DEPARTMENT OF EDUCATION CROSS-CUTTING SECTION

INTRODUCTION

This section contains compliance requirements that apply to more than one Department of Education (ED) program (listed below) in the Supplement because the program was authorized under the Elementary and Secondary Education Act of 1965 (ESEA) or the program is subject to the General Education Provisions Act (GEPA) or the Build America, Buy America Act (BABAA). The applicable programs in Part 4 reference this ED Cross-Cutting Section.

Note: For an area that a specific program did not select under the six-requirement limitation, ED has removed its Assistance Listing from that area (or sub-area) of the cross-cutting section.

Assistance Listing 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 (Title, I, Part C)	MEP
84.282	Charter Schools	CSP
84.287	Twenty-First Century Community Learning Centers	21st CCLC
84.365	English Language Acquisition Grants	Title III, Part A
84.367	Supporting Effective Instruction State Grant	Title II, Part A
84.424	Student Support and Academic Enrichment Grants	Title IV, Part A
Non-ESEA Programs		
84.002	Adult Education—State Grant Program	Adult Education
84.027 84.173	Special Education—Grants to States (IDEA, Part B) Special Education—Preschool Grants (IDEA Preschool)	IDEA
84.042 84.044 84.047 84.066 84.217	TRIO—Student Support Services TRIO—Talent Search TRIO—Upward Bound TRIO—Educational Opportunity Centers TRIO—McNair Post-Baccalaureate Achievement	TRIO Cluster
84.048	Career and Technical Education – Basic Grants to States (Perkins V)	CTE
84.126	Rehabilitation Services – Vocational Rehabilitation	

84.181	Special Education—Grants for Infants and Families with Disabilities	IDEA, Part C
84.425A	Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA I and II)	
84.425C	Governor’s Emergency Education Relief (GEER I and II) Fund	
84.425D	Elementary and Secondary School Emergency Relief (ESSER I and II) Fund	
84.425H	Education Stabilization Fund–Governors (Outlying Areas) (ESF-Governors I and II)	
84.425R	Emergency Assistance to Non-Public Schools (EANS) Program	
84.425U	American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund	
84.425V	American Rescue Plan Emergency Assistance to Non-Public Schools (ARP EANS)	
84.425X	American Rescue Plan-Outlying Areas State Educational Agency (ARP-OA SEA) Fund	

References to the ESEA are to the ESEA, as amended by the Every Student Succeeds Act (ESSA).

The ESEA was amended December 10, 2015, by the ESSA (Pub. L. No. 114-95).

Education Stabilization Fund (ESF) Programs

To prevent, prepare for, and respond to the Coronavirus Disease 2019 (COVID-19), Congress enacted three laws. In March 2020, it passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 748-284, which includes the ESF. Four CARES Act ESF programs are included in this Supplement: the Governor’s Emergency Education Relief (GEER I) Fund (Assistance Listing 84.425C); the Elementary and Secondary School Emergency Relief (ESSER I) Fund (Assistance Listing 84.425D); the Education Stabilization Fund–Governors (Outlying Areas) (ESF-Governors I) (Assistance Listing 84.425H); and the Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA I) (Assistance Listing 84.425A).

In December 2020, Congress passed the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021, Pub. L. No. 116-260, which provided additional funds to the ESF. Five CRRSA ESF programs are included in this Supplement: the Governor’s

Emergency Education Relief (GEER II) Fund (Assistance Listing 84.425C); the Elementary and Secondary School Emergency Relief (ESSER II) Fund (Assistance Listing 84.425D); the Education Stabilization Fund–Governors (Outlying Areas) (ESF-Governors II) (Assistance Listing 84.425H); the Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA II) (Assistance Listing 84.425A); and the Emergency Assistance to Non-Public Schools (EANS) program (Assistance Listing 84.425.R).

In March 2021, Congress passed the American Rescue Plan Act of 2021 (ARP), Pub. L. No. 117-2, which provided additional funds to the ESF. Three ARP programs are included in this Supplement: the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund (Assistance Listing 84.425U); the American Rescue Plan Emergency Assistance to Non-Public Schools (ARP EANS) (Assistance Listing 84.425V); and the American Rescue Plan-Outlying Areas State Educational Agency (ARP-OA SEA) Fund (Assistance Listing 84.425X).

Waivers and Expanded Flexibility

Local educational agencies (LEAs) through their SEA, and schools through their LEA and SEA, may request waivers from ED of many of the statutory and regulatory requirements of programs authorized in the ESEA. In addition, some States have been granted authority to grant waivers of Federal requirements under the Education Flexibility Partnership Act of 1999. See approved States at: https://www.ed.gov/grants-and-programs/grants-birth-grade-12/ed-flex#Participating-States.

Due to the COVID-19 pandemic, ED invited SEAs to apply for certain fiscal waivers. A list of the invited waivers is available at:

- Adult Ed and Perkins: https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/tydings-covid-waiver-letter-aefla.pdf

- IDEA: https://www2.ed.gov/policy/speced/guid/idea/monitor/cssos-mfs-2018-waiver-authority-06-05-2020.pdf

For certain programs, lists of waivers granted under the CARES Act waiver authority are listed in the *Federal Register*:

- Adult-Ed and Perkins: https://www.federalregister.gov/documents/2020/11/05/2020-24537/notice-of-waiver-granted-under-the-coronavirus-aid-relief-and-economic-security-cares-act

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” (except for certain ESF programs see the program-specific level of effort- maintenance of effort requirement); and III.N, “Special Tests and Provisions.” 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.

In recent years, the Office of Inspector General in ED has investigated a number of significant criminal cases related to the risk of misuse of Federal funds and the lack of accountability of Federal funds in public charter schools. Auditors should be aware that, unless an applicable program statute provides otherwise, public charter schools, including charter school LEAs, are subject to the requirements in this cross-cutting section to the same extent as other public schools and LEAs. Auditors also should note that, depending upon State law, a public charter school may be its own LEA or a school that is part of a traditional LEA.

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.

I. PROGRAM OBJECTIVES

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

II. PROGRAM PROCEDURES

A. Overview

1. *ESEA Programs*

The ESEA requires an SEA to 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 8302 of the ESEA, a consolidated plan to ED for approval. Each SEA submitted a consolidated State plan. SEAs with approved consolidated State plans may require LEAs to submit consolidated plans or allow an LEA to submit a consolidated plan or individual program plans.

B. Subprograms/Program Elements

Unique Features of ESEA Programs That May Affect the Conduct of the Audit Subprograms/Program Elements

The following unique features may affect the conduct of an audit:

1. *Consolidation of Administrative Funds*

   SEAs and LEAs (with SEA approval) may consolidate Federal funds received for administration under many ESEA programs, and non-ESEA programs listed in the last sentence, 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. This also includes these non-ESEA programs, ESSER, GEER (if administered by an SEA), and EANS.

2. *Schoolwide Programs*

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

3. *Transferability*

   SEAs and LEAs (with some limitations) may transfer up to 100 percent of their allotment from one or more applicable programs (Title II, Part A and Title IV, Part A for SEAs and LEAs; 21st CCLC for SEAs) to one or more of those programs or to other applicable programs: Title I, Part A; MEP; Title I, Part D; Title III, Part A; and Title V, Part B. Transferred funds are subject to all of the requirements, set-asides, and limitations of the programs into which they are transferred.

4. *Small Rural Schools Achievement Alternative Use of Funds*

   Eligible LEAs may, after notifying the SEA, spend all or part of the formula funds they receive under two applicable programs (Title II, Part A and Title IV, Part A) for local activities authorized under one or more of five applicable programs (Title I, Part A; Title II, Part A; Title III, Part A; Title IV, Part A; and 21st CCLC).

Availability of Other Program Information

The ESEA, as reauthorized by the ESSA, is available with a hypertext index at https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf.

An ED *Federal Register* notice, dated July 2, 2004 (69 FR 40360-40365), indicating which Federal programs may be consolidated in a schoolwide program, is available at http://www.gpo.gov/fdsys/pkg/FR-2004-07-02/pdf/04-15121.pdf.

A number of documents contain guidance applicable to the cross-cutting requirements in this section. Documents numbered 10-11 below, which were issued before enactment of the ESSA, are applicable in general. They include:

1. ESSA Fiscal Changes & Equitable Services (which includes guidance on Transferability Authority) (November 21, 2016) ESSA Non Regulatory Guidance Fiscal and Equitable Service 11-21-2016 (PDF) (ed.gov)
   Note: The information on Title I, Part A equitable services in this document is superseded by the nonregulatory guidance ED issued in October 2019. See below.

2. ESSA Schoolwide Guidance (September 29, 2016) https://oese.ed.gov/files/2020/07/essaswpguidance9192016.pdf

3. Title I, Part A of the ESEA: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (October 7, 2019/updated May 17, 2023) https://oese.ed.gov/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf

4. Informational Document on the Rural Education Achievement Program (REAP) (January 19, 2021) https://oese.ed.gov/files/2021/01/19-0043-REAP-Informational-Document-final-OS-Approved-1.pdf

5. Non-Regulatory Guidance: Early Learning in the Every Student Succeeds Act (November 2016) https://oese.ed.gov/files/2020/07/essaelguidance10202016.pdf

6. Within-District Allocations Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Draft) https://oese.ed.gov/files/2022/02/Within-district-allocations-FINAL.pdf

7. Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs (Oct. 9, 2020) https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf

8. Title VIII, Part F of the Elementary and Secondary Education Act of 1965: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel (July 17, 2023) https://www2.ed.gov/about/inits/ed/non-public-education/files/esea-titleviii-guidance-2023.pdf

9. How Does a State or Local Educational Agency Allocate Funds to Charter Schools that are Opening for the First Time or Significantly Expanding Their Enrollment? (December 2000) https://oese.ed.gov/files/2020/07/cguidedec2000.pdf

10. Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements (February 2008) https://oese.ed.gov/files/2020/07/fiscalguid.pdf

11. A BABAA FAQ document, U.S. Department of Education Frequently Asked Questions about the Build America Buy America Act, addressing questions related to ED's implementation of BABAA is available at https://www2.ed.gov/policy/fund/guid/buy-america/faqs.pdf and additional information can be found at https://www2.ed.gov/policy/fund/guid/buy-america/index.html.

12. Serving Preschool Children Through Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended (February 2024) https://oese.ed.gov/files/2024/02/Title-I-Preschool-Early-Learning-Guidance-Revised-2023-FINAL.pdf (This is a new document that is specific to Title I Preschool and is an update to previous guidance that was issued in 2012.)

III. COMPLIANCE REQUIREMENTS

If there has been a transfer of funds to a consolidated administrative cost objective 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 objective in the universe to be tested.

A. Activities Allowed or Unallowed

1. Activities Allowed

a. 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); CSP (84.282); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); Title IV, Part A (84.424A) including the Stronger Connections Grant (84.424F). This section also applies to ESSER, GEER, EANS, and the ESF Outlying Areas program (84.425A, C, D, H, R, U, V, and X).

An SEA may consolidate the amounts specifically made available to it for State administration under one or more ESEA programs (and such other programs as the ED secretary may designate) if the SEA can demonstrate that the majority of its resources are derived from non-Federal sources. An SEA must use consolidated administrative funds for authorized administrative activities of one or more of the consolidated programs. It may also use such funds for administrative activities designed to enhance the effective and coordinated use of funds under one or more of the programs included in the consolidation, such as coordination of ESEA programs with other Federal and non-Federal programs; the establishment and operation of peer review mechanisms; the dissemination of information regarding model programs and practices; and technical assistance (Section 8201 of ESEA (20 USC 7821)).

An LEA may, with the approval of its SEA, consolidate and use for the administration of one or more ESEA programs not more than the percentage, established in each program, of the total available under those programs. An LEA may use consolidated funds for the administration of the consolidated programs and for uses at the school district and school levels comparable to those authorized for the SEA. An LEA that consolidates administrative funds may not use any other funds under the programs included in the consolidation for administration (Section 8203 of ESEA (20 USC 7823)).

An SEA or LEA that consolidates administrative funds is not required to keep separate records of administrative costs for each individual program.

Expenditures of consolidated administrative funds are allowable if they are for administrative costs that are allowable under any of the contributing programs (sections 8201(c) and 8203(e) of ESEA (20 USC 7821(c) and 7823(e))).

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

b. *Schoolwide Programs (LEAs)- ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) but not including the Stronger Connections Grant (84.424F). This section also applies to ESSER & GEER (84.425C, D, and U), IDEA (84.027 and 84.173), and CTE (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 IV, "Other Information," for guidance on the treatment of consolidated schoolwide funds for purposes of Type A program determination and presentation in the SEFA.

c. *Transferability (SEAs and LEAs)- ESEA programs in this Supplement to which this section applies are: 21st CCLC (84.287) (for SEAs only), Title*

II, Part A (84.367), and Title IV, Part A (84.424A), but not including the Stronger Connections Grant (84.424F).

SEAs may transfer up to 100 percent of the non-administrative funds allocated for State-level activities from applicable programs to one or more of the other listed applicable programs, or to Title I, Part A (Assistance Listing 84.010); MEP (Assistance Listing 84.011); Title I, Part D (Assistance Listing 84.013); Title III, Part A (Assistance Listing 84.365A); and Title V, Part B (84.358). LEAs may transfer up to 100 percent of their allotments from an applicable program to the other listed applicable program, or to Title I, Part A (Assistance Listing 84.010); MEP (Assistance Listing 84.011); Title I, Part D (Assistance Listing 84.013); Title III, Part A (Assistance Listing 84.365A); and Title V, Part B (84.358).

See III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," in this cross-cutting section, for additional testing related to transferability.

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

d. *Small Rural Schools Achievement (SRSA) (LEAs) Alternative Uses of Funds Program- ESEA programs in this Supplement to which this section applies are Title II, Part A (84.367) and Title IV, Part A (84.424A), but not including the Stronger Connections Grant (84.424F).*

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 ten persons per square mile; and (b) serve only schools that are designated rural (locale code of 41, 42, or 43) by the National Center for Education Statistics (NCES), 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 programs for local activities authorized under one or more of the following five programs:

(1) Assistance Listing 84.010 Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A)

(2) Assistance Listing 84.287 Twenty-First Century Community Learning Centers (Title IV, Part B)

(3) Assistance Listing 84.365 Language Instruction for English Learners and Immigrant Students (Title III)

(4) Assistance Listing 84.367 Supporting Effective Instruction (Title II, Part A)

(5) Assistance Listing 84.424 Student Support and Academic Enrichment (Title IV, Part A) (Section 5211(a)-(c) of ESEA (20 USC 7345(a)-(c))).

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

B. Allowable Costs/Cost Principles

1. *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); CSP (84.282); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A), including the Stronger Connections Grant (84.424F). This section also applies to IDEA (84.027 and 84.173) (schoolwide programs only), CTE (84.048) (schoolwide programs only), and ESSER, GEER, and EANS (84.425C, D, R, U, and V) (consolidated administrative funds and schoolwide programs).

a. *Consolidated Administrative Funds (SEA/LEA):* An SEA or LEA that consolidates Federal administrative funds is not required to keep separate records by individual program (Sections 8201(c) or 8203(e) of ESEA (20 USC 7821(c) or 7823(e))). The SEA or LEA may treat the consolidated administrative funds as a consolidated administrative cost objective.

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

(1) For an employee who works solely on the consolidated administrative cost objective, an SEA or LEA is not required to maintain records reflecting the distribution of the employee's salary and wages among the programs included in the consolidation.

(2) For an employee who works in part on the consolidated administrative cost objective and in part on a Federal program whose administrative funds have not been consolidated or on activities funded from other revenue sources, an SEA or LEA must maintain time and effort distribution records in accordance with 2 CFR section 200.430(i)(1)(vii) that support the portion of time and effort dedicated to:

(a) The consolidated cost objective, and

(b) Each program or other cost objective supported by non-consolidated Federal funds or other revenue sources.

b. *Schoolwide Programs (LEA)* – A schoolwide program school is permitted to consolidate Federal funds with State and local funds to upgrade the entire educational program of the school. A school that consolidates Federal funds with State and local funds in a consolidated schoolwide pool is not required to maintain separate records by program (Section 1114(a)(3)(C) of ESEA (20 USC 6314(a)(3)(C), 34 CFR section 200.29(d). If a schoolwide program school does not consolidate Federal funds in a consolidated schoolwide pool, the school must keep separate records by program. (Guidance is contained in the publication entitled *Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements* (February 2008). This guidance is available at https://oese.ed.gov/files/2020/07/fiscalguid.pdf.

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

(1) If a school operating a schoolwide program consolidates Federal, State, and local funds in a consolidated schoolwide pool, there is no distinction between staff paid with Federal funds and staff paid with State or local funds. Under these circumstances, payment from the single consolidated schoolwide pool is sufficient to demonstrate that an employee works only on activities of the schoolwide program, and no other documentation is required.

(2) If a school operating a schoolwide program does not consolidate Federal funds with State and local funds in a consolidated schoolwide pool, an employee who works, in whole or in part, on a Federal program or cost objective must document time and effort as follows:

(a) For an employee who works solely on a single cost objective (e.g., a single Federal program whose funds have not been consolidated or Federal programs whose funds have been consolidated but not with State and local funds), an LEA is not required to maintain records reflecting the distribution of the employee’s salary and wages, including among the Federal programs included in the consolidation, if applicable.

(b) For an employee who works on multiple activities or cost objectives (e.g., in part on a Federal program whose funds have not been consolidated in a consolidated schoolwide pool and in part on Federal programs supported with funds consolidated in a schoolwide pool or on activities that are not part of the same cost objective), an LEA must maintain time and effort distribution records in accordance with 2

CFR section 200.430(i)(1)(vii) that support the portion of time and effort dedicated to:

(i) The Federal program or cost objective; and

(ii) Each other program or cost objective supported by consolidated Federal funds or other revenue sources.

2. *Indirect Costs (SEA/LEA or other subrecipients)*

ESEA programs in this Supplement to which a restricted indirect cost rate applies are Title I, Part A (84.010); MEP (84.011); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) including the Stronger Connections Grant (84.424F).

This section also applies to Adult Education (84.002); IDEA (84.027 and 84.173); CTE (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 subgrantees that have a statutory requirement prohibiting the use of Federal funds to supplant nonfederal funds. The programs listed above in this section have a non-supplanting requirement and therefore must have a restricted indirect cost rate.

Nongovernmental grantees or subgrantees administering such programs have the option of using the RICR, or an indirect cost rate of 8 percent, unless ED determines that the RICR would be lower.

The formula for a restricted indirect cost rate is:

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

a. Divisional administration that is limited to one component of the grantee;

b. The governing body of the grantee;

c. Compensation of the chief executive officer of the grantee;

d. Compensation of the chief executive officer of any component of the grantee; and

e. Operation of the immediate offices of these officers.

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

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

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

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

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

The other ED programs (those not having a statutory non-supplant requirement) that allow indirect costs do not require a restricted rate and should follow the cost principles in 2 CFR Part 200, Subpart E (34 CFR sections 76.560 and 76.563-76.569).

3. *Unallowable Direct Costs to Programs (SEA/LEA or other subrecipients)*

Officials from ED have noted that some entities have charged costs in the following areas which were determined to be unallowable as specified in the indicated references. Auditors should be alert that if any such costs are charged, charges must be consistent with provisions of 2 CFR Part 200, Subpart E or as applicable.

a. Separation leave costs (2 CFR section 200.431(b)).

b. Severance costs (2 CFR section 200.431(i)).

c. Post-retirement health benefit (PRHB) costs (2 CFR section 200.431(h)).

4. *Unallowable Costs to Programs (Direct or Indirect) (SEA/LEA or other subrecipients)*

Officials from ED have noted that, in cases where grantees rent or lease buildings or equipment from an affiliate organization, the costs associated with the lease or rental agreement can be excessive. The auditor should be alert to the fact that the measure of allowability in such “less-than-arms-length-relationships” is not fair market value, but rather the “costs of ownership” standard as referenced in 2 CFR section 200.465(c).

C. Cash Management

ESEA programs in this Supplement to which this section applies are: CSP (84.282); 21st CCLC (84.287); and Title IV, Part A (84.424A) including the Stronger Connections Grant (84.424F).

This section also applies to Adult Education (84.002); TRIO Cluster (84.042, 84.044, 84.047, 84.066, and 84.217); CTE (84.048); and IDEA, Part C (84.181).

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

Grantees draw funds via the G5 System. Grantees request funds by (1) creating a payment request using the G5 System through the Internet; (2) calling the Payee Hotline; or (3) if the grantee is placed on the reimbursement or cash monitoring payment method, submitting a Form 270, *Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2), (OMB No. 1845-0089)*, to an ED program or regional office.

When creating a payment request in G5, the grantee enters the drawdown amounts, by award, directly into G5. Grantees can redistribute drawn amounts between grant awards by making adjustments in G5 to reflect actual disbursements for each award, as long as the net amount of the adjustments is zero. When requesting funds using the other two methods, grantees provide drawdown information to the hotline operator or on the Form 270, as applicable.

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

G. Matching, Level of Effort, Earmarking

1. Matching

See individual program supplements for any matching requirements.

2. Level of Effort

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); Title III, Part A (84.365); and Title II, Part A (84.367).; as described in the Introduction, "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, an SEA must reduce an LEA's allocation under a covered program if the LEA also failed to maintain effort in one or more of the five immediately preceding fiscal years 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 8521 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 suggested audit procedures for compliance contained in Part 3G for "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 (grantees and subgrantees)*

MEP (84.011); CTE (84.048); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) including the Stronger Connections Grant (84.424F).

General – A grantee and subgrantee 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 (MEP, Section 1304(c)(2) of ESEA (20 USC 6394(c)(2)); Title III, Part A, Section 3115(g) (20 USC 6825(g)) (see additional information below); Title II, Part A, Section 2301 of ESEA (20 USC 6691)); and Title IV, Part A, Section 4110 (20 USC 7120)).

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

a. The SEA or LEA used Federal funds to provide services that the SEA or LEA was required to make available under other Federal, State, or local laws.

b. The SEA or LEA used Federal funds to provide services that the SEA or LEA provided with non-Federal funds (or for Title III, Part A, other Federal funds, as noted below) in the prior year.

c. The SEA or LEA used 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.

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 the MEP, as identified in Title I of ESEA (sections 1118(d) and 1304(c)(2) of ESEA (20 USC 6321(d) and 6394(c)(2)); 34 CFR section 200.88).

MEP funds may only be used to address the needs of migratory children that are not addressed by services available from other **Federal or non-Federal** programs (Section 1306(b)(2) of ESEA).

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

3. Earmarking

a. Administration *(SEA)*

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.

However, if the sum of the amounts appropriated for parts A, C, and D is equal to or greater than $14 billion, as is the case for fiscal year (FY) 2019, the amount an SEA may reserve for administration may not exceed one percent of the amount the State would receive if the Title I allocation were $14,000,000,000 (20 USC 6304(b)). ED has provided a table to the State showing the amount that it could reserve for administration of Title I programs from FY 2021 funds if $14 billion were appropriated for FY 2020. An SEA may reserve less than one percent from each of parts A, C, and D. Moreover, an SEA does not need to reserve the same percentage from each part, although the SEA may not reserve more from parts C and D than it would have reserved if it had reserved proportionate amounts from parts A, C, and D. An SEA reserving $400,000 must reserve proportionate amounts from each of the amounts allocated to the State under Part A but is not required to reserve funds proportionately from each of parts A, C, and D and may, for example, take the reservation entirely out of Part A funds. However, in reserving $400,000, an SEA may not reserve more funds for State administration from Part C or Part D than it would have if it had reserved proportionate funds from parts A, C, and D. (Section 1004 of ESEA (20 USC 6304); see also 34 CFR section 200.100(b)). For more detail, see page 33 of the guidance entitled *State*

Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education (May 23, 2003) (https://oese.ed.gov/files/2020/07/seaguidanceforadjustingallocations.doc) and page 9 of the ESSA Fiscal Changes & Equitable Services guidance (November 2016) (ESSA Non Regulatory Guidance Fiscal and Equitable Service 11-21-2016 (PDF) (ed.gov)).

As explained in III.A.1, "Activities Allowed or Unallowed – Consolidation of Administrative Funds," the amounts reserved above may be consolidated with State administrative funds available under other applicable programs (Section 8201(a) of ESEA (20 USC 7821(a)).

b. Transferability *(SEA/LEA)*

Title II, Part A (84.367); and Title IV, Part A (84.424A) – not including the Stronger Connections Grant (84.424F).

SEAs may transfer up to 100 percent of the non-administrative funds allocated for State-level activities from one or more of the programs listed above (as well as 21st CCLC) to one or more of those programs, or to Title I, Part A (84.010); MEP (84.011); Title I, Part D, Subpart 1 (84.013); Title III, Part A (84.365A); or Title V, Part B (84.358). LEAs may transfer up to 100 percent of their allotments from one or more of the programs listed above to one or more of those programs, or to Title I, Part A (84.010); MEP (84.011); Title I, Part D, Subpart 2 (84.013); Title III, Part A (84.365A); or Title V, Part B (84.358).

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.

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 5103(a) and (b) of ESEA (20 USC 7305b(a) and (b))).

H. Period of Performance (All Grantees and Subgrantees)

ESEA program in the Supplement to which this section applies are MEP (84.011); Title III, Part A (84.365); and Title IV, Part A (84.424).

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

All ESEA and other programs as identified in the program documents except subrecipients under Career Technical Education (CTE) – Funds must be obligated 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 2019 appropriation initially became available on July 1, 2019; and may be obligated by the grantee and subgrantee through September 30, 2021 (Section 421(b) of GEPA (20 USC 1225(b)); 34 CFR sections 76.703 through 76.710). See note about invited waiver that pertains to this requirement under "Waivers and Expanded Flexibility."

CTE Program – In any academic year that a subrecipient does not obligate all of the amounts it is allocated under the Secondary and Postsecondary CTE programs for that year, it must return the unobligated amounts to the State to be reallocated under the Secondary and Postsecondary CTE programs, as applicable (Section 133(b) of the Carl D. Perkins Career and Technical Education Act of 2006 as amended by the Strengthening Career and Technical Education Act for the 21st Century Act (Perkins V) ((20 USC 2301 et seq., as amended by Pub. L. No. 115-224) (20 USC 2353(b))).

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

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

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-award cost that was properly approved by the State under the cost principles	On the first day of the subgrant period.

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

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

I. Procurement and Suspension and Debarment

Applicability of BABAA to ED Programs

A list of ED programs that are subject to BABAA is available at: infrastructure-programs-list.pdf (ed.gov). This list is subject to change resulting from the identification of new programs that will require BABAA compliance or resulting from reauthorizations of existing programs that will require compliance. However, the list becomes outdated each time an update is made so auditors are cautioned to document the date of the list they viewed to determine BABAA applicability.

As of May 3, 2023 (the date of the most current list at the time of this Compliance Supplement's publication), this section applies to Vocational Rehabilitation (84.126); CSP (84.282); IDEA, Part B (84.027); IDEA, Preschool (84.173); and IDEA, Part C (84.181) because Procurement is subject to audit in those program supplement sections.

ED implemented BABAA effective October 1, 2022, in accordance with its approved BABAA adjustment period waiver. The BABAA domestic content procurement preference requirement applies to new, non-competing continuation, and supplemental grants awarded on or after October 1, 2022, under ED's infrastructure programs. At ED, infrastructure is limited to only construction, remodeling, or broadband infrastructure activities. Projects considered under ED's Regulations as "minor remodeling" (34 CFR § 77.1(c)) are not considered infrastructure projects and are not subject to the BABAA Domestic Sourcing Requirements. Only those activities in each grant project related to *infrastructure* are covered. No other projects or costs associated with other grant activities are subject to the BABAA domestic sourcing requirements. The BABAA domestic content procurement preference requirement does not apply retroactively to new, non-competing continuation (NCC), and supplemental grants awarded prior to October 1, 2022. See also related ED BABAA FAQ document referred to in the Availability of Other Program Information section above.

Waivers – BABAA

If a grantee is implementing a proposed construction, remodeling, or broadband infrastructure project and proposes to deviate from the BABAA domestic sourcing requirements and meets relevant requirements for a waiver, a grantee must submit a waiver request, unless the project qualifies under one the department's agency level waivers. The grantee should submit the BABAA Waiver Request Form to ED before, during, or after it solicits bids for the project that is subject to the BABAA domestic sourcing requirements.

For information regarding the BABAA domestic sourcing waiver requirements and waiver request process, see the U.S. Department of Education Domestic Sourcing Requirements and Grant Waiver Request Procedure guidance document. Additional information, including information about the department's agency level waivers, is available at https://www2.ed.gov/policy/fund/guid/buy-america/index.html.

M. Subrecipient Monitoring

Oversight and Monitoring Responsibilities with Respect to Charter Schools with Relationships with Charter Management Organizations (SEAs/LEAs)

ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010) and Title III, Part A (84.365)

As grantees, SEAs/LEAs are responsible for overseeing and monitoring subrecipients, including charter schools with relationships with Charter Management Organizations (CMOs) (section 4310(3) of the ESEA). Charter schools with relationships with CMOs that receive Federal grant funds must comply with statutes authorizing the applicable grant program, applicable regulations, and the terms and conditions of their grant awards.

As described in the Introduction, "Cross-Cutting Requirements," this requirement is a program-specific cross-cutting requirement that needs to be tested separately for each covered program in the Supplement.

Note: As stated earlier, the Office of Inspector General in ED has investigated a number of significant criminal cases related to the risk of misuse of Federal funds and the lack of accountability of Federal funds in public charter schools. Auditors should be aware that, unless an applicable program statute provides otherwise, public charter schools, including charter school LEAs, are subject to the requirements in this cross-cutting section to the same extent as other public schools and LEAs. Auditors also should note that, depending upon State law, a public charter school may be its own LEA or a school that is part of a traditional LEA.

N. Special Tests and Provisions

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

ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); 21st CCLC (84.287); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) including the Stronger Connections Grant (84.424F).

This section also applies to ESSER I and GEER I (84.425C and D), as well as ESF-SEA, ESF II-SEA, ESF-Governor, ESF II-Governor, and ARP-OA SEA (84.425A, H, and X, respectively).

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 the Introduction, "Cross-Cutting Requirements").

Compliance Requirements For programs funded under Title I, Part A (Assistance Listing 84.010), an LEA, after timely and meaningful consultation with private school officials, must provide equitable services to eligible private school children, their teachers, and their families. Eligible private school children are those who reside in a participating public school attendance area and have educational needs under Section 1115(c) of the ESEA (20 USC 6315(c)). The amount of funds an LEA makes available for equitable services under Title I, Part A must be equal to the proportion of funds generated by private school children from low-income families who reside in participating public school attendance areas. An LEA must determine the proportional share available for services for eligible private school children based on the total amount of Title I funds received prior to any expenditures or transfers of funds within the program, such as reservations for administration, parental involvement, and district-wide activities (20 USC 6320(a)(4)(A)). LEAs determine the proportional share by multiplying the proportion of children from low-income families who attend private schools and live in participating Title I attendance areas by the LEA's total Title I allocation (including any funds transferred into Title I). For more information, see Title I, Part A of the ESEA: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (October 7, 2019) (https://oese.ed.gov/files/2020/07/equitable-services-guidance-100419.pdf).

For programs under Title VIII of the ESEA (Assistance Listing 84.011, 84.365, 84.367, and 84.424), ESF-SEA I (Assistance Listing 84.425A), and ESF-Governor I (Assistance Listing 84.425H), an agency, consortium, or entity receiving financial assistance under an applicable program must provide eligible private school children and their teachers or other educational personnel with equitable services or other benefits under the program. Before an agency, consortium, or entity makes any decision that affects the opportunity of eligible private school children, teachers, and other educational personnel to participate, the agency, consortium, or entity must engage in timely and meaningful consultation with private school officials. Expenditures for services and benefits to eligible private school children and their teachers and other educational personnel must be equal on a per-pupil basis to the expenditures for participating public school children and their teachers and other educational personnel, taking into account the number and educational needs of the children, teachers and other educational personnel to be served (Section 8501 of ESEA (20 USC 7881); 34 CFR sections 299.6 through 299.9).

For programs under ESSER I and GEER I (Assistance Listing 84.425C and D), an LEA that receives funds under one or both of those programs must provide equitable services in the same manner as provided under section 1117 of Title I, Part A of the ESEA (20 USC 6320) (Assistance Listing 84.010) to students and teachers in private schools as determined in consultation with private school officials (section 18005(a) of the CARES Act). To meet this requirement, an LEA must determine the proportional share of ESSER I or GEER I funds available for equitable services in accordance with section 1117(a)(4)(A) of the ESEA (20 USC 6320(a)(4)(A)). Consistent with the guidance referenced below, under ESSER I and GEER I, the LEA in which a private school is located is responsible for providing equitable services to students and teachers in the school. With respect to the provision of services, in general all students and teachers in a private school are eligible to receive equitable services under ESSER I and GEER I. However, an LEA may limit eligibility to students who are low-achieving and reside in a Title I public school attendance area in the LEA consistent with the Title I, Part A equitable services requirements in section 1117 of the ESEA. In addition, if a Governor (under GEER I) or an SEA (through the SEA reserve fund under ESSER I) targets funds for a specific purpose or population of public school students, an LEA may similarly target services for private school students. For more information, see questions 4 and 7–11 in Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs (Oct. 9, 2020) (https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf).

An LEA that receives funds under ESSER II, ARP ESSER, or GEER II is not required to provide equitable services to students and teachers in private schools.

For programs under ESF-SEA, ESF II-SEA, ESF-Governor, ESF II-Governor, and ARP-OA SEA, SEAs and governors will ensure that equitable services, as determined through timely and meaningful consultation with non-public school officials, will be provided to students and teachers in non-public elementary and secondary schools in the same manner as provided under section 8501 of the ESEA.

The control of funds used to provide equitable services to eligible private school students, teachers and other educational personnel, and families, and title to materials, equipment, and property purchased with those funds must be in a public agency and the public agency must administer the funds, materials, equipment, and property. The provision of equitable services must be by employees of a public agency or through a contract by the public agency with an individual, association, agency, or organization that is independent of the private school. The contract must be under the control of the public agency (Sections 1117(d), and 8501(d) of ESEA (20 USC 6320(d), and 7881(d); section 18005(b) of the CARES Act; 34 CFR sections 76.661, 200.64(b)(3), 200.67, and 299.9).

These compliance requirements also apply to transfers from *Title II, Part A (84.367) and Title IV, Part A (84.424)* (Section 5103(e)(2) of ESEA (20 USC 7305b(e)(2)), as provided in III.A.3, “Activities Allowed or Unallowed – Transferability”).

Audit Objectives Determine whether (1) an LEA, SEA, or other agency receiving ESEA funds, an LEA receiving ESSER I or GEER I funds (84.425C and D), and an OA SEA or Governor receiving ESF-SEA, ESF II-SEA, ESF-Governor, ESF II-Governor, and ARP-OA SEA (84.425A, H, and X, respectively) 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

a. Verify, by reviewing minutes of meetings and other appropriate documents, that the agency, consortium, or entity conducted timely consultation with private school officials in making its determinations and set aside the required amount for private school children.

b. Review program expenditure and other records to verify that educational services that were planned were provided.

c. For Title I, Part A, verify that the amount of funds available for equitable services in an LEA was determined by multiplying the proportion of private school children from low-income families residing in participating public school attendance areas by the LEA’s total Title I, Part A allocation.

d. If an agency, consortium, or entity provides services to eligible private school students under an arrangement with a third-party provider, verify that the agency, consortium, or entity retains proper administration and control by having a written contract that:

   (1) Describes the services to be provided; and

   (2) Provides that the agency, consortium, or entity retains ownership of materials, equipment, and property purchased with Federal funds.

e. For programs other than Title I, Part A, ESSER I, and GEER I, verify that expenditures are equal on a per-pupil basis for public and private school students, teachers, and other educational personnel, taking into consideration their numbers and needs as required by 34 CFR section 299.7. Please note that all students and teachers in a non-public school are eligible to receive equitable services under the CARES Act programs, unless a Governor (under the GEER Fund) or an SEA (through the SEA reserve under the ESSER Fund) targets funds for a specific purpose or population of public and non-public school students. If a Governor or SEA does this, then equitable services would also be limited.

2. Access to Federal Funds for New or Significantly Expanded Charter Schools (SEA/LEA, depending on which entity is responsible for funding charter schools)

ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) not including the Stronger Connections Grant (84.424F).

As described in the Introduction, “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. *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 additional of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that the SEA determines to be significant. 34 CFR section 76.787. *Charter school* has the same meaning as provided in Title IV, Part C, of the ESEA (Section 4310(2) of ESEA (20 USC 7221i(2))). 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.

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 five 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. For purposes of implementing the hold harmless protections in sections 1122(c) and 1125A(f)(3) of Title, Part A of ESEA for a new or expanding charter school LEA, an SEA must calculate a hold-harmless base for the prior year that, as applicable, reflects the new or expanding enrollment of the charter school LEA (Section 4306(c) of ESEA (20 USC 7221e(c))). For more detail, see pages 4–7 of the ESSA Fiscal Changes & Equitable Services guidance (November 2016) (ESSA Non Regulatory Guidance Fiscal and Equitable Service 11-21-2016 (PDF) (ed.gov)).

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 five 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 4306 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.

g. For Title I, Part A, review documentation to determine whether the SEA applied section 4306(c) of the ESEA to calculate a hold-harmless base for the prior year that reflects the new or significantly expanded enrollment of the charter school LEA.

IV. OTHER INFORMATION

1. Consolidation of Administrative Funds (SEAs and LEAs)

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); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) including the Stronger Connections Grant (84.424F).

This section also applies to ESSER, GEER, and EANS (84.425C, D, R, U, and V).

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

2. Schoolwide Programs (LEAs)

ESEA programs in this Supplement to which this section applies are Title I, Part A (84.010); MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424A) not including the Stronger Connections Grant (84.424F).

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

Since schoolwide programs are not separate Federal programs, as defined in 2 CFR section 200.42, expenditures of Federal funds consolidated in schoolwide programs should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs and (2) completing the SEFA. A footnote showing, by program, amounts consolidated in schoolwide programs is encouraged.

3. Transferability (SEAs and LEAs)

ESEA programs in this Supplement to which this section applies are Title II, Part A (84.367) and Title IV, Part A (84.424A) –not including the Stronger Connections Grant (84.424F).

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

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.002 ADULT EDUCATION – BASIC GRANTS TO STATES

I. PROGRAM OBJECTIVES

The Adult Education and Family Literacy State Grant program provides grants to eligible agencies to provide adult education and literacy services. These grants help adults (1) become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency; (2) obtain the education and skills that are necessary to become full partners in the educational development of their children and lead to sustainable improvements in the economic opportunities for their family; and (3) attain a secondary school diploma and transition to postsecondary education and training, including through career pathways. These grants also assist immigrants and other individuals who are English language learners in improving their reading, writing, speaking, and comprehension skills in English and mathematics and in acquiring an understanding of the American system of government, individual freedom, and the responsibilities of citizenship.

II. PROGRAM PROCEDURES

To receive funds, states must submit to the secretaries of Labor and Education, and have approved, a four-year unified or combined state plan (state plan) that covers the program, as well as certain other core programs required to be included in the plan under the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. No. 113-128). State plans must be modified at the end of the first two-year period and may be revised at other times when substantial changes in conditions occur. Funds are awarded to the state eligible agency each year in accordance with a statutory formula. In turn, the state eligible agency makes awards to eligible providers on a competitive basis, using the same competitive process for all eligible providers, and ensures that all eligible providers have direct and equitable access to apply and compete for funds. Local activities, implemented by eligible providers, include services or instruction in one or more of the following categories: adult education, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, and integrated education and training. Eligible providers are organizations with demonstrated effectiveness in providing adult education and literacy activities and may include a local educational agency; a community-based organization or faith-based organization; a volunteer literacy organization; an institution of higher education; a public or private nonprofit agency; a library; a public housing authority; a nonprofit institution that has the ability to provide adult education and literacy services to eligible individuals; a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described above; and a partnership between an employer and an entity listed above.

Source of Governing Requirements
The program is authorized by the Adult Education and Family Literacy Act (AEFLA), Title II of WIOA (Pub. L. No. 113-128 (29 USC 3271 et seq.)).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	Y	N	N	N	Y	N

A. Activities Allowed or Unallowed

The state eligible agency shall require that each eligible provider receiving a grant or contract establish or operate one or more programs that provide services or instruction in one or more of the following categories: adult education, workplace adult education and literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, and integrated education and training (29 USC 3272(2) and 3321(b); 34 CFR section 463.30).

1. *Activities Allowed*

   a. *State-Level Activities*- State eligible agencies must use AEFLA funds for the following:

(1) Subgrants to eligible providers (29 USC 3302(a)(1) and 3321(a)).

(2) State administrative costs, including the development, and implementation of the state plan; consultation with other appropriate agencies, groups, and individuals in the development and implementation of AEFLA activities; and coordination and non-duplication with related federal and state programs (29 USC 3301 and 3302(a)(3)).

(3) State leadership activities including the following required activities: (1) alignment of adult education and literacy activities with other WIOA core programs to implement the strategy identified in the state plan; (2) high-quality professional development programs; (3) technical assistance to eligible providers; and (4) monitoring and evaluation of adult education and literacy activities (29 USC 3302(a)(2) and 3303(a)(1)).

b. *Subrecipient Activities*- Subrecipient activities are described in the eligible provider's approved application. Eligible providers may also use funds for administrative costs (see III.G.3.b, "Matching, Level of Effort, Earmarking – Earmarking," for a limitation) (29 USC 3272(2), 3321(b), and 3323(a)(2)); 34 CFR sections 463.25, 463.26, and 463.30).

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section.

C. Cash Management

See Part 4, 84.000 ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

Eligible individuals are individuals who are at least 16 years of age, who are not enrolled or required to be enrolled in secondary school under state law, and who are basic skills deficient, do not have a secondary school diploma or its recognized equivalent and have not achieved an equivalent level of education, or are English language learners (29 USC 3272(4)).

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

Not Applicable

3. Eligibility for Subrecipients

Not Applicable

G. Matching, Level of Effort, Earmarking

1. Matching

   a. Each state eligible agency providing adult education and literacy services shall provide a nonfederal contribution of at least 25 percent of the total amount of funds expended for adult education and literacy activities in the state (29 USC 3302(b)(1)(B)).

   b. A state eligible agency serving an outlying area shall provide a nonfederal contribution equal to 12 percent of the total amount of funds for adult education and literacy activities in the outlying area, unless ED allows a smaller nonfederal contribution (29 USC 3302(b)(1)(A)).

   c. A state eligible agency’s nonfederal contribution may be provided in cash or in-kind, fairly evaluated, and shall include only nonfederal funds that are used for adult education and literacy activities in a manner that is consistent with the purpose of AEFLA (29 USC 3302(b)(2)).

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

A state eligible agency may receive funds for any fiscal year if ED finds that the fiscal effort per student or the aggregate expenditures of such eligible agency for adult education and literacy activities, in the second preceding fiscal year, was not less than 90 percent of the fiscal effort per student or the aggregate expenditures of the state eligible agency for adult education and literacy activities, in the third preceding fiscal year (29 USC 3331(b)).

2.2 Level of Effort – *Supplement Not Supplant*

Not Applicable

3. Earmarking

a. *State Eligible Agency* – The following earmarking requirements are for each yearly grant award and must be met within the period of its availability (generally 27 months) (34 CFR sections 76.703 through 76.710):

(1) Funds used for grants and contracts for eligible providers shall not be less than 82.5 percent of the state eligible agency's grant funds (29 USC 3302(a)(1)).

(2) Funds used for corrections education and education for other institutionalized individuals shall not be more than 20 percent of the 82.5 percent available for grants and contracts for eligible providers (29 USC 3302(a)(1) and 3305); 34 CFR Part 463, Subpart F).

(3) Funds used for state leadership activities shall not exceed 12.5 percent of the state eligible agency's grant funds (29 USC 3302(a)(2) and 3303)).

(4) Funds used for necessary and reasonable administrative expenses of the state eligible agency shall not be more than 5 percent of the grant funds, or $85,000, whichever is greater (29 USC 3302(a)(3)).

c. *Subrecipients* – Eligible providers must use at least 95 percent of the funds received from the state eligible agency to carry out adult education and literacy activities unless a lower limit has been agreed to by the state eligible agency. Eligible providers may use up to 5 percent of their funds for noninstructional costs, including planning, administration, professional development, providing services in alignment with the local workforce development plan required under WIOA, and fulfilling certain one-stop partner responsibilities required by Section 121(b)(1)(A) of WIOA (this may include using funds to pay for infrastructure costs of one-stop centers in accordance with Section 121(b)(1)(A) of WIOA). In cases when the 5 percent limit is too restrictive, the eligible provider must negotiate with the state eligible agency to determine the adequate level of funds for noninstructional purposes (29 USC 3323; 34 CFR sections 463.25 and 463.26).

H. Period of Performance

See Part 4, 84.000 ED Cross-Cutting Section.

M. Subrecipient Monitoring

See 2 CFR 200.331 Requirements for Pass-through Entities.

IV. OTHER INFORMATION

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

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.010A TITLE I GRANTS TO LOCAL EDUCATIONAL AGENCIES (TITLE I, PART A OF THE ESEA)

I. PROGRAM OBJECTIVES

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

II. PROGRAM PROCEDURES

The US Department of Education (ED) provides funds under Title I, Part A (hereafter Part A) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), through each state educational agency (SEA) to local educational agencies (LEAs) through a statutory formula based primarily on the number of children ages 5 through 17 from low-income families. This number is augmented by annually collected counts of children ages 5 through 17 in foster homes, locally operated institutions for neglected or delinquent children, and families above poverty that receive assistance under Temporary Assistance for Needy Families (TANF) (Assistance Listing 93.558), adjusted to account for the cost of education in each state. To receive funds, an SEA must submit to ED for approval either (1) an individual state plan as provided in Section 1111 of the ESEA (20 USC 6311), or (2) a consolidated state plan that includes Part A, in accordance with Section 8302 of the ESEA (20 USC 7842). Each SEA included Part A in a consolidated state plan. This plan, after approval by ED, remains in effect for the duration of the state's participation in Part A under the current ESEA authorization. The plan must be updated to reflect substantive changes.

In general, to receive Part A funds, LEAs must have on file with the SEA an approved plan that includes the descriptions required under Section 1112(b) of the ESEA (20 USC 6312(b)). In lieu of an individual program plan, however, an LEA may include Part A as part of a consolidated application submitted to the SEA under Section 8305 of the ESEA (20 USC 7845).

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

Source of Governing Requirements

This program is authorized by Title I, Part A of the ESEA, as amended by the ESSA (20 USC 6301 through 6339 and 6571 through 6576)). Program regulations are found at 34 CFR Part 200. The regulations in 34 CFR parts 76, 77, and 299 apply to this program.

Availability of Other Program Information

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

1. Title I, Part A of the ESEA: Providing Equitable Services to Eligible Private School Children, Teachers, and Families (October 7, 2019/updated May 17, 2023) https://www.ed.gov/sites/ed/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf

2. Supplement not Supplant under Title I, Part A of the ESEA (June 2019) https://www.ed.gov/sites/ed/files/2020/07/snsfinalguidance06192019.pdf

3. ESSA Fiscal Changes & Equitable Services (November 2016) [Section I contains information relevant to III.G.3 Earmarking] https://www.ed.gov/sites/ed/files/2020/07/essaguidance160477.pdf

   Notes: The information on Title I, Part A equitable services in Section V of this document is superseded by the document listed under #1 above https://www.ed.gov/sites/ed/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf. The information on within-district Title I, Part A allocations in Section II of this document is superseded by the document listed under #6 below.

4. ESSA Schoolwide Guidance (September 2016) https://www.ed.gov/sites/ed/files/2020/07/essaswpguidance9192016.pdf

5. Within-District Allocations Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Appendix A includes information on the National School Lunch Program's Community Eligibility Provision in the context of within-district Title I, Part A allocations.) https://www.ed.gov/sites/ed/files/2022/02/Within-district-allocations-FINAL.pdf

6. The American Recovery and Reinvestment Act of 2009 (ARRA): Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students (September 2, 2009) https://www.ed.gov/sites/ed/files/2020/07/titlei-reform.pdf
   Note: Although the period of availability for Title I ARRA funds has expired, the information in this document about the use of Part A funds remains generally applicable.

7. Serving Preschool Children Through Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended (February 2024)

https://www.ed.gov/sites/ed/files/2024/02/Title-I-Preschool-Early-Learning-Guidance-Revised-2023-FINAL.pdf (This is a new document that is specific to Title I Preschool and is an update to previous guidance that was issued in 2012.)

8. Early Learning in the Every Student Succeeds Act (October 2016) [References to Title I contain information relevant to III.E.2.c Eligibility.] https://www.ed.gov/sites/ed/files/2020/07/essaelguidance10202016.pdf

9. The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended (Revised March 2015) https://www.ed.gov/sites/ed/files/2023/10/CEP-and-Selected-Requirements-Title-IA-2015.pdf

10. Homeless Student Guidance (Updated August 2018) [Section V/M contains information relevant to III.E.2.c Eligibility.] https://www.ed.gov/sites/ed/files/2020/07/160240ehcyguidanceupdated082718.pdf

11. Opportunities and Responsibilities for State and Local Report Cards Under the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act (September 2019) https://www.ed.gov/sites/ed/files/2020/07/report-card-guidance-final.pdf

Additional information is provided in the “Availability of Other Program Information” part of Part 4, 84.000 ED Cross-Cutting Section.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	N	Y	Y

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   See also Part 4, 84.000 ED Cross-Cutting Section.

   a. *SEAs*- SEAs must use regular federal fiscal year (FY) 2024 funds to provide subgrants to LEAs through their FY 2024 LEA allocation process. SEAs may reserve funds for state administration and Direct Student Services and must reserve funds for school improvement activities in accordance with the statutory requirements (Title I, Sections 1003, 1003A, and 1004 of ESEA (20 USC 6303, 6303b (if applicable), and 6304). (See also III.G.3.a, “Matching, Level of Effort, Earmarking – Earmarking,” below, and ED Cross-Cutting Section, 84.000, III.G.3.a.)

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

Not Applicable

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

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

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

An LEA must serve eligible schools or attendance areas in rank order according to their percentage of poverty. An LEA must serve those areas or schools above 75 percent poverty, including any middle or high schools, before it serves any with a poverty-percentage at or below 75 percent. After an LEA has served all areas and schools with a poverty rate above 75 percent or, at its discretion, high schools at or above 50 percent, the LEA may serve lower-poverty areas and schools either by continuing with the district-wide ranking or by ranking its schools at or below 75 percent poverty according to grade-span grouping (e.g., K–6, 7–9, 10–12). If an LEA ranks by grade span, the LEA may use the district-wide poverty average or the poverty average for the respective grade-span grouping. An LEA may serve, for one additional year, an attendance area that is not currently eligible but that was eligible and served in the preceding year.

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

b. *Allocating Funds to Eligible School Attendance Areas and Schools (LEAs with either schoolwide programs or targeted assistance programs)*

From its total Part A allocation and before reserving any funds for allowable activities or allocating Part A funds to participating public school attendance areas or schools, an LEA must reserve, to provide equitable services to eligible private school children, the proportional share generated by children from low-income families who reside in participating public school attendance areas and who attend private schools. For the purpose of determining the proportional share (equitable services section of III.N., “Special Tests and Provisions”), the LEA may use the same poverty data, if available, as the LEA uses to count public school children. If the same data are not available, the LEA may use comparable data from a survey of families of private school children, allowing such survey results to be extrapolated from a representative sample if complete actual data are unavailable. An LEA may also correlate sources of data or apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area. If an LEA selects a public school to participate on the basis of enrollment, rather than because it serves an eligible school attendance area, the LEA must, in consultation with private school officials, determine an equitable way to count private school children from low-income families in order to calculate the proportional share of Part A funds available to serve private school children. An LEA may count private school children from low-income families every year or every two years.

After reserving Part A funds to provide equitable services to eligible private school students, homeless children, children in local institutions for neglected children, and any other allowable reservations, an LEA must allocate Part A funds to each participating school attendance area or school, in rank order, on the basis of the number of public school children from low-income families residing in the area or attending the school.

If an LEA serves any attendance area with less than a 35 percent poverty rate, the LEA must allocate to all its participating areas an amount per child from a low-income family that equals at least 125 percent of the LEA’s Part A allocation per child from a low-income family. (An LEA’s allocation per child from a low-income family is the total LEA allocation under subpart 2 of Part A divided by the number of children from low-income families in the LEA according to the poverty measure selected by the LEA to identify eligible school attendance areas. The LEA then multiplies this per-child amount by 125 percent.) If an LEA serves only areas with a poverty rate greater than 35 percent, the LEA must allocate funds, in rank order, on the basis of the total number of public-school children from low-income families in each area or school but is not required to allocate a per-pupil amount of at least 125 percent. If an LEA serves areas or schools below 75 percent poverty by grade-span groupings, the LEA may allocate different amounts per child from a low-income family for different grade-span groupings as long as those amounts do not exceed the amount per child from a low-income family allocated to any area or school above 75 percent poverty. Amounts per child from a low-income family within grade spans may also vary as long as the LEA allocates higher amounts per child from a low-income family to higher-poverty areas or schools within the grade span than it allocates to lower-poverty areas or schools.

(Title I, Section 1113(c) of the ESEA (20 USC 6313(c)) and Title I, Section 1117(a)(4) of ESEA (20 USC 6320(a)(4)); 34 CFR sections 200.64(a)(2)-(3), 200.77 and 200.78)

c. *Serving Homeless Children in Participating and Nonparticipating Schools and Children in Local Institutions for Neglected or Delinquent Children (LEAs)*

(1) Before allocating Part A funds to school attendance areas and schools and based on its total allocation, an LEA must reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:

(a) Children in local institutions for neglected children; and

(b) Homeless children and youths, including providing educationally related support services to children in shelters and other locations where homeless children may live and services not ordinarily provided to other children served by Part A.

(2) An LEA may reserve funds to provide services comparable to those provided to children in participating school attendance areas and schools to serve:

(a) Children in local institutions for delinquent children; and

(b) Neglected and delinquent children in community day school programs.

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

3. Eligibility for Subrecipients

ED allocates funds by formula for basic grants, concentration grants, targeted grants, and education finance incentive grants, through SEAs, to each eligible LEA for which the Bureau of the Census has provided data on the number of children from low-income families residing in the school attendance areas of the LEA (the "Census list"). If there is an LEA in a state that is not on the Census list (see III.G.3.a, "Matching, Level of Effort, Earmarking - Earmarking," below), the SEA must determine that the LEA is eligible under each formula as follows:

a. Basic grants – an eligible LEA must have at least 10 formula children (i.e., the Census estimate of low-income children, children in neglected facilities and in publicly supported foster homes, and children from families that receive an annual payment from the TANF program (Assistance Listing 93.558) that exceeds the federal poverty level) and the number of formula children must exceed 2 percent of the LEA's total population of children ages 5 through 17.

b. Concentration grants – an eligible LEA must be eligible for basic grants and the number of formula children must exceed 6,500 children or 15 percent of the LEA's total population of children ages 5 through 17 population.

c. Targeted grants – an eligible LEA must have at least 10 formula children and the number of those children must equal or exceed 5 percent of the LEA's total population of children ages 5 through 17.

d. Education finance incentive grants – an eligible LEA must have at least 10 formula children and the number of those children must equal or exceed 5 percent of the LEA's total population of children ages 5 through 17.

(Title I, Sections 1124-1125A of ESEA (20 USC 6333-6337; 34 CFR section 200.71)

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

See Part 4, 84.000 ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant*

See III.N.6, "Special Tests and Provisions - Title I, Part A specific: Supplement Not Supplant."

3. Earmarking

See also Part 4, 84.000 ED Cross-Cutting Section and the following:

a. Allocation of funds to LEAs (SEAs)

ED provides LEA allocation tables to SEAs for basic grants, concentration grants, targeted grants, and education finance incentive grants based on LEA-level data from the Bureau of the Census (Census list).

(1) If there is an LEA in a state that is not on the Census list (e.g., charter school LEAs), the SEA must adjust the initial allocations provided by ED for any eligible LEA that is not on the Census list (see III.E.3, “Eligibility - Eligibility for Subrecipients,” above) (34 CFR section 200.72).

(2) In making the adjustments, the SEA must ensure that no eligible LEA is reduced below its hold harmless level. An LEA’s hold harmless level is 85, 90, or 95 percent of the amount it was allocated in the preceding year depending on its percentage of formula children (34 CFR section 200.73).

(3) In making the adjustments, the SEA must apply section 4306(c) of the ESEA, as amended by the ESSA, which requires the SEA, for purposes of implementing the hold-harmless protections in sections 1122(c) and 1125A(f)(3) of the ESEA for a newly opened or significantly expanded charter school LEA, to calculate a hold-harmless base for the prior year that reflects the new or significantly expanded enrollment of the charter school LEA (20 USC 7221e(c)). For more information see pages 4–7 in the ESSA Fiscal Changes & Equitable Services guidance (November 2016) (https://www.ed.gov/sites/ed/files/2020/07/essaguidance160477.pdf).

b. Targeting school improvement funds (SEAs)

Each SEA must ratably reduce the allocations of LEAs and also follow the special rule described below to reserve for school improvement activities the greater of:

- Seven percent of the SEA’s FY 2024 Part A award; or

- The sum of the total amount that the SEA reserved for school improvement under section 1003(a) from its FY 2016 Part A award (generally, 4 percent of that award) and the amount of the SEA's FY 2016 School Improvement Grants (SIG) allocation under section 1003(g).

Special rule: In reserving funds for school improvement, an SEA may not reduce an LEA's Part A allocation below the prior year's amount. If funds are insufficient to reserve the amount described in the two bullets above, the SEA is not required to reserve this amount. The special rule in section 1003(h) of the ESEA took effect beginning with FY 2018 Part A funds that ED awarded states on July 1, 2018 (https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-section6303&num=0&edition=prelim).

Of the amount reserved, the SEA must allocate not less than 95 percent directly to LEAs on a formula or competitive basis to support school improvement activities in schools identified for comprehensive support and improvement under ESEA Section 1111(c)(4)(D)(i) of the ESEA or implementing targeted support and improvement plans under ESEA Section 1111(d)(2) of the ESEA. However, the SEA may, with the approval of its LEAs, provide directly for these activities or arrange for them to be provided by other entities such as school support teams or educational service agencies.

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

c. Funds reserved for state administration (SEAs)
From the amount received by the SEA for Part A, to administer Part A, an SEA may reserve no more than the greater of 1 percent of what the SEA would have received for Part A, if the appropriation for parts A, C, and D of Title I were $14 billion (as indicated on a state administrative allocation table that ED provides to SEAs) or $400,000 ($50,000 for outlying areas) (Title I, Section 1004 (20 USC 6304); 34 CFR section 200.100(b)).

d. Funds reserved for Direct Student Services (SEAs: optional)
After meaningful consultation with geographically diverse LEAs, an SEA may, but is not required to, reserve a maximum of 3 percent of its Part A allocation for direct student services (Title I, Section 1003A (20 USC 6303b).

M. Subrecipient Monitoring

See Part 4, 84.000 ED Cross-Cutting Section.

N. Special Tests and Provisions

1. Participation of Private School Children

See Part 4, 84.000 ED Cross-Cutting Section.

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

See Part 4, 84.000 ED Cross-Cutting Section.

3. Annual Report Card, High School Graduation Rate

Compliance Requirements An SEA and its LEAs must report graduation rate data for all public high schools at the school, LEA, and state levels using the four-year adjusted cohort rate and, at an SEA's or LEA's discretion, one or more extended-year adjusted cohort rates. Graduation rate data must be reported both in the aggregate and disaggregated by the subgroups in Section 1111(c)(2) of the ESEA, homeless status, status as a child in foster care using a four-year adjusted cohort graduation rate (and any extended-year adjusted cohort rates) (ESEA sections 1111(h)(1)(C)(iii)(II) and 8101(23), (25) (20 USC 6311(h)(1)(C)(iii)(II) and 7801(23), (25))). Except as noted below, only students who earn a regular high school diploma may be counted as a graduate for purposes of calculating graduation rates. The term "regular high school diploma" means the standard high school diploma that is awarded to the preponderance of students in the state and that is fully aligned with the state standards (but not to alternate academic achievement standards for students with the most significant cognitive disabilities) or a higher diploma. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma (GED), certificate of completion, certificate of attendance, or similar lesser credential (ESEA, Section 8101(43) (20 USC 7801(43))). An SEA may, but is not required to, award a state-defined alternate diploma for students with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards. That diploma must be standards based, aligned with the state's requirements for a regular high school diploma, and obtained within the time period for which the state ensures the availability of a free appropriate public education. If an SEA awards an alternate diploma, the SEA may count those students in its four-year and any extended-year adjusted cohort graduation rate, even if the student takes more than four years to receive the alternate diploma (ESEA, Section 8101(23)(A)(ii)(I)(bb), (25)(A)(ii)(I)(bb) (20 USC 7801(23)(A)(ii)(I)(bb), (25)(A)(ii)(I)(bb))).

To remove a student from the cohort, a school or LEA must confirm, in writing, that the student transferred out, emigrated to another country, transferred to a prison or juvenile facility, or is deceased. To confirm that a student transferred out, the school or LEA must have official written documentation that the student enrolled in another school or in an educational program that culminates in the award of a regular high school diploma. A student who is retained in grade, enrolls in a GED program, or leaves school for any other reason may not be counted as having transferred out for the purpose of calculating graduation rate and must remain in the adjusted cohort (ESEA sections 1111(h)(1)(C)(iii)(II) and 8101(23), (25) (20 USC 6311(h)(1)(C)(iii)(II) and 7801(23), (25))).

Audit Objectives Determine whether SEAs and LEAs have implemented appropriate policies and procedures for documenting the removal of a student from the adjusted cohort.

Suggested Audit Procedures

SEAs

Review SEA policies and procedures that ensure that LEAs are maintaining appropriate documentation to confirm when students have been removed from the adjusted cohort.

LEAs

Verify that the LEA maintains appropriate written documentation to support the removal of a student from the adjusted cohort. Select a sample of students that have been removed from the adjusted cohort. Verify the LEA has maintained appropriate written documentation to support the removal of these students from the adjusted cohort (see the last paragraph under “3” above).

4. Assessment System Security – (SEAs/LEAs)

Compliance Requirements SEAs, in consultation with LEAs, are required to establish and maintain an assessment system that is valid, reliable, and consistent with relevant professional and technical standards. Within their assessment system, SEAs must have policies and procedures to maintain test security and ensure that LEAs implement those policies and procedures (Title I, Section 1111(b)(2)(B)(iii) of the ESEA (20 USC 6311(b)(2)(B)(iii))).

Audit Objectives Determine whether SEAs and LEAs have developed and operationalized policies and procedures regarding test security for the assessments.

Suggested Audit Procedures

SEAs

a. Review SEA policies and procedures for ensuring that the SEA and LEAs have developed and operationalized test security measures.

b. Verify that the SEA has developed and operationalized the relevant policies and procedures.

LEAs

a. Ascertain that the LEA has policies and procedures for ensuring that the LEA and its schools implement test security measures.

b. Verify that the LEA and its schools implemented test security measures, for example, by reviewing documentation and interviewing LEA officials and school administrators and teachers.

Note: An auditor need not consider the sufficiency of an SEA's or LEA's test security procedures. ED ensures that the sufficiency of test security procedures is reviewed as a part of its peer review process of State assessment systems. For more information see pages 43-45 of the State's Guide to the U.S. Department of Education's Assessment Peer Review Process (September 2018) (https://www.ed.gov/sites/ed/files/2023/11/assessmentpeerreview.pdf).

5. Title I, Part A specific: Supplement Not Supplant

Compliance Requirements An LEA may use Part A funds only to supplement the funds that would, in the absence of the Part A funds, be made available from state and local sources for the education of students participating in a Part A program. In no case may an LEA use Part A funds to supplant funds from state and local sources (Section 1118(b)(1) of ESEA (20 USC 6321(b)(1))). An LEA may not be required to (1) identify that an individual cost or service supported with Part A funds is supplemental; or (2) provide services through a particular instructional method or in a particular instructional setting (Section 1118(b)(3) of ESEA (20 USC 6321(b)(3))).

To demonstrate compliance, an LEA must demonstrate that it has a methodology (e.g., through written procedures) and uses it to allocate state and local funds to each Title I school and ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds (i.e., the LEA's methodology may not take into account a school's Title I status) (Section 1118(b)(2) (20 USC 6321(b)(2))). An LEA may use a combination of methodologies to allocate state and local funds to schools (e.g., use a different methodology for high schools than it uses for elementary schools). An LEA also may design its methodology to take into consideration grade span or school type, student enrollment size, or schools in need of additional funds to serve high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support.

An LEA need not have a methodology if it has (1) only one school; (2) only Title I schools; or (3) a grade span that contains only one school, only non-Title I schools, or only Title I schools (i.e., no methodology is required for this grade span).

This requirement applies to both schoolwide program schools and targeted assistance schools. Thus, a Title I targeted assistance school is not required to use Part A funds to provide supplemental services to identified children or to identify that an individual cost or service supported with Part A funds is supplemental. Part A funds still must be used only for allowable activities (i.e., in a Title I targeted assistance school, Part A funds may be used only to serve students who are failing, or most at risk of failing, to meet challenging state academic standards) (see sections 1114 and 1115 of ESEA (20 USC 6314 and 6315)).

If an LEA reserves state and local funds for district-level activities (i.e., funds that it does not allocate through its methodology to schools), the LEA must conduct activities with those funds in a manner that does not take into account a school’s Title I status. In addition, to the extent an LEA retains state and local funds to implement activities that are required by federal, state, or local law, the LEA must use those funds in a manner that does not take into account a school’s Title I status.

An 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 Part A (Section 1118(d) of ESEA (20 USC 6321(d)); 34 CFR section 200.79).

Audit Objectives Determine whether an LEA complied with the requirement and whether an SEA reviewed whether LEAs complied with the requirement.

Suggested Audit Procedures

LEAs

Determine whether an LEA has a methodology for allocating state and local funds to each Title I school that ensures the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds; (2) determine whether the LEA implemented its methodology; (3) if the LEA reserves state and local funds for district-level activities, determine whether the LEA conducts activities with those funds in a manner that does not take into account a school’s Title I status.

SEAs

Verify that the SEA reviews LEA compliance with the Part A supplement not supplant provision (e.g., through sub-recipient monitoring).

IV. OTHER INFORMATION

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

IV (Other Information) of the Cross-Cutting Section also provides information that is relevant to this program. (See Other Information, 1. Consolidation of Administrative Funds and 2. Schoolwide Programs).” Finally, as discussed in the Cross-Cutting Section’s Introduction, SEAs and LEAs may have been granted waivers from certain compliance requirements. Auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under any approved waivers.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 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) assist states in supporting high-quality and comprehensive educational programs and services during the school year and, as applicable, during summer or intersession periods, that address the unique educational needs of migratory children; (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 challenging state academic standards; (3) ensure that migratory children receive full and appropriate opportunities to meet the same challenging state academic standards that all children are expected to meet; (4) help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to succeed in school; and (5) help 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 local operating agencies (LOAs). LOAs may be (1) a local educational agency (LEA) to which an SEA makes a subgrant, (2) a public or private agency with which an SEA or the secretary makes an arrangement, or (3) an SEA if the SEA operates the state's migrant education program or projects directly.
The amount of funding an SEA receives annually depends, in part, on the number of eligible migratory children that the SEA determined reside within the state and the number of eligible migratory children who received MEP-funded services provided by the state during summer or intersession programs. 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 LOA, depending on which agency provides the services and where the records are maintained.

In general, only eligible migratory children may receive MEP services. A "migratory child" means a child or youth who made a qualifying move in the preceding 36 months as a migratory agricultural worker or migratory fisher; or with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher. A qualifying move is a move due to economic necessity (a) from one residence to another residence; and (b) from one school district to another, except in the case of a state that comprises a single school district, wherein a qualifying move is from one administrative area to another within such district, or in the case of a school district of more than 15,000 square miles, wherein a qualifying move is a distance of 20 miles or more to a temporary residence (Title I, Part C, Section 1309(3), (5)(20 USC 6399(3), (5)). The 34 CFR section 200.81 further defines the following key terms: "agricultural work or employment," "fishing work or employment," "temporary employment," "seasonal employment," "personal subsistence," and "qualifying work."

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). Requirements in 34 CFR Part 200, subparts C (34 CFR sections 200.81 through 200.89) and E (34 CFR sections 200.100 through 200.103), 34 CFR Part 76, and 34 CFR Part 299 also apply.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	N	Y	Y

A. Activities Allowed or Unallowed

1. *Activities Allowed*

See also Part 4, 84.000 ED Cross-Cutting Section.

a. *SEAs*- SEAs may use funds to operate the program directly or through contracts or subgrants to LEAs or other LOAs 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; (b) provide instructional and support services that address the identified needs of the eligible children (including, but not limited to, preschool services, academic and career counseling, and advocacy and outreach); and (c) to support such objectives through related activities such as, but not limited to, professional development, parental involvement, and transfer of student records.

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, 6391(c), and 6396(b)); 34 CFR section 200.82).

b. *LEAs or Other LOAs*- LEAs or other LOAs use funds in accordance with the agreement with the SEA to (a) identify eligible migratory children and their needs; (b) provide instructional and support services that address the identified needs of the eligible children; and (c) to support such objectives through related activities such as, but not limited to, professional development, parental involvement, and transfer of student records.

c. *Schoolwide Programs (LEAs)* – Before a school chooses to consolidate MEP funds in its schoolwide program, the school must (1) use these funds, in consultation with parents of migratory children or organizations representing those parents, or both, first to meet the unique educational needs of migratory students that result from the effects of their migratory lifestyle, and those other needs that are necessary to permit these students to participate effectively in school; and (2) document that these needs have been met (Title I, Part C, Section 1306(b)(4) of ESEA (20 USC 6396); 34 CFR sections 200.86 and 200.29(c)(1)).

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

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

Not Applicable

2.2 Level of Effort – Supplement Not Supplant

See Part 4, 84.000 ED Cross-Cutting Section.

3. Earmarking

a. Administration

See Part 4, 84.000 ED Cross-Cutting Section.

b. Transferability

Not Applicable

H. Period of Performance (All grantees)

See Part 4, 84.000 ED Cross-Cutting Section.

N. Special Tests and Provisions

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

See Part 4, 84.000 ED Cross-Cutting Section.

2. Priority for Services

Compliance Requirements SEAs and LEAs or other LOAs must give priority for MEP services to migratory children who made a qualifying move within the previous one-year period; and are failing, or most at risk of failing, to meet the challenging state's academic standards, or have dropped out of school (Title I, Part C, Section 1304(d) of ESEA (20 USC 6394(d)).

Audit Objectives (*SEAs providing services directly and LEAs or other LOAs)* Determine whether the SEA or LEA or other LOA 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 who made a qualifying move within the previous one-year period; and are failing, or most at risk of failing, to meet the challenging state's academic standards, or have dropped out of school (priority children).

Suggested Audit Procedures *(SEAs providing services directly and LEAs or LOAs)*

a. Review the SEA's or LEA's or other LOA's procedures to identify those individual migratory children who made a qualifying move within the previous one-year period; and are failing, or are most at risk of failing, to meet the challenging state academic standards, or have dropped out of school. Such procedures must include an accurate definition of priority for services.

b. Review the SEA or LEA's or other LOA's process for selecting children to receive MEP services.

c. Select a sample of migratory children who were identified as "priority for services" 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.)

d. Review the SEA's or LEA's or other LOA's procedures to accurately document the eligible migratory children who were identified as being "priority for services," and the services provided to those children.

3. Subgrant Process (SEAs)

Compliance Requirements SEAs may provide MEP services either directly, or through LEAs or other LOAs. When 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 (1) the numbers of migratory children, (2) the needs of migratory children, (3) 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 each of the required factors is left to the SEA's discretion (Title I, Part C, sections 1301 and 1304(b)(5) of the ESEA (20 USC 6391 and 6394(b)(5))).

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

Suggested Audit Procedures

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

a. Uses current or recent (e.g., previous year, average of most recent two or three years) information.

b. Takes into account the following: (1) numbers of migratory children; (2) needs of migratory children; (3) "priority for services" requirement in Section 1304(d) of ESEA; and (4) availability of funds from other federal, state, and local programs.

4. Child Counts – Quality Control Process

Compliance Requirements SEAs must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children on a statewide basis that includes at a minimum, the components specified in ED regulations. These components include training recruiters on eligibility requirements; supervision and annual review and evaluation of identification and recruitment practices; resolving eligibility questions raised by recruiters and communicating this information to all LOAs; examining each COE by qualified personnel to verify eligibility; validating that eligibility determinations were made properly, including prospective re-interviewing of a randomly selected sample of children determined to be migratory during the performance reporting period (34 CFR section 200.89(b)(2)); and implementing corrective action if the SEA identifies COEs that do not sufficiently document a child's eligibility, or in response to internal State audit findings and recommendations, or monitoring or audit findings of the Secretary. SEAs are required to describe specific aspects of their quality control process in Section 2.4.3 of the Consolidated State Performance Report, Part II (See III.L.3.b., "Reporting – Special Reporting - Consolidated State Performance Report, Part II, Migrant Child Counts"). SEAs may require LEAs and other LOAs to submit information to the SEA and comply with specified quality control procedures (20 USC 6394(c)(7); 34 CFR sections 200.89(c) and (d); ED has identified Required Data Elements and Required Data Sections and provided Instructions and Questions & Answers for the National COE at https://www2.ed.gov/programs/mep/coe2017.docx).

Audit Objectives Determine whether the SEA and LEAs and other LOAs (1) established and implemented a quality control process that meets the requirements of ED regulations, and (2) whether the process is accurately reported in the Consolidated State Performance Report, Part II.

Suggested Audit Procedures

SEAs

a. Verify that the SEA has a documented a quality control process that meets the requirements of ED regulations, including processes for annual prospective re-interviewing of a sample of children determined to be eligible for the MEP during the performance reporting period (September 1 to August 31).

b. Ascertain whether the quality control process was actually conducted in the manner described.

c. Verify that the SEA accurately reported the quality control process in Section 2.4.3 of the Consolidated State Performance Report, Part II.

LEAs and Other LOAs

a. Determine if the LEAs and other LOAs were required to submit information to the SEA relating to Section 2.4.3 of the Consolidated State Performance Report, Part II, and if so, what information was required, the processes for obtaining it, and how quality was ensured.

b. Ascertain whether the LEAs and other LOAs complied with the SEA's requirements relating to obtaining, processing, and submitting accurate data required for Section 2.4.3 of the Consolidated State Performance Report, Part II

IV. OTHER INFORMATION

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

Also, as discussed in the ED Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements. This includes waivers of certain Title I, Part C requirements that ED invited SEAs to apply for due to the COVID-19 Pandemic. Auditors should ascertain from the audited SEAs and LEAs whether the SEA or the LEA or its schools are operating under any approved waivers.

1. Consolidation of Administrative Funds (SEAs and LEAs)

   See Part 4, 84.000 ED Cross-Cutting Section: Other Information.

2. Schoolwide Programs (LEAs)

   See Part 4, 84.000 ED Cross-Cutting Section: Other Information.

3. Prima Facie Case Requirement for Audit Findings

   See Part 4, 84.000 ED Cross-Cutting Section: Other Information.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.027 SPECIAL EDUCATION—GRANTS TO STATES (IDEA, Part B)
ASSISTANCE LISTING 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) that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (2) ensure that the rights of children with disabilities and their parents 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 to States for Education of Children with Disabilities program (IDEA, Part B) and the Preschool Grants for Children with Disabilities program (IDEA Preschool) provide grants to states to assist them in meeting these purposes (20 USC 1400 et seq.). IDEA's Special Education—Grants to States program (IDEA, Part B) provides grants to states, and through them to LEAs, to assist them in providing special education and related services to eligible children with disabilities ages 3 through 21 (20 USC 1411). (The obligation to make FAPE available to children with disabilities ages 3 through 5 and 18 through 21 depends on state law. All states require that FAPE be made available to children with disabilities ages 3 through 5, and most states mandate FAPE through age 20 or 21.) IDEA's Special Education—Preschool Grants program (IDEA Preschool), 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 educational agency (SEA) for assistance under IDEA, Part B must, among other things, submit a plan to the Department of Education (ED) that provides assurances that the SEA has in effect policies and procedures that ensure that all children with disabilities have the right to a FAPE (20 USC 1412(a)).

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

Source of Governing Requirements

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

Availability of Other Program Information

A number of documents posted on ED's website contain information pertinent to the IDEA, Part B requirements in this Compliance Supplement:

1. OSEP Memorandum 10-5, *Maintenance of Financial Support under the Individuals with Disabilities Education Act*, dated December 2, 2009 http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf

2. OSEP Memorandum 15-10, *Issuance of Guidance on the Final Local Educational Agency (LEA) Maintenance of Effort (MOE) Regulations under Part B of the Individuals with Disabilities Education Act (IDEA)*, dated July 27, 2015 https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	Y	Y	N	N	Y	N

A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *SEAs*

Allowable activities for SEAs are subgranting funds to LEAs and state administration, and other state-level activities (see Section III.G.3, "Matching, Level of Effort, Earmarking – Earmarking," for a further description of these activities).

2. *LEAs*

a. *IDEA, Part B* – An LEA may only use federal funds under IDEA, Part B for the excess costs of providing special education and related services to children with disabilities. Special education includes specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education. Related services include transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education. Related services do not include a medical device that is surgically implanted or the replacement of such device. A portion of these funds, under conditions specified in the law, may also be used by the LEA (1) for services and aids that also benefit nondisabled children; (2) for early intervening services; (3) to establish and implement high-cost or risk-sharing funds; and (4) for administrative case management. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year. LEAs are required to compute the minimum average amount of per pupil expenditure separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools, and not on a combination of the enrollments in both. Appendix A to 34 CFR Part 300 provides detailed guidance and an example for calculating the average per pupil expenditures and the minimum average amounts that the LEA must spend before using IDEA funds (20 USC 1401(8), (26) and (29); 20 USC 1413(a)(2) and (4); 34 CFR sections 300.16, 300.34, 300.39, 300.202, and 300.208).

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

B. Allowable Costs/Cost Principles

See also Part 4, 84.000 ED Cross-Cutting Section.

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

F. Equipment and Real Property Management

Acquisition of equipment and construction or alteration of facilities by the IDEA Part B programs must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1404 and 1412(a)(10)(B); and 34 CFR sections 300.144 and 300.718.

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

a. SEAs – Maintenance of State Financial Support

(1) A state may not reduce the amount of state financial support for special education and related services for children with disabilities (or state financial support otherwise made available because of the excess costs of educating those children) below the amount of state financial support provided for the preceding fiscal year.

The secretary reduces the allocation of funds under 20 USC 1411 for any fiscal year following the fiscal year in which the state fails to comply with this requirement by the amount by which the state failed to meet the requirement.

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

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

An SEA may meet the maintenance of effort requirement by either a total or per capita amount.

For more information on the maintenance of financial support requirements for SEAs, see OSEP Memorandum 10-5, *Maintenance of Financial Support under the Individuals with Disabilities Education Act*, dated December 2, 2009. This guidance is available at (same as #1 Memo 10-5) http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf.

(3) For the purposes of establishing an LEA's eligibility for an award for a fiscal year, the SEA must determine that the LEA meets the eligibility standard (see III.G.2.1.b.(2), "Eligibility Standard") (34 CFR section 300.203(a)).

b. LEAs – Local Maintenance of Effort

(1) General

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, LEAs must meet (1) the eligibility standard and (2) the compliance standard. These standards are described in detail below in paragraphs b(2) and b(3), respectively.

Allowances may be made for (a) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel; (b) a decrease in the enrollment of children with disabilities; (c) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child (i) has left the jurisdiction of the agency, (ii) has reached the age at which the obligation of the agency to provide a FAPE has terminated, or (iii) no longer needs such program of special education; (d) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment and the construction of school facilities; or (e) the assumption of costs by the high cost fund operated by the SEA under 34 CFR section 300.704 (20 USC 1413(a)(2); 34 CFR sections 300.203 and 300.204).

Appendix E of 34 CFR Part 300 provides LEA maintenance of effort calculation examples. For more information on the LEA maintenance of effort requirements, see OSEP Memorandum 15-10, *Issuance of Guidance on the Final Local Educational Agency (LEA) Maintenance of Effort (MOE) Regulations under Part B of the Individuals with Disabilities Education Act (IDEA),* dated July 27, 2015. This guidance is available at https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf.

(2) Eligibility Standard

(a) To meet the eligibility standard for an award for a fiscal year, the LEA must budget for the education of children with disabilities at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

(i) Local funds only;

(ii) The combination of state and local funds;

(iii) Local funds only on a per capita basis; or

(iv) The combination of state and local funds on a per capita basis.

(b) When determining the amount of funds that the LEA must budget to meet the requirement, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in 34 CFR sections 300.204 and 300.205 that the LEA:

(i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and

(ii) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

(c) Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the eligibility standard (34 CFR section 300.203(a)).

(3) Compliance Standard

Except as provided in 34 CFR sections 300.204 and 300.205, funds provided to an LEA under IDEA, Part B must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in 34 CFR sections 300.204 and 300.205:

(i) Local funds only;

(ii) The combination of state and local funds;

(iii) Local funds only on a per capita basis; or

(iv) The combination of state and local funds on a per capita basis.

Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the compliance standard (34 CFR section 300.203(b)).

(4) Subsequent Years Rule

If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, an LEA fails to meet the eligibility standard or compliance standard in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.

If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirements of 34 CFR sections 300.203(b)(2)(i) or (iii) and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the eligibility standard or compliance standard, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under 34 CFR sections 300.203(b)(2)(i) or (iii) in the absence of that failure, not the LEA's reduced level of expenditures.

If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of 34 CFR section 300.203(b)(2)(ii) or (iv) and the LEA is relying on the combination of state and local funds, or the combination of state and local funds on a per capita basis, to meet the eligibility standard or compliance standard, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under 34 CFR sections 300.203(b)(2)(ii) or (iv) in the absence of that failure, not the LEA's reduced level of expenditures (34 CFR section 300.203(c)).

(5) Consequence of Failure to Maintain Effort

If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with 34 CFR section 300.203(b), the SEA is liable in a recovery action under Section 452 of the General Education Provisions Act (20 USC 1234a) to return to the Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance the compliance standard in that fiscal year, or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower (34 CFR section 300.203(d)).

(6) Adjustment to Local Fiscal Effort

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

2.2 Level of Effort – *Supplement Not Supplant*

Not Applicable

3. Earmarking

Individual state grant award documents identify the amount of funds a state must distribute to its LEAs on a formula basis and the amount it can set aside for administration and other state-level activities under paragraphs 3.a. and b. below.

a. IDEA, Part B (SEAs)

(1) *Funds Set Aside for State Administration:* Each state may reserve, for each fiscal year, not more than the maximum amount the state was eligible to reserve for state administration under 20 USC 1411 for fiscal year (FY) 2004, or $800,000 (adjusted for inflation in accordance with 20 USC 1411(e)(1)(B)), whichever is greater. Administration includes the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA if the SEA is the lead agency (20 USC 1411(e)(1)A; 34 CFR section 300.704(a)).

(2) *Funds Set Aside for Other State-Level Activities*: The maximum amount a state may reserve for other state-level activities in fiscal year 2007 and subsequent fiscal years is as follows: States, for which the amount reserved for state administration is greater than $850,000 and the state reserves funds for the LEA risk pool, may reserve an amount equal to 10 percent of the state’s allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States, for which the amount reserved for administration is greater than $850,000 and the state does not reserve funds for the LEA risk pool, may reserve an amount equal to 9 percent of the state’s allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States for which the amount reserved for state administration is less than or equal to $850,000 and the state reserves funds for the LEA risk pool may reserve an amount equal to 10.5 percent of the state’s allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation. States for which the amount reserved for administration is less than or equal to $850,000 and the state does not reserve funds for the LEA risk pool may reserve an amount equal to 9.5 percent of the state’s allocation for fiscal year 2006 under 20 USC 1411(d), adjusted cumulatively for inflation (20 USC 1411(e)(2) and 34 CFR section 300.704(b)). SEAs must use some portion of state-level activity funds for monitoring, enforcement, and complaint

investigation, and to establish and implement the mediation process, including providing for the costs of mediators and support personnel (20 USC 1411(e)(2)(B); 34 CFR section 300.704(b)(3)).

These funds may also be used

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

(b) to support paperwork reduction activities, including expanding the use of technology in the individualized education plan (IEP) process;

(c) to assist LEAs in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities;

(d) to improve the use of technology in the classroom to enhance learning by children with disabilities;

(e) to support the use of technology, including technology with universal design principals and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(f) for development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(g) to assist LEAs in meeting personnel shortages;

(h) to support capacity-building activities and improve the delivery of services by LEAs to improve results for children with disabilities;

(i) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in state-operated or state-supported schools, and children with disabilities in charter schools;

(j) to support the development of and provision of appropriate accommodations for children with disabilities, or the development and provision of alternative assessments that are valid and reliable for assessing the performance of children with disabilities; and

(k) to provide technical assistance to schools and LEAs and direct services, including supplemental educational services as defined in section 1116(e)(12)(C) of the ESEA (20 USC 6316(e)(12)(C)), in schools or LEAs identified for improvement solely on the basis of the assessment results of the disaggregated group of children with disabilities (20 USC 1411(e)(2)(C); 34 CFR section 300.704(b)(4)).

(3) *LEA Risk Pool*: Each state has the option to reserve for each fiscal year 10 percent of the amount of funds the state reserves for other state-level activities: (a) to finance and make disbursements from the high-cost fund to LEAs; and (b) to support innovative and effective ways of cost-sharing by the state, by an LEA, or among a consortium of LEAs, as determined by the state in coordination with representatives from LEAs. For purposes of this provision, the term “LEA” includes a charter school that is an LEA, or a consortium of LEAs (20 USC 1411(e)(3); 34 CFR section 300.704(c)).

(4) *Formula Subgrants to LEAs*: Any funds under this program that the SEA does not retain for administration and other state-level activities shall be distributed to eligible LEAs in the state. An SEA must distribute to each eligible LEA the amount that the LEA would have received, from the fiscal year 1999 appropriation, if the state had distributed 75 percent of its grant for that year to LEAs. (This amount is based on the IDEA-B child count conducted on December 1, 1998.) The SEA must then distribute 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the LEA’s jurisdiction; and then distribute 15 percent of any remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the state educational agency (20 USC 1411(f)(1) and (2); 34 CFR sections 300.705(a) and (b)).

b. IDEA, Preschool Grants Program (SEAs)

(1) *Reservation for State Activities*. Each state may reserve, for each fiscal year, not more than the maximum amount of funds that the secretary determines may be retained by the state for administration and other state-level activities (20 USC 1419(d); 34 CFR section 300.812).

(a) *Funds Set Aside for State Administration*: An SEA may use not more than 20 percent of the funds it is allowed to retain for state activities under 20 USC 1419(d) for the purposes of administering this program, including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities. These funds may also be used for the administration of Part C of the IDEA (20 USC 1419(e); 34 CFR section 300.813).

(b) *Funds Set Aside for Other State-Level Activities*: SEAs shall use funds reserved for state activities that are not used for administration for:

(i) 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 ages 3 through 5;

(ii) direct services for children eligible for services under this program;

(iii) activities at the state and local levels to meet the performance goals established by the state under 20 USC 1412(a)(15);

(iv) 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;

(v) providing early intervention services (which must include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) in accordance with Part C of the IDEA to children with disabilities who are eligible for services under section 619 of the IDEA until such children enter, or are eligible under state law to enter, kindergarten; or

(vi) at the state's discretion, continuing service coordination or case management for families who receive services under Part C of the IDEA (20 USC 1419(f); 34 CFR section 300.814).

(2) *Formula Subgrants to LEAs*. Any funds under this program that the SEA does not retain for administration and other state-level activities shall be distributed to eligible LEAs in the state.

(a) 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.)

(b) 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.

(c) If an SEA determines that an LEA is adequately providing a FAPE to all children with disabilities ages 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 ages 3 through 5 residing in the areas they serve. The SEA may also retain those funds for use at the state level to the extent the state has not reserved the maximum amount of funds it is permitted to reserve for state-level activities under 34 CFR section 300.812 (20 USC 1419(g); 34 CFR sections 300.815 through 300.817).

c. Schoolwide Programs (LEAs)

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

d. Adjustments of Base Payments to LEAs

(1) If a new LEA is created within a state, the state must 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.

(2) If one or more LEAs are combined into a single LEA, the state must combine the base allocation of the merged LEAs.

(3) 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 must be redistributed among affected LEAs based on the relative numbers of children with disabilities currently provided special education by each affected LEA.

(4) If an LEA received a base payment of zero in its first year of operation, the state must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The state shall divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA among the LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs (34 CFR section 300.705(b)(2)).

e. Coordinated Early Intervening Services (LEAs)

An LEA can use not more than 15 percent of the amount of federal Part B funds the LEA receives for any fiscal year (less any amount by which it reduces its expenditures under 20 USC 1413(a)(2)(C)) (see III.G.2.1.b.(6) in this section), in combination with other funds, to develop and implement, early intervening services for children in kindergarten through grade 12 who have not been identified under IDEA but need additional academic and behavioral support to succeed in the general education environment (20 USC 1413(f); 34 CFR section 300.226).

H. Period of Performance

See also Part 4, 84.000 ED Cross-Cutting Section.

I. Procurement and Suspension and Debarment

See Part 4, 84.000 ED Cross-Cutting Section. Further, acquisition of equipment and construction or alteration of facilities by the IDEA Part B programs must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1404 and 1412(a)(10)(B); and 34 CFR sections 300.144 and 300.718.

IV. OTHER INFORMATION

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

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.032 FEDERAL FAMILY EDUCATION LOANS (GUARANTY AGENCIES)

I. PROGRAM OBJECTIVES

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

II. PROGRAM PROCEDURES

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

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

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

Source of Governing Requirements

The FFEL program is authorized by the Title IV, Part B of the Higher Education Act (HEA) of 1965, as amended (20 USC 1071 to 1087-4). Program regulations are located at 34 CFR Part 682.

Availability of Other Program Information

Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies

To help borrowers burdened by debt during the COVID-19 emergency, ED announced an expansion of the pause on federal student loan interest and collections to all defaulted loans in the FFEL program. ED issued Dear Colleague Letter (DCL) GEN-21-03 on May 12, 2021, with an update on May 24, 2021, entitled "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021)."

This pause had a significant impact on guaranty agency operations, including the compliance requirements covered by this compliance supplement, that auditors should be aware of. For instance:

- Interest was retroactively reduced to zero percent back to March 13, 2020, and through August 31, 2023.
- Guaranty agencies were not allowed to charge and retain collection cost for loan rehabilitation and for those rehabilitations that occurred during the Pandemic period, the guarantor must make adjustments to interest and collection costs on the loan before it is transferred to the new holder.
- Guaranty agencies were allowed to charge 2.8 percent collection cost to borrowers for consolidation loans (change from 18.5 percent) through December 31, 2022. Previous collection charges made where the loan verification certificate (LVC) was completed after March 30, 2021, must be refunded to the Direct Loan consolidating servicer to adjust the borrower accounts. Collection charges return to 18.5% for loans were the LVC is received after August 28, 2023, for loans that default after August 28, 2023, or once the payment pause expires.
- Guaranty agencies were required to make adjustments to interest on involuntary payments to loans that defaulted on or after March 13, 2020, through August 28, 2023; these loans must be transferred to ED under Special Mandatory Assignment (SMA).
- Guaranty agencies were allowed to transfer funds from the Federal Fund to the Operating Fund without prior permission (through August 28, 2023) from ED to reimburse themselves for lost revenue and to make refunds to borrowers. Guaranty agencies who received additional funds from ED must report that activity on the Guaranty Agency Financial Report (GAFR) Forms 2000 (Annual Report).

Fresh Start Initiative

On April 6, 2022, ED announced the "Fresh Start" initiative to eliminate negative effects for FFEL borrowers who defaulted prior to March 13, 2020. On December 2, 2022, ED published DCL GEN-22-16 entitled "Fresh Start Initiative Guidance to Guaranty Agencies (GAs). This letter "...informs GAs of their obligations regarding Federal Family Education Loan (FFEL) Program loans that are in default in accordance with the Fresh Start Initiative." A general 'fact sheet' was provided and is included in the DCL data linked above.

Guaranty agency obligations to implement the initiative will be in place for one year following the end of the pandemic payment pause, or through August 28, 2024.

Some of those obligations impact the compliance requirements covered by this compliance supplement. For instance, as described in detail in DCL GEN-22-16 guaranty agencies are obligated to:

- Resume interest rate accruals for all loans upon cessation of the pandemic payment pause in accordance with the law, the borrower's promissory note, and any modifications to the loan agreement agreed upon by the guaranty agency.
- Suspend collection attempts for borrowers who are eligible for Fresh Start for one year following the end of the pandemic payment pause, or through August 28, 2024.
- Implement credit reporting procedures.
- Assign defaulted loans to ED/Debt Management and Collection System (DMCS) for transfer to its contractor, Nelnet, upon request from a borrower eligible for Fresh Start.
- Assign SMA and Fresh Start borrowers to DMCS who have unfulfilled rehabilitation agreements.

Borrowers who defaulted on or after March 13, 2020, and before the cessation of the pandemic payment pause on August 28, 2023, are still subject to SMA in accordance with DCL GEN 21-03. Borrowers who default after the pandemic payment pause, or after August 28, 2023, will not be eligible for the Fresh Start initiative and will be subject to collections in accordance with 34 CFR 682.410(b)(6) and (b)(9).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	N	N	N	N	N	Y	N	Y

L. Reporting

1. Financial Reporting

Not Applicable

2. Performance Reporting

Not Applicable

3. Special Reporting

a. **Report Title:** ED Form 2000, Guaranty Agency Financial Report
OMB PRA Number: OMB No. 1845-0026
Report Authority: Title IV, Part B, Sec. 428 of the HEA and 34 CFR 682 Subpart D
Reporting period/submission date/s: Monthly, Monthly/Quarterly, and Annually, based on the Federal fiscal year
Link to report and report instructions:
ED Form 2000, *Guaranty Agency Financial Report (OMB No. 1845-0026)* – Guaranty agencies submit this form monthly, monthly/quarterly, and annually. Instructions for this report are available at https://ifap.ed.gov/sites/default/files/attachments/2020-02/GAFRGuideFY19FINALSep2019.pdf.

In determining which amounts to test on ED Form 2000, particular attention should be given to validating the September 30 amounts reported for the following key line items within the ED Form 2000:

MR-1 – Claims Paid
MR-3 – Status Changes
MR-5 - Repurchases
MR-6 – Repurchases for Reinsurance Claims Paid in Prior Fiscal Year
MR-7 – Partial Refunds
MR-8 – Partial Refunds (Previous Fiscal Year)
MR-9 – Overstated Claims
MR-10 – all line items
MR-11 – FFEL Consolidation Refund
MR-12 – GA Administrative Wage Garnishment
MR-13 – Default Collections
MR-32 – Ending Balance of Defaulted Loans

AR-20 – Other Revenues
AR-25 – Other Expenses
AR-52 – Other Assets
AR-53 – Accounts Payable, Accrued Expenses, and Other Current Liabilities
AR-55 – Other Liabilities

Guaranty agencies are required to submit loan level detail information to the National Student Loan Data System (NSLDS) (*OMB No. 1845-0035)*. NSLDS data may be used to validate the MR and AR line items tested. Guaranty agencies must maintain loan level detail for all data reported on the ED Form 2000.

When reviewing support for the above line items, the auditor should consider whether the relevant amounts in these reports reconcile with the NSLDS Extract submitted by the guaranty agency or other financial data as represented 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. In this case, the guaranty agency's books and records should provide the information necessary to complete this reconciliation.)

b. **Report Title:** National Student Loan Data System (NSLDS)
OMB PRA Number: OMB No. 1845-0035
Report Authority: Title IV, Part G of the Higher Education Act of 1965, as amended by the 1998 Amendments to the HEA (P.L. 105-244) section 485B
Reporting period/submission date/s: Monthly (Electronically)
Link to report and report instructions: NSLDS for Financial Aid Professionals

The guaranty agency is required to submit loan-level detail data to the NSLDS. The NSLDS Enrollment Reporting Guide that describes this level of detail is available at https://ifap.ed.gov/sites/default/files/attachments/2019-12/NewNSLDSEnrollmentReportingGuide_0.pdf.

Key Line Items - The following are identified as key data elements:

1. *Social security number*
2. *First name*
3. *Date of birth*
4. *Original school code*
5. *Academic level*
6. *Current school code*
7. *Enrollment status code*
8. *Enrollment status date*
9. *Originating lender code*
10. *Loan guarantee date*
11. *Amount of guarantee*
12. *Current holder lender code*
13. *Date repayment entered*
14. *Loan status code*
15. *Loan status date*
16. *Outstanding principal*
17. *Amount of claim paid to lenders (principal and interest)*
18. *Interest and fee amounts for loans in defaulted status*

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.1, "Current Records," III.N.2, "Conditions of Reinsurance Coverage," III.N.3, "Death, Disability, Closed Schools, False Certifications, Unpaid Refunds, Bankruptcy, and Teacher Loan Forgiveness Claims," and III.N.8, "Federal Fund and Agency Operating Fund."

4. Special Reporting for Federal Funding Accountability and Transparency Act

Not Applicable

N. Special Tests and Provisions

1. Current Records

Compliance Requirements The guaranty agency shall maintain current, complete, and accurate 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, including status date, updated at least once every 10 business days (34 CFR section 682.414(a)).

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

Suggested Audit Procedures

a. For a sample of loans, compare dates transactions or information was posted to the guaranty agency's system to the dates the source information was received.

b. Verify that the status date is not the date the claim was paid but the actual date of occurrence (i.e., date of death on NSLDS).

c. Identify whether any backlog exists that is over 10 days old.

d. Verify that there are no duplicate records for a given borrower.

2. Conditions of Reinsurance Coverage

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

a. Evidence that the lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the guaranty agency, including documentation of:

(1) Timely conversion to repayment;

(2) Collection and payment histories;

(3) Beginning and ending dates of borrower deferments/forbearances;

(4) Required skip-tracing activities; and

(5) No 45-day gaps in collection activities (34 CFR sections 682.406, 682.411, and 682.414).

b. Evidence that the loan was actually in default before the guaranty agency paid a default claim (34 CFR section 682.406(a)(4)).

c. Evidence that the lender filed a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

d. Evidence that the loan was legally enforceable by the lender when the guaranty agency paid the claim on the loan to the lender (34 CFR section 682.406(a)(10)).

e. Evidence that the lender provided an accurate collection history and an accurate payment history with the default claim showing that the lender exercised due diligence in collecting the loan that met the requirements of 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).

f. Evidence that the lender satisfied all conditions of guarantee coverage set by the guaranty agency (34 CFR section 682.406(a)(7)).

g. Evidence that the guaranty agency submitted a request for payment to ED within 30 days of lender payment (34 CFR section 682.406(a)(9)).

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

Past problem areas have been:

The lender:

a. Did not exercise due diligence in collecting the loan in accordance with 34 CFR section 682.411 (34 CFR section 682.406(a)(3)).

b. Did not include adequate documentation evidencing: timely conversion to repayment, a detailed collection and detailed payment history, beginning or ending dates of borrowers’ deferments/forbearances, performance of required skip-tracing activities, and no 45-day gaps in collection activities to support claim eligibility and the claim amount (34 CFR section 682.406(a)(3)).

c. Did not file a default claim with the guaranty agency within 90 days of default (34 CFR section 682.406(a)(5)).

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

d. 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:

a. Filed a request for payment of reinsurance later than 30 days following payment of a default claim to the lender (34 CFR section 682.406(a)(9)).

b. Did not pay the lender within 90 days of the date the lender filed the claim (34 CFR section 682.406(a)(8)).

Audit Objectives Determine whether loans for which reinsurance was paid met the requirements for reinsurance.

Suggested Audit Procedures

a. Select a sample of defaulted loans from the guaranty agency's ED Form 2000 reports.

b. Ascertain if, prior to paying claims, the guaranty agency determined that:

(1) The lender exercised due diligence in making, disbursing, and servicing the loan;

(2) The loan was legally enforceable;

(3) The loan was in default;

(4) The claim was timely filed;

(5) The lender provided an accurate collection and payment history showing that the lender exercised due diligence in collecting the loan; and

(6) The lender satisfied conditions of guaranty coverage set by the guaranty agency.

c. Ascertain that the guaranty agency:

(1) Filed a request for payment of reinsurance no later than 30 days following payment of a default claim to the lender; and

(2) Paid the lender or returned the claim to the lender for additional documentation within 90 days of the date the lender submitted the claim.

(3) Calculated and reported the loan amount using the appropriate rate on the Form 2000.

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

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

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

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

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

Suggested Audit Procedures

a. Select a sample of death, disability, closed school, false certification, unpaid refund, bankruptcy, and teacher loan forgiveness claims from the guaranty agency's ED Form 2000 reports.

b. Review claim documentation that supports the eligibility of the claims for payment.

c. Verify that the guarantor calculated and reported the claim amount using the appropriate rate on the Form 2000.

4. Default Aversion Assistance

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

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

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.

5. 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(j) and 682.410(b)(6)).

Under DCL GEN-21-03, guaranty agencies were directed to stop all collection efforts in March 2021 and return any involuntary amounts collected. Collection efforts are to resume on or after the Fresh Start period for those borrowers who defaulted prior to August 28, 2023. For borrowers who defaulted after August 28, 2023, regular collection efforts must resume. See DCL GEN-22-16.

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.

6. Federal Share of Borrower Payments

Compliance Requirements 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" for the applicable reinsurance rate. The complement of the reinsurance percentage equals 100 minus the federal reinsurance rate), and

b. Sixteen percent of borrower payments (34 CFR section 682.404(g)(1)(ii)).

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

For defaulted loans, which are repaid by a consolidation loan, under separate authority, agencies are allowed to retain only the amount of collection costs charged to the borrower and paid off by the consolidation loan. The amount that may be retained is as follows: The guaranty agency can charge up to 18.5 percent of the outstanding principal and interest on the defaulted loan; however, the secretary is entitled to the lesser of actual collection costs charged or 8.5 percent of principal and interest outstanding on the defaulted loan. (Note: There is also a provision that a guaranty agency may not retain any portion of the collection costs paid by a consolidation loan that exceed 45 percent of the agency's total collections on defaulted loans that year. However, this provision has been waived by DCL GEN-21-03 and GEN-22-16 until September 30, 2024. See Federal Register for additional information. (34 CFR sections 682.401(b)(18) and 685.220(f)).

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

Audit Objectives 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

a. 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.

7. Assignment of Defaulted Loans to ED

Compliance Requirements 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).

DCL GEN-21-03 required that guaranty agencies pause assigning loans that it would have otherwise assigned until it receives instructions from ED to resume those assignments and also required that guaranty agencies transfer loans meeting certain criterion to ED. Eligible loans for transfer include those in "population 2" of the DCL which is defined as:

> "Population 2 includes outstanding loans on which a default claim was paid on or after March 13, 2020 and on or prior to the end date for the pause for loans held by [ED], that are not subject to an active bankruptcy filing, and are in default on or after the date of this letter…"

DCL GEN-22-16 provided additional requirements for guaranty agencies to assign certain population of loans to ED. This DCL provided details about the "Fresh Start" initiative which includes ED eliminating the "…negative effects for federal student loan borrowers who are in default." Guaranty agencies are required to suspend collection attempts for borrowers eligible for Fresh Start for one year after the end of the pandemic payment pause, or August 29, 2023. Loans are required to be assigned to ED upon a request from a borrower who is eligible for Fresh Start. Borrowers eligible for Fresh Start are those who defaulted prior to March 13, 2020.

Audit Objectives Determine whether the guaranty agency assigned to ED all loans that were required to be assigned, unless assignment has been paused.

Suggested Audit Procedures

a. Review the guaranty agency's aging of loans and identifications of loan populations to ascertain if the guaranty agency is holding loans that should be assigned to ED.

b. Determine whether the guaranty agency is complying with any directive from the Secretary to assign to ED certain other categories of defaulted loans.

8. Federal Fund and Agency Operating Fund

Compliance Requirements- *Federal Fund*-A guaranty agency shall deposit in the Federal Fund the following:

a. All amounts received from ED as payment of reinsurance or other claims on loans.

b. All funds received by the guaranty agency from any source on FFEL loans on which a claim has been paid minus the portion the agency is authorized to deposit in its Operating Fund (must be deposited within 48 hours of receipt).

c. Insurance premiums or federal default fees.

d. Amounts received for Supplemental Preclaim Assistance (SPA) activity performed prior to October 1, 1998.

e. Earnings from investments of the Federal Fund.

f. Other receipts as specified in regulations (34 CFR section 682.419(b)).

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

a. To pay lender insurance claims.

b. To transfer default aversion fees into the Agency Operating Fund.

c. For other purposes listed in the regulations (34 CFR section 682.419(c)), including for any purpose authorized by the secretary (see N. Special Test 14. Lost Revenue).

Agency Operating Fund

The guaranty agency shall deposit into the Operating Fund:

a. Account maintenance fees.

b. Default aversion fees.

c. The portion of the amounts collected on defaulted loans that remains after the secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund (34 CFR section 682.423).

d. Other receipts as specified in regulations (34 CFR section 682.423(b)).

Funds in the Operating Fund may only be used for application processing, loan disbursement, enrollment and repayment status management, default aversion activities, default collection activities, school and lender training, financial aid awareness and related outreach activities, compliance monitoring, and other SFA-related activities for the benefit of students (34 CFR section 682.423(c)).

Past problem areas concerning fund revenue and expense have included:

a. Failure to credit funds received into the Federal Fund, including lock-box operations, within the specified period.

b. Unauthorized expenses paid from the Federal Fund assets.

c. Failure to report all credits to the Federal Fund on ED Form 2000.

d. Use of the Federal Funds for other programs (e.g., Leveraging Educational Assistance Partnerships [LEAP] and state programs).

e. Commingling of funds.

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

Suggested Audit Procedures

a. Review revenue records to assure that amounts required to be credited to the Federal and Operating Funds were so credited. Review revenues and receipts that were not credited to the Federal or Operating Funds to assure that they were not inappropriately omitted.

b. Test expenditures to ascertain if they were made for allowable purposes.

c. Examine the general journal for unusual entries that impact the Federal or Operating funds.

9. Investments – Federal Fund

Compliance Requirements Funds transferred to the Federal Fund shall be invested in obligations issued or guaranteed by the United States or a state, or in other similarly low-risk securities selected by the guaranty agency, with the approval of the secretary (such as pooled investments as part of a state investment program). Earnings from the Federal Fund are the sole property of the federal government (Section 422A(b) of the HEA (20 USC 1072a(b)); and DCLID: 99-G-316.

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

Suggested Audit Procedures

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

b. Ascertain that earnings were deposited in the Federal Fund.

10. Collection Charges

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

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

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

a. The amount or rate, if any, specified in the borrower’s note;

b. The rate determined by dividing the agency’s expected expenses by its expected recoveries for the period at issue; or

c. The rate that would be charged if the loan were held by ED (through March 1, 2007, 25 percent of the amount of principal and interest satisfied from a payment; thereafter, 24 percent of the amount).

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

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

a. A guaranty agency may charge collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest on a defaulted FFELP loan that is paid off by a Federal Consolidation Loan. DCL Gen 21-03 limits collection cost to 2.8% for loans in which the LVC was completed after March 30, 2021. DCL Gen 22-16 removed collection cost for defaulted loan consolidated after January 1, 2023. This limitation on collection cost applies through the Fresh Start period but doesn't apply to borrowers that default after August 28, 2023. The guaranty agency must remit to the secretary a portion of the collection charge equal to the lesser of the amount charged the borrower or 8.5 percent of the outstanding principal and interest of the loan. A guaranty agency must remit directly to the secretary the entire amount of the collection charge with respect to each defaulted loan that is paid off with excess consolidation proceeds, as defined in 34 CFR section 682.401(b)((18)(iv) (34 CFR section 682.401(b)(18)) (see III.N.6, "Federal Share of Borrower Payments").

b. Borrowers who make the required nine voluntary and on-time payments within ten months and whose loans are then rehabilitated by sale to an eligible lender may not be charged more than 16 percent of the outstanding principal and interest on the loans being rehabilitated (20 USC 1078-6(a)(1)(D)(i)(II)(aa); 34 CFR section 682.405(b)(1)(vi)). A guaranty agency may not charge any collection costs to a borrower who timely enters into a loan rehabilitation agreement or other repayment agreement as discussed in paragraph c, below.

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

d. For loans rehabilitated on or after March 13, 2020, DCL GEN-21-03 requires that collection costs be reduced for loans considered "Population 3" which includes outstanding loans that were in default during the pandemic (regardless of when the claim was paid) and for which that default was resolved through rehabilitation or consolidation prior to March 13, 2020. The DCL states that:

> "To provide parity with the treatment of loans held by [ED], a [guaranty agency] may not add collection costs to the loan when it is successfully rehabilitated but may reimburse itself for those costs…."

Therefore, borrowers charged collection costs during this time are owed a refund from the guaranty agency.

Audit Objectives 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. Determine if the guaranty agency has corrected borrower accounts for loans rehabilitated before May 12, 2021, during the Pandemic period.

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.

c. Review methodology for determining loans in Population 3 as defined by DCL GEN-21-03, and if the guaranty agency has made the required corrections. If the guaranty agency has not made the required corrections, document the identification method of Population 3 and validate these amounts.

11. Enforcement Action

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

Audit Objectives 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 to review to ascertain if they meet the regulatory criteria or an alternative methodology approved by the secretary.

b. Review the guaranty agency's program review guidance to ascertain if it is up-to-date and includes, when problems are found, a statistically valid method for determining liabilities due the secretary.

c. Review program review reports to ascertain if amounts due the secretary were identified and, if so, whether appropriate demand for payment and follow-up was conducted.

d. Through inquiry and review, determine whether the guaranty agency adopted procedures for reporting all allegations of misconduct having a substantial basis to ED. Review guaranty agency records on the follow-up of misconduct to determine whether ED was notified when appropriate.

12. Access to National Student Loan Data System (NSLDS)

Compliance Requirements Section 485B of HEA (20 USC 1092b) establishes principles for administering the NSLDS. The secretary is required to ensure that the primary purpose of access to the system by guaranty agencies is for legitimate program operations and to take actions to maintain confidence in the NSLDS, including, at a minimum, developing standardized protocols for limiting access to the data system. NSLDS access and use requirements were issued by ED in Dear Colleague Letter GEN-05-06/FP-05-04 (https://ifap.ed.gov/dear-colleague-letters/04-11-2005-gen-05-06-access-and-use-nslds-information) *Access To and Use of NSLDS Information,* dated April 8, 2005, and expanded July 2009 in NSLDS Organization Access Process located at (NSLDS Access) Subject: NSLDS Organization Access Process | Knowledge Center.

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

a. Ensuring that all users are aware of their responsibilities regarding access to NSLDS.

b. Monitoring the use and access of NSLDS data by all of the organization's users.

c. De-activating a User ID when the person to whom it was assigned is no longer with the organization or otherwise is no longer eligible to have access to NSLDS.

d. Ensuring that information in or received from the NSLDS is protected from access by or disclosure to unauthorized personnel.

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

Suggested Audit Procedures

a. Review and evaluate the guaranty agency's established and documented controls over access to the NSLDS.

b. Verify that the entity removes NSLDS access when an employee terminates or is reassigned to a position not requiring NSLDS access.

13. Implementation of Dear Colleague Letter GEN-21-03 "Expansion of Collections Pause to Defaulted FFEL Program Loans Managed by Guaranty Agencies (Updated May 24, 2021)"

Compliance Requirements Dear Colleague Letter GEN-21-03 required that all guaranty agencies identify three populations for all loans in its portfolio, stating as follows:

> "On March 30, 2021, the U.S. Department of Education [ED] announced an expansion of the pause on federal student loan interest and collections on all defaulted loans in the FFEL Program that are managed by [guaranty agencies]. These flexibilities will be in place for the same period of time as the pause for loans held by [ED], which is currently slated to run through September 30, 2021."

(Note: This "end date" was updated to be through August 28, 2023, by the Secretary.)

There were three populations of FFEL Program loans covered by the announcement:

- Population 1 includes outstanding loans on which a default claim was paid prior to March 13, 2020, that are not subject to an active bankruptcy filing, and are still in default as of the date of this letter;

- Population 2 includes outstanding loans on which a default claim was paid on or after March 13, 2020 and on or prior to the end date for the pause for loans held by ED, that are not subject to an active bankruptcy filing, and are in default on or after the date of this letter; and

- Population 3 includes outstanding loans that were in default during the pandemic (regardless of when the claim was paid) and for which that default was resolved through rehabilitation or consolidation prior to the date of this letter.

The DCL describes in detail each action that guaranty agencies must take and the applicable waivers of the Higher Education Act of 1965, as amended (HEA), and ED's implementing regulations that ED will exercise to facilitate these actions.

Audit Objectives Determine whether the guaranty agency correctly calculated interest adjustments retroactive to the beginning of the Pandemic, or March 13, 2020. Identify and document all assumptions made in this process.

Suggested Audit Procedures

a. Review and evaluate the guaranty agency's methods for determining the population for all loans in its portfolio.

b. Test a sample of defaulted loan accounts from populations 1 and 2 to determine whether the guaranty agency correctly charged interest and retroactively adjusted interest where required.

14. Calculation of Lost Revenue

Compliance Requirements DCL GEN-21-03 allows a guaranty agency to reimburse itself from the Federal Fund for lost revenue that will be realized as a result of the implementation of the Dear Colleague Letter. That reimbursement, however, will only cover "…the share of what a [guaranty agency] might have reasonably collected during the pandemic but for the suspension. Lost revenue calculations will need to be submitted to Federal Student Aid's Office of Partner Participation and Oversight's Financial Oversight Service Group.

Guaranty agencies may reimburse themselves for this lost revenue from the Federal Fund on a quarterly basis based on their good-faith estimates, and without the requirement for prior approval from Federal Student Aid as to lost revenue. After August 28, 2023, guarantors must receive approval from Federal Student Aid to transfer lost revenue that accrued for periods prior to August 28, 2023. When the suspension ends, (August 28, 2023) ED will compare the total amount reimbursed to the amount of lost revenue as submitted by the guaranty agency, with an attendant over-/under-payment process.

ED is not setting specific requirements for the guaranty agency's estimate of its lost collection revenues for the purposes of seeking reimbursement from the Federal Fund, but the estimate must be made in good faith and supported by the guaranty agency's records.

Audit Objectives Determine whether the guaranty agency has estimated its lost revenue in accordance with DCL GEN-21-03 and any additional related guidance and confirm that the estimation is supported by the guaranty agency's records.

Suggested Audit Procedures

a. Review the guaranty agency's methods for determining its lost revenue and ensure that it complies with DCL GEN-21-03 and any relevant guidance.

b. Review the guaranty agency's lost revenue estimate and confirm that it is supported by the guaranty agency's records.

15. Credit Bureau Reporting

Compliance Requirements DCL GEN-21-03 required that all loans in “Population 2”, or loans that defaulted during the pandemic payment pause (March 13, 2020, through August 29, 2023) will be returned to good standing. DCL GEN-22-16 required that, effective February 1, 2023, GAs are to report all defaulted borrowers as current unless their first date of delinquency (FDD) (which is not the same as their default date) is more than seven years ago.

- If the FDD is more than seven years ago, GAs must delete the borrower’s tradeline. If a borrower elects to have their loans transferred to ED as part of “Fresh Start”, the GA must delete the credit reporting tradeline upon assignment to ED.

- If a borrower does not request a transfer to ED during the Fresh Start period, after it ends the GA will report delinquent/defaulted with the original FDD (so that the debt does not restart the seven-year clock).

Audit Objectives Determine whether the guaranty agency correctly adjusted defaulted borrower’s credit reports as required by both DCLs.

Suggested Audit Procedures

a. Review the guaranty agency’s methods for determining a borrower’s FDD met acceptable standards. Note any assumptions made by the guaranty agency.

b. Review the guaranty agency’s procedures for updating the credit bureau reporting as required by the DCLs, including process of update and management and correction of reporting errors after the initial submission. Determine if the process and updates were reasonable and resulted in overall compliance with this provision.

IV. OTHER INFORMATION

Identification of Program Expenditures

FFEL Programs are administered by guaranty agencies and lenders, with distinct compliance requirements that apply to each. Therefore, FFEL program expenditures should be identified in the single audit report package and on the Data Collection Form as "FFEL – Guaranty Agencies" or "FFEL – Lenders".

Use of a Guaranty Agency “Servicer”

Some guaranty agencies hire servicers to administer FFEL Program functions. Guaranty agency servicers are required to obtain a financial statement audit and an examination-level compliance attestation engagement under the April 2020 Audit Guide: Guide for Financial Statement Audits and Compliance Attestation Engagements of Guaranty Agency Servicers Administering the Federal Family Education Loan Program (Guaranty Agency Servicer Audit Guide), issued by ED's Office of Inspector General and available at https://oig.ed.gov/non-federal-audits/federal-family-education-loan-ffel-program-audits. Auditors of guaranty agencies may exclude coverage of compliance requirements performed by a servicer, provided the auditor has determined that the servicer has obtained an audit under the Guaranty Agency Servicer Audit Guide for the entire audit period of the guaranty agency. If the servicer has a different audit period, the auditor of the guaranty agency must determine that the most recently required audit of the servicer under the Guaranty Agency Servicer Audit Guide has been completed timely and must obtain a representation from the servicer that it has engaged (or will engage) an auditor to perform the required audit under the Guaranty Agency Servicer Audit Guide for the immediate subsequent audit period. The auditor of the guaranty agency must confirm that the audit period of the prior servicer audit, together with the audit period for the subsequent servicer audit, covers the entire audit period of the guaranty agency audit.

If the auditor excludes coverage of guaranty agency compliance requirements performed by a servicer, the *Report on Compliance for Each Major Federal Program and Report on Internal Control Over Compliance Required by Uniform Guidance* must clearly describe the compliance requirements for which coverage has been excluded, name the servicer that performed those compliance requirements, state that the servicer has obtained an audit performed under the April 2020 Guaranty Agency Servicer Audit Guide issued by ED's Office of Inspector General, and specify the period of that audit. Alternatively, the auditor may decide to use a servicer's audit (attestation engagement) and rely on it in rendering an opinion on compliance. In such cases, the auditor should obtain the servicer's most recent compliance audit report and any other reports regarding servicer compliance.

If the servicer's compliance audit report or other reports contain findings of noncompliance, the auditor should assess the effect of that noncompliance on the nature, timing, or extent of substantive tests to be conducted at the guarantee agency and/or the servicer, as well as reporting that information. The auditor must also adhere to pertinent generally accepted auditing standards relating to use of servicer organization audits and reliance on the work of other auditors.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.032 FEDERAL FAMILY EDUCATION LOANS (LENDERS)

I. PROGRAM OBJECTIVES

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

II. PROGRAM PROCEDURES

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

A lender (other than a school lender) holding more than $5 million in FFEL loans during its fiscal year, and a school lender under 34 CFR section 682.601 that holds any FFEL loans during its fiscal year, must submit an independent annual compliance audit for that year conducted by a qualified independent organization or person (34 CFR section 682.305(c)(1)). Governmental entities or nonprofit organizations that function as lenders under the FFEL program must meet this requirement by auditing the school lender activity as a major program (or, if applicable, as part of the Student Financial Aid (SFA) Cluster) as part of the entity's single audit under 2 CFR Part 200, Subpart F. (For Schools that are Lenders, see guidance in IV, "Other Information.")

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

Source of Governing Requirements

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

Availability of Other Program Information

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

1. Dear Partner (Colleague) Letters https://ifap.ed.gov/ilibrary/document-types/dear-colleague-letters
2. Electronic Announcement https://ifap.ed.gov/ilibrary/document-types/electronic-announcements
3. FFEL Special Allowance Rates FFEL Special Allowance Rates | Library | Knowledge Center
4. FFEL Variable Interest Rates FFEL Variable Interest Rates | Library | Knowledge Center
5. Dear Colleague Letter FP-07-01 FFELP Loans Eligible for 9.5 Percent Minimum Special Allowance Rate https://ifap.ed.gov/dear-colleague-letters/01-24-2007-fp-07-01-ffelp-loans-eligible-95-percent-minimum-special
6. Dear Colleague Letter FP-07-06 Audit Requirements for 9.5 Percent Minimum Special Allowance Payment Rate https://ifap.ed.gov/dear-colleague-letters/04-27-2007-fp-07-06-audit-requirements-95-percent-minimum-special-allowance
7. Dear Colleague Letter FP 07-12 -Determination of Not-For-Profit Holder Status for SAP Billing https://ifap.ed.gov/dear-colleague-letters/12-28-2007-fp-07-12-determination-not-profit-holder-status-sap-billing
8. Dear Colleague Letter FP 08-10 The Higher Education Opportunity Act https://ifap.ed.gov/sites/default/files/attachments/dpcletters/GEN0812FP0810AttachHEOADCL.pdf
9. Dear Colleague Letter FP 12-01 Loan Verification Certificate for Special Direct Consolidation Loans https://ifap.ed.gov/dear-colleague-letters/01-20-2012-fp-12-01-subject-loan-verification-certificate-special-direct
10. Dear Colleague Letter FP 12-02 LIBOR-Based SAP under the Consolidated Appropriations Act, 2012 https://ifap.ed.gov/sites/default/files/attachments/2019-05/LIBORLenderBulletinFeb2012.pdf
11. Dear Colleague Letter FP 12-03 Corrections to GEN-11-19/FP-11-01 Revised Loan Discharge Application: Unpaid Refund https://ifap.ed.gov/dear-colleague-letters/11-22-2011-gen-11-19-subject-revised-loan-discharge-application-unpaid

12. Dear Colleague Letter GEN-12-01 Changes Made to the Title IV Student Aid Programs by the Recently Enacted Consolidated Appropriations Act, 2012 https://ifap.ed.gov/dear-colleague-letters/01-18-2012-gen-12-01-subject-changes-made-title-iv-student-aid-programs

13. Dear Colleague Letter GEN-16-08, Approval of Servicemember Civil Relief Act (SCRA) Interest Rate Limitation Request for the Direct Loan and FFEL Programs https://ifap.ed.gov/dear-colleague-letters/05-05-2016-gen-16-08-subject-approval-servicemember-civil-relief-act-scra

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	N	Y	N	Y	N	Y	N	Y

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

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

3. Earmarking

Not Applicable

I. Procurement and Suspension and Debarment

For schools that are lenders (see III.N.10, "Holding Loans as a Trustee for an Institution of Higher Education or an Affiliated Organization"), any contract awarded for financing, servicing, or administration of FFEL loans must be awarded on a competitive basis (Section 435(d)(2)(A)(iv) of the HEA (20 USC 1085(d)(2)(A)(iv)); 34 CFR section 682.601(a)(4)).

L. Reporting

1. Financial Reporting

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Not Applicable

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

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

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

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

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

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

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

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

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

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

2. Performance Reporting

Not Applicable

3. Special Reporting

Not Applicable

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

N. Special Tests and Provisions

1. Individual Record Review

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

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

a. A copy of the loan application if a separate application was provided to the lender

b. A copy of the signed promissory note

c. The repayment schedule

d. A record of each disbursement of loan proceeds

e. Notices of changes in a borrower’s address and status as at least a half-time student

f. Evidence of the borrower’s eligibility for a deferment

g. The documents required for the exercise of forbearance

h. Documentation of the assignment of the loan

i. A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs

j. A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan; each communication (other than regular reports by the lender showing that an account is current) between the lender and a credit bureau regarding the loan; each effort to locate a borrower whose address is unknown at any time; and each request by the lender for default aversion assistance on the loan

k. Documentation of any Master Promissory Note confirmation process or processes

l. Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted.

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

Audit Objectives Determine whether the lender maintained current, complete, and accurate loan records.

Suggested Audit Procedures

a. Trace loan information from the lender’s summary records/ledgers to detailed loan records.

b. Test a sample of individual loan files and determine if the lender maintained the required documents and the information recorded in the detailed loan record agrees with the information in these documents and the summary records.

2. Interest Benefits

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

a. All periods prior to the beginning of the repayment period;

b. Any period when the borrower has an authorized deferment (34 CFR section 682.300); and

c. During a period that does not exceed three consecutive years from the established repayment period start date on each loan under the income-based repayment plan and that excludes any period during which the borrower receives an economic hardship deferment if the borrower's monthly payment amount is not sufficient to pay the accrued interest on the borrower's loan or on the qualifying portion of the borrower's Consolidation Loan.

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

a. January 1, 1993, but prior to August 10, 1993;

b. August 10, 1993, but prior to November 13, 1997, if the loan consolidates only subsidized Stafford loans; or

c. November 13, 1997, but prior to July 1, 2010, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans (34 CFR section 682.301(a)(3)).

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

Reporting of Interest Benefits- The information needed for ED to calculate interest benefits is reported in Part II of the LaRS. See 34 CFR section 682.202(a) for applicable interest rates for FFEL program loans. The Servicemembers Civil Relief Act (50 USC App. 527) (SCRA), which limits the interest rate on a borrower's loan to 6 percent during the borrower's active duty military service, applies to FFEL loans. This limitation applies to borrowers who were in military service as of August 14, 2008, but a borrower is not entitled to a refund of interest paid above the 6 percent rate prior to that date. The SCRA interest rate limit does not apply to an endorser to a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service (50 USC App. 527). Lenders must also limit interest billing to ED to an interest rate of no more than 6 percent for borrowers that qualify for SCRA interest rate cap (34 CFR 682.208(j)).

Consolidation Loan Interest Payment Rebate Fee- Consolidation loan interest payment rebate fees are required on a monthly basis from lenders that hold federal consolidation loans with first disbursements after October 1, 1993. The monthly rebate fee is 0.0875 percent (1.05 percent annualized) of the unpaid balance of the principal and the accrued unpaid interest on all federal consolidation loans disbursed after October 1, 1993 and held by the lender on the last day of the month. For loans based on applications received during the period October 1, 1998 through January 31, 1999, inclusive, the monthly rebate fee is 0.05167 percent (0.62 percent annualized) of the unpaid balance of principal and accrued unpaid interest. Consolidation loan rebate fees (CLRF) are reported monthly using the FFEL Consolidation Loan Rebate Fee Report and Remittance Form *(OMB No. 1845-0046)* (Section 428C(f) of the HEA (20 USC 1078-3(f))).

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

Suggested Audit Procedures

a. Test that the loans are assigned the correct interest rate in accordance with 34 CFR section 682.202(a) and 50 USC App. 527 and are reported in the correct interest rate category in the LaRS.

b. Test that the lender begins and ends billings to ED for interest benefits on the appropriate day for loans in an in-school, grace, or authorized deferment period.

c. Review loan records, disbursement records, or other documentation to verify that interest is billed only for periods specified in 34 CFR section 682.300(b)(2) and is not billed for interest covered under 34 CFR section 682.300(c).

d. For consolidated loans on which the lender has claimed interest benefits, review the history files, and verify that the loans qualified for interest payments.

e. For consolidated loans subject to the consolidation loan interest payment rebate fee, verify that fees were calculated accurately and submitted on a monthly basis.

f. Test the accuracy of the average daily balance or actual accrual calculations by recalculating amounts or by reasonableness tests.

3. Special Allowance Payments

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

Loans Eligible for Special Allowance Payments-See 34 CFR section 682.302(b) for details on loans eligible for special allowance payments. Limitations on the payment of a special allowance for PLUS loans were eliminated by the Higher Education Reconciliation Act (HERA) (Pub. L. No. 109-171). Lenders may receive special allowance payments on PLUS loans that were first disbursed on or after January 1, 2000, and before July 1, 2006, for periods beginning April 1, 2006 (Section 438(b)(2)(I) of the HEA (20 USC 1087-1(b)(2)(I)). The average loan principal, including capitalized interest, is to be calculated using the average daily balance method defined in 34 CFR section 682.304(d). For any FFEL loan that is subject to the SCRA six percent interest rate limit, for those FFEL loans first disbursed on or after July 1, 2008, the applicable interest rate used in calculating the lender's special allowance payment is the SCRA-determined rate. Interest benefits due the lender may be calculated by using either the average daily balance or actual accrual methods in 34 CFR sections 682.304(b) and (c).

Special Allowance Rates for Loans Made on or After October 1, 2007, but Prior to July 1, 2010-Except for certain loans made from funds derived from tax-exempt sources, the special allowance rate for any eligible loan, for which the first disbursement of principal was made on or after October 1, 2007, is to be calculated according to the formulas described in:

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

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

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

a. A state, or a political subdivision, agency, authority, or instrumentality of a state, including an entity eligible to issue bonds described in section 144(b) of the Internal Revenue Code (Code), or in 26 CFR section 1.103-1;

b. A not-for-profit entity described in section 150(d)(2) of the Code that has not made the election described in section 150(d)(3) of the Code to relinquish that status;

c. A not-for-profit entity described in section 501(c)(3) of the Code; or

d. A trustee acting on behalf of a governmental or nonprofit entity listed above, without regard to whether that entity qualifies as an eligible lender under Section 435(d) in its own right (Section 435(p) of the HEA (20 USC 1085(p); 34 CFR section 682.302(f)(3)).

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

a. On September 27, 2007, either acted as an eligible lender under Section 435(d) of the HEA (other than as a school lender), or was the sole beneficial owner of a FFEL program loan that was eligible for special allowance payments;

b. Is neither owned nor controlled, even in part, by a for-profit entity; and

c. Remains the sole beneficial owner of such loans and the income from such loans (Section 435(p)(2) of the HEA (20 USC 1085(p)(2))).

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

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

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

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

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

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

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

a. The proceeds of a tax-exempt obligation originally issued prior to October 1, 1993;

b. Collections or default payments by a guarantor on a loan acquired with the proceeds of such an obligation;

c. Interest benefits or special allowance payments received on a loan acquired with the proceeds of such an obligation;

d. The sale of a loan acquired with the proceeds of such an obligation; or

e. The investment of the proceeds of such an obligation.

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

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

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

a. Was a unit of state or local government or a private nonprofit entity;

b. Was not owned or controlled by, or under common ownership with, a for-profit; and

c. Held directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal equal to or less than $100 million on loans for which special allowances were paid under section 438(b)(2)(B) in the most recent quarterly payment prior to September 30, 2005(Section 438(b)(2)(B)(vii) of the HEA (20 USC 1087-1(b)(2)(B)(vii)); 34 CFR section 682.302(e)(5)).

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

a. Pledged or otherwise transferred prior to October 1, 2004 from the tax-exempt obligation used to acquire the loan, unless either of the following applies:

    (1) The loan is pledged or transferred in consideration of funds listed in 34 CFR section 682.302(c)(3)(i) or from a tax-exempt refunding obligation, or

    (2) The prior tax-exempt obligation used to acquire the loan is neither retired nor deceased with yield-restricted obligations;

b. Financed by a tax-exempt obligation that, after September 30, 2004, has matured, been refunded, or is retired or deceased;

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

d. Sold or transferred to any other holder after September 30, 2004.

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

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

a. The date a borrower’s loan is repaid;

b. The date a borrower’s loan check is returned uncashed to the lender;

c. The date the lender receives payment on a claim for loss on the loan;

d. The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

e. The 60th day after the borrower’s default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all the required documentation on or before the 60th day;

f. The 120th day after disbursement if the loan check has not been cashed on or before that date or if the loan proceeds disbursed by EFT have not been released from the restricted account maintained by the school on or before that date;

g. The 30th day after the date the lender received a returned claim from the guaranty agency due solely to inadequate documentation on a loan submitted by the regulatory deadline for loss on the loan (unless the lender files a claim for loss on the loan with the guarantor, together with the required documentation prior to the 30th day); and

h. The date on which the lender determines the loan is legally unenforceable based on receipt of an identity theft report under 34 CFR section 682.208(b)(3).

Loss of Interest and Special Allowance Payment Benefits-A lender can lose reinsurance coverage and interest and special allowance payment benefits due to violations of due diligence requirements on a loan *(*see III.N.7, “Due Diligence by Lenders in the Collection of Delinquent Loans”). To reinstate reinsurance and other federal payments on the loan, the violation has to be “cured” (see III.N.9, “Curing Due-Diligence and Timely Filing Violations”). See Appendix D to 34 CFR Part 682 for more information.

Audit Objectives Determine whether special allowance payments were earned and reported properly.

Suggested Audit Procedures

a. Test that the lender is reporting all eligible loans in its portfolio in Part III of the LaRS by the proper year, quarter, interest rate, and special allowance category.

b. Using the results of any audit conducted by or for the lender under Dear Colleague Letter FP-07-06 and accepted by ED, test that the lender is accurately reporting for the 9.5 percent floor only those loans that—

(1) were identified as a result of the audit as made or purchased with eligible sources of funds, or

(2) if made or acquired by the lender after December 31, 2006, were made or purchased with funds obtained from repayments, sales, or interest or special allowance payments on loans that were established by such audit to be first-generation loans, as that term is used in Dear Colleague Letter FP 07-01, and

(3) unless held by a lender that qualified for deferral until December 30, 2010,

(a) were made or purchased prior to February 8, 2006, and

(b) were eligible for 9.5 percent floor on February 8, 2006.

c. Test that the lender is terminating special allowance requests on loan balances when a date-specific event specified in 34 CFR section 682.302(d) occurs, as documented in the borrower's file.

d. Test that the lender is terminating billing under the 9.5 percent floor when disqualifying events specified in HEA and 34 CFR sections 682.302(e)(2) and (3) occur.

e. Test the accuracy of the average daily balance calculations as defined in 34 CFR section 682.304(d) by recalculating amounts or by reasonableness tests.

f. Test a sample of loans included in the average daily balances to determine that the average daily balances do not include loans that are not eligible for special allowance payments.

g. For loans made on or after October 1, 2007 through June 30, 2010, for which the lender claimed special allowance as an "eligible not-for-profit holder," examine if the lender claimed special allowance on loans held as a trustee on behalf of another entity—

(1) the claim was limited to loans to which a governmental or nonprofit entity listed above held full beneficial ownership; and

(2) the lender was compensated by the governmental or nonprofit entity at a rate in excess of that paid other eligible lender trustees holding FFEL program loans, and if so, by what amount.

4. Loan Sales, Purchases, and Transfers

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

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

Suggested Audit Procedures

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

b. Review a sample of the loan purchase/sales agreements and ascertain the terms of the agreements as to the day of sale, transfer of funds, and responsibility for loan origination and lender fees. Test that the sale/purchase was conducted in accordance with these terms and the date-specific event was properly noted in the lender's records as to the start/end date of eligibility for interest benefits and special allowance.

c. Select a sample of loans that were transferred to the lender during the audit period and verify that all applicable LaRS loan data, including beginning balances, was entered completely and accurately into the lender's system. Verify that all required supporting loan documentation was obtained and maintained.

d. Select a sample of loans that were transferred, sold, or assigned on or after August 14, 2008, and determine if the borrower was notified with the required information.

5. Enrollment Reports

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

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

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

Suggested Audit Procedures

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

b. Determine whether conversions to repayment status were made within required time limits.

c. Obtain and review the error reports (manifests, in-school discrepancy reports, or out-of-school status reports), if any, generated by the lender that identify discrepancies between the Enrollment Reports and the lender's records.

d. For a sample of loans, trace student enrollment data to any interim status reports or other notification of change information that may have been received directly from the school.

6. Payment Processing

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

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

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

Suggested Audit Procedures

a. Test whether the lender applied the borrower payments and prepayments to loan records in accordance with payment application requirements.

b. Test that application of principal and interest were appropriately calculated and that the correct amount was applied to the individual borrower's loan balance.

c. Test if prepayments were allocated in accordance with ED regulatory requirements or, if applicable, borrower instructions.

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

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

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

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

a. Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of 34 CFR sections 682.411(c), (d), (e), or (f);

b. Attempting telephone contact with the borrower;

c. Conducting skip-tracing efforts, in accordance with 34 CFR sections 682.411(h)(1) or (m)(1)(iii) to locate a borrower whose correct address or telephone number is unknown to the lender;

d. Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

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

Gaps in Collection Activity

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

Due Diligence Documentation

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

Failure to Comply with Due-Diligence Regulations

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

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

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

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

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

a. At least four diligent telephone contacts (see definition of a "diligent telephone contact" below) urging the borrower to make the required payments on the loan. At least one of the telephone contacts must occur on or before the 90th day of delinquency and another one must occur after the 90th day of delinquency.

b. At least four collection letters – at least two of which must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to the borrower, or to garnish the borrower's wages, or assign the loan to the federal government for litigation against the borrower.

Diligent Efforts for Telephone Contact

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

a. A successful effort to contact the borrower by telephone;

b. At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

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

Subsequent Payment or Information Obtained

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

a. *For loans less than 91 days delinquent (121 days for a loan repayable in installments less frequently than monthly)* – Two diligent efforts to contact the borrower by telephone.

b. *For loans 91–120 days delinquent (121–180 days for a loan repayable in installments less frequently than monthly)* **–** One diligent effort to contact the borrower by telephone.

c. *For loans more than 120 days delinquent (180 days for a loan repayable in installments less frequently than monthly)* **–** No additional diligent efforts to contact the borrower by telephone are required.

d. *181–270 days delinquent (241–330 days for loans payable in installments less frequent than monthly)* – During this period, the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

e. *Final demand on or after the 241st day of delinquency (the 301st day for loans payable in installments less frequent than monthly)* – The lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond and bring the loan out of default before filing a default claim on the loan.

Default Aversion Assistance

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

Skip-Tracing Requirements

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

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

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

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

Requirements for Loan Endorsers

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

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

a. Make a diligent effort to contact the endorser by telephone and send the endorser two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan.

b. At least one letter must warn the endorser that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus.

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

Skip Tracing for Loan Endorsers

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

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

Suggested Audit Procedures

a. Test a sample of loans that were delinquent from one to 15 days, verify that the lender's records document that the required written notice or collection letter was sent to the borrower. Verify that the letter contained the required information.

b. Test a sample of loans that were delinquent between 16 to 180 days (16 to 240 days for loans repayable in installments less frequently than monthly) verify that the lender's records document that the required telephone efforts were made and that the required collection letters were sent to the borrower. Verify that at least two of the letters warned the borrower of possible assignment of the loan to the guaranty agency, reporting the default to all national credit bureaus, offset of income tax refunds to garnish wages, and litigation against the borrower.

c. Test a sample of loans that were delinquent from 181 to 270 days (241 to 331 days for loans payable in installments less frequently than monthly) verify that the lender's records document the lender's efforts to urge the borrower to make the required payments on the loan and that the efforts, at a minimum, provided information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

d. Test a sample of loans that are 241 days delinquent (the 301st day for loans payable in installments less than monthly), verify that the lender sent the required final demand letter to the borrower.

e. *Loan Endorser Procedures*: Test a sample of the lender's records to verify that they document that the lender made a diligent effort to contact the endorser by phone, sent the required letters and final demand letter, if applicable, in accordance with requirements.

f. *Skip-Tracing Procedures*: From the sample of delinquent loans where a final demand letter was not sent to the borrower, verify that the lender's records document that the lender attempted to contact each endorser, relative, reference, individual and entity identified in the borrower's loan file within 10 days of receipt of information indicating that the lender did not know the borrower's current address. Verify that these efforts were completed by the date of default with no gap of more than 45 days between attempts. Verify that the lender's efforts for loan endorsers included an inquiry to directory assistance.

g. *Default Aversion Assistance:* Obtain and review the agreement the guaranty agency has with the lender that establishes the time period for default aversion assistance. From the population of delinquent or defaulted loans, determine the loans where required default aversion assistance from the loan guaranty agency should have been requested by the lender. For a sample of the loans, verify that the lender's records document that default aversion assistance was requested within the required timeframes.

8. Timely Claim Filings by Lenders or Servicers

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

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
Default	A lender must submit default claims to the guaranty agency within 90 days of the default.
Death	A lender must submit a claim within 60 days of the date that the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died.
Total and Permanent Disability	Effective July 1, 2013, if a borrower, who is not a veteran, notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR section 682.200(b), the lender must direct the borrower to notify the secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the secretary (34 CFR section 682.402(c)(2)). After the secretary receives the application described in 34 CFR section 682.402 (c)(2)(iv), the secretary notifies the holders of the borrower's Title IV loans that the secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received (34 CFR section 682.402(c)(2)(vi)).

TYPE OF CLAIM	TIMELY FILING REQUIREMENTS
	The secretary will notify the borrower and the borrower's lenders whether the application for a disability discharge has been approved and will direct each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the secretary. The lender must submit the claim to the guaranty agency within 60 days of the date the lender received notification from the secretary that the borrower is totally and permanently disabled (34 CFR sections 682.402(c)(3)(iii) and 682.402 (g)(2)(ii)). Effective July 1, 2013, if the borrower, who is a veteran, notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in 34 CFR section 682.200(b), the lender must direct the veteran to notify the secretary of the veteran's intent to submit an application for total and permanent disability discharge and provide the veteran with the information needed to apply for a total and permanent discharge to the secretary (34 CFR section 682.402(c)(9)). After the secretary receives the application described in 34 CFR section 682.402 (c)(2)(iv), the secretary notifies the holders of the veteran's Title IV loans that the secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received (34 CFR section 682.402(c)(9)(vi)). If the secretary approves the veteran's total and permanent disability discharge application based on documentation from the Department of Veterans Affairs, the lender must submit a disability claim to the guaranty agency in accordance with 34 CFR section 402(g)(1) (34 CFR section 682.402(c)(9)(xii)(A)). The secretary will notify the veteran and the veteran's lenders whether the application for a disability discharge has been approved and will direct each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the secretary. The lender must submit the claim to the guaranty agency within 60 days of the date the lender received notification from the secretary that the veteran is totally and permanently disabled (34 CFR section 682.402(c)(9)(x) and 34 CFR 682.402 (g)(2)(ii)).
Closed School	The lender shall file a claim within 60 days after the borrower submits to the lender the written request and sworn statement described in 34 CFR section 682.402(d)(3) or after the lender is notified by the secretary or the secretary's designee or by the guaranty agency to do so.
False Certification	The lender shall file a claim with the guaranty agency within 60 days after the borrower submits to the lender the written and sworn statement described in 34 CFR section 683.402(e)(3) or after the lender is notified by the secretary or the secretary's designee or by the guaranty agency to do so.
Bankruptcy	A lender shall file a bankruptcy claim by the earlier of: (1) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in 34 CFR section 682.402(f)(3); or (2) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that period, whichever is later.

Records to Support a Claim

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

a. The original or a true and exact copy of the promissory note.

b. The loan application if a separate loan application was provided to the lender.

c. In the case of a death claim, an original or certified copy of the death certificate or other documentation supporting the discharge request that formed the basis for the determination of death.

d. In the case of a disability claim, a copy of the certification of disability described in 34 CFR section 682.402(c)(2).

e. In the case of a closed school claim, the documentation described in 34 CFR section 682.402(d)(3) or any other documentation as the secretary may require.

f. In the case of a false certification claim, the documentation described in 34 CFR section 682.402(e)(3).

g. In the case of a bankruptcy claim:

    (1) Evidence that a bankruptcy petition has been filed and all pertinent documents sent to or received from the bankruptcy court by the lender;

    (2) An assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

    (3) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower’s loan obligation in bankruptcy and all documents supporting those facts (34 CFR section 682.402(g)(1)(v)).

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

Suggested Audit Procedures

a. Select a sample from all loans on which a claim was filed and verify that the lender’s records document that a claim was filed with accurate claim payment information and in a timely manner with the guaranty agency.

b. Using the same sample of claims, verify that the lender maintained the required documentation to support the particular type of claim.

9. Curing Due-Diligence and Timely Filing Violations

Compliance Requirements A due-diligence violation occurs when a lender does not perform a requirement (see III.N.8, "Timely Claim Filings by Lenders or Servicers") within the time frame specified. The time interval between collection activities is called a "gap." If the gap between collection activities exceeds that permitted a due diligence violation has occurred and the lender may incur penalties, including loss of insurance and reinsurance on the loan (34 CFR section 682.411 and 34 CFR Part 682, Appendix D).

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

a. Sending the required collection letter(s), including the required final demand letter;

b. Making the required telephone contact or diligent effort to contact the borrower;

c. Requesting default aversion assistance from the guarantor;

d. Conducting skip tracing activity.

A timely filing violation occurs when a lender fails to submit default, death, disability, closed school, or false certification claims within the prescribed time frames prescribed. See III.N.8, "Timely Claim Filings by Lenders or Servicers," for timely filing requirements.

Cures for Due-Diligence Violations-

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

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

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

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

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

a. The receipt of one full payment as defined in 34 CFR Part 682, Appendix D, I.A,

b. The receipt of a new repayment agreement signed by the borrower, or

c. Successful completion of the requirements in 34 CFR Part 682, Appendix D, I.E.1.

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

Suggested Audit Procedures

a. Select a sample of cured loans identified on the LaRS and verify that the lender's records document that it performed the required cure procedures.

b. For cured loans for which the lender obtained a new repayment agreement, verify that the agreement meets the repayment period limitations of 34 CFR sections 682.209(a)(8) and 682.209(h)(2).

c. For cured loans for which the lender obtained one full payment, obtain documentation of the payment, and verify that the payment complied with the terms of the most current repayment schedule and was valid in accordance with 34 CFR Part 682, Appendix D, I.A.

10. Servicemembers Civil Relief Act

Compliance Requirements Effective July 1, 2016, FFEL lenders and lender-servicers must use the Defense Manpower Data Center's (DMDC) Servicemembers Civil Relief Act (SCRA) website at least monthly to identify borrowers who are in military service status for the purpose of determining eligibility for a 6 percent interest rate cap under 34 CFR section 682.202(a)(8). Once a borrower's status and service dates have been confirmed using the DMDC, the loan servicer must use the DMDC-generated certification information in lieu of requiring a request from the borrower and a copy of the servicemember's military orders to support the borrower's receipt of the SCRA interest rate limitation. A borrower may provide the loan holder with alternative evidence of military service status to demonstrate eligibility if the borrower believes that the information contained in the DMDC database is inaccurate or incomplete. When the loan servicer applies the SCRA's interest rate limitation to a borrower's account, it must notify the borrower in writing within 30 days that the interest rate on the loan has been changed (see Dear Colleague Letter GEN-16-08, May 5, 2016) (34 CFR section 682.208(j)).

Audit Objectives Determine whether eligible borrowers of FFEL loans received the benefit of the 6 percent interest rate cap provided by the SCRA.

Suggested Audit Procedures

a. Test a sample of loans to verify that FFEL lenders and lender-servicers used the DMDC's SCRA website to identify borrowers eligible for the SCRA interest rate limit of 6 percent.

b. Test sample of borrowers who were eligible for the SCRA interest rate cap to verify that they received the new rate of 6 percent only if their previous interest rate was greater than 6 percent.

c. Test a sample of loans to verify that borrowers were notified in writing within 30 days that the interest rate was reduced to the SCRA limit of 6 percent.

IV. OTHER INFORMATION

Selection of Major Programs When the Entity is a School That is a Lender under the FFEL Program.

Some schools hold loans under the FFEL program. Under the HEA and 34 CFR section 682.601(a)(7), for any fiscal year beginning on or after July 1, 2006, in which a school engages in activities as an eligible lender, the school must submit a compliance audit covering its activities as a lender. An audit conducted in accordance with 2 CFR Part 200, Subpart F, that treats the lender function as a major program, will satisfy that requirement.

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

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

Governmental Lenders Covered as Part of a Statewide Single Audit

Some "statewide" entities are defined to include a governmental lender under the FFEL program. For such entities, this program supplement should be used to identify pertinent compliance requirements. Auditors for such entities with large FFEL lending programs must consider the provisions of 2 CFR section 200.518(b)(3) in determining major programs. When those provisions apply, coverage of the FFEL program for a lender should be identified and reported on separately and listed as a major program in the Summary of Auditor's Results Section of the Schedule of Findings and Questioned Costs as "Assistance Listing 84.032 - FFEL – Lenders."

Use of Third Party Servicers

Some lenders (including schools that are lenders in the FFEL program) use third party servicer organizations to perform some or many lender functions. Third party servicer organizations are required to obtain a financial statement audit and compliance attestation engagement under the January 2011 *Lender Servicer Financial Statement Audit and Compliance Attestation Guide* (Lender Servicer Audit Guide), issued by ED. Auditors of lenders (including school lenders) may exclude coverage of compliance requirements performed by a third party servicer, provided the auditor has determined that the third party servicer has obtained an audit under the Lender Servicer Audit Guide for the entire audit period of the lender. If the third party servicer has a different audit period, the auditor of the lender must determine that the most recently required audit of the third party servicer under the Lender Servicer Audit Guide has been completed timely and must obtain a representation from the third party servicer that it has engaged (or will engage) an auditor to perform the required audit under the Lender Servicer Audit Guide for the immediate subsequent audit period. The auditor of the lender must confirm that the audit period of the prior third party servicer audit, together with the audit period for the subsequent third party servicer audit, covers the entire audit period of the lender/school lender audit.

If the auditor excludes coverage of compliance requirements performed for a third party servicer, the *Report on Compliance With Requirements Applicable to Each Major Program and on Internal Control Over Compliance* must clearly describe the compliance requirements for which coverage has been excluded, name the third party servicer that performed those compliance requirements, state that that the third party servicer has obtained an audit performed under the January 2011 Lender Servicer Audit Guide issued by ED, and specify the period of that audit.

Alternatively, the auditor may decide to use a third party servicer's audit (attestation engagement) and rely on it in rendering an opinion on compliance. In such cases, the auditor should obtain the servicer's most recent compliance audit report and any other reports regarding servicer compliance.

If the servicer's compliance audit report or other reports contain findings of noncompliance, the auditor should assess the effect of that noncompliance on the nature, timing, or extent of substantive tests to be conducted at the lender and/or the servicer organization, as well as reporting that information. The auditor must also adhere to pertinent generally accepted auditing standards relating to use of servicer organization audits and reliance on the work of other auditors.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.041 IMPACT AID (Title VII of ESEA)

I. PROGRAM OBJECTIVES

The objective of the Impact Aid Program (IAP) under Title VII of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), is to provide financial assistance to local educational agencies (LEAs) whose local revenues or enrollments are adversely affected by federal activities. These activities include the federal acquisition of real property (Section 7002) (20 USC 7702) or the presence of children residing on tax-exempt federal property or residing with a parent employed on tax-exempt federal property ("federally connected" children) (Section 7003) (20 USC 7703).

II. PROGRAM PROCEDURES

Funds are provided on the basis of statutory criteria and data supplied by LEAs in applications submitted to the Department of Education (ED), with copies provided simultaneously to the state educational agency (SEA). ED makes payments directly to the LEA. Generally, payments under Section 7003 of the ESEA are based on membership and attendance counts of federally connected children, with additional funds provided for certain federally connected children with disabilities and children residing on Indian lands. Payments under Section 7002 of the ESEA are based on the estimated taxable value of eligible federal property and the applicable tax rate, and, in case of insufficient funds, upon a statutory formula that considers past year payments.

Except for the additional funds provided for federally connected children with disabilities under Section 7003(d) of the ESEA, funds provided under sections 7002 and 7003 are considered general aid and generally have no restrictions on their expenditure. Under 2 CFR 200.101(e)(2), sections 7002 and 7003(b) are **not** subject to subparts C (pre-federal award), D (post federal award), or E (cost principles) of 2 CFR Part 200; therefore, ED generally has no basis to sustain findings related to these subparts for funds provided under sections 7002 and 7003(b) of the ESEA.

Any formula funds that are provided under Section 7007(a) of the ESEA to certain LEAs that received Section 7003 payments must be used for construction, as defined in the statute. Any discretionary construction grant funds that are provided under Section 7007(b) of the ESEA to certain LEAs that received Section 7002 or 7003 payments must be used for emergency repairs or modernization, as defined in the statute and regulations.

In fiscal years where the auditee expends only Section 7002 funds from the Impact Aid program, the auditor must exclude the amount of the 7002 Impact Aid expenditures from the determination of the Type A/B program threshold. See IV, "Other Information" below for additional information on major program determination and SEFA presentation.

Source of Governing Requirements

This program is authorized by sections 7001–7014 of the ESEA, as amended, which is codified at 20 USC 7701 through 7714. Implementing regulations are 34 CFR Part 222.

Availability of Other Program Information

Additional information on this program may be found at http://www.ed.gov/about/offices/list/oese/programs.html and at https://impactaid.ed.gov/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	N	N	Y	N	Y
Only 7003(d) 7007	Only 7003(d) 7007				Only 7003(d)				Only 7003(b)7003(d)		N.1 Only 7002 7003(b) 7007 N.2 Only 7003(d)

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. *Section 7003(d) – Federally Connected Children with Disabilities* LEAs must use the payments provided under Section 7003(d) of the ESEA to conduct programs or projects for the free, appropriate public education of the federally connected children with disabilities who generated those funds. Allowable costs include expenditures reasonably related to the conduct of programs or projects for the free, appropriate public education of children with disabilities, including program planning and evaluation and acquisition costs of equipment, except when the title to that equipment would not be held by the LEA. Costs for school construction are not allowable (Section 7003 of ESEA (20 USC 7703), 34 CFR section 222.53(c)).

b. *Section 7007 – Construction* LEAs that receive payments under Section 7003 of the ESEA and that meet certain other statutory criteria may receive formula assistance under Section 7007(a) of the ESEA in any fiscal year that Congress appropriates funds under that section. LEAs must use the payments provided under Section 7007(a) for construction, as defined in Section 7013(3) of the ESEA. Under Section 7013(3), the term “construction” includes (a) preparing drawings and specifications for school facilities; (b) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (c) inspecting and supervising the construction of school facilities; and (d) debt servicing for such activities (sections 7007 and 7013(3) of ESEA (20 USC 7707 and 7713)). Certain LEAs that receive payments under Section 7002 or 7003 of the ESEA and that meet other statutory and regulatory criteria may receive discretionary grant assistance under Section 7007(b) of the ESEA. Selected grantees must use these funds for emergency or modernization construction grant expenditures, as specified in their grant award documents. Emergency and modernization are defined in 34 CFR section 222.176 and the allowable and unallowable uses of these funds are detailed in 34 CFR sections 222.172 through 222.174.

c. *Section 7002 – Federal Property Payments and Section 7003(b) – Basic Support Payments* Funds made available under sections 7002 and 7003(b) of the ESEA usually become part of the general operating fund of the LEAs. These funds are available as general aid for free public education and may be used for current operating expenditures or capital outlays in accordance with state laws. The auditor is not expected to perform any tests with respect to the expenditure of these funds.

B. Allowable Costs/Cost Principles

The cost principles described in 2 CFR Part 200, Subpart E, apply only to Section 7003(d) (federally connected children with disabilities) and Section 7007 (construction) funds.

Under 2 CFR 200.101(e)(2), sections 7002 (federal property payments) and 7003(b) (basic support payments) are not subject to the cost principles described in Subpart E of 2 CFR Part 200.

G. Matching, Level of Effort, Earmarking

1. Matching
   Not Applicable

2. Level of Effort

   2.1 Level of Effort – *Maintenance of Effort*

   Not Applicable

   2.2 Level of Effort – *Supplement Not Supplant*

   Section 7003(d) funds may not supplant any state funds (either general or special education state aid) that were or would have been available to the LEA for the free, appropriate public education of federally connected children with disabilities counted under Section 7003(d). A reduction in the per-pupil amount of state aid for children with disabilities, including children counted under Section 7003(d), from that received in the previous year raises a presumption that supplanting has occurred. An LEA can rebut this presumption by demonstrating that the reduction was unrelated to the receipt of Section 7003(d) funds (Section 7003(d) of ESEA (20 USC 7703(d)); 34 CFR section 222.54).

3. Earmarking
   Not Applicable

L. Reporting

1. Financial Reporting
   Not Applicable

2. Performance Reporting
   Not Applicable

3. Special Reporting

Application for Impact Aid – Section 7003 (OMB No. 1810-0687) – Each year an LEA must submit this application, which provides the following information: counts of federally connected children in various categories, membership and average daily attendance data, and information on expenditures for children with disabilities. This form is in the Impact Aid Grant System, which does not have a public link, therefore school districts will need to provide a copy to the auditor. Please note: As a result of the public health emergency related to the coronavirus, the Impact Aid Coronavirus Relief Act (Pub. L. No. 116-211) provides LEAs the option for their fiscal year 2022 7003 application of using the same student count data from their fiscal year 2021 application or providing new student count data as prescribed in Section 7003. Similarly, the Impact Aid Supplemental Flexibility Act (Pub. L. No. 117-83) gave LEAs the option to use the same student count data for the FY 2023 application as it used for the FY 2022 application or providing new student count data as prescribed in Section 7003.

Key line items:

1. Current year membership (enrollment) on the survey date should be tested. LEAs have the option to use the current year enrollment numbers or enrollment numbers associated with the Impact Aid Coronavirus Relief Act. Federally connected children who live on Indian lands are weighted the most in the payment formula, followed by those with parents in the Uniformed Services, and civilian children who both live on and whose parents work on Federal property. Children living in Federal low rent housing and children who only live on or whose parents only work on Federal property are weighted lower in the payment formula. The auditor should use professional judgment when determining which categories to test, taking into account the relative materiality of the weight and number of children reported in each category. (Note: Eligible LEAs submit a separate application for Section 7002 or Section 7007(b) funding. The auditor is not expected to perform any tests with respect to the Section 7002 or Section 7007(b) applications.)

4. Special Reporting for Federal Funding Accountability and Transparency Act
See Part 3.L for audit guidance.

N. Special Tests and Provisions

1. Wage Rate Requirements

Compliance Requirements Section 7007 construction funds, as well as any section 7002 or 7003(b) funds spent for construction or minor remodeling, are subject to Wage Rate Requirements (20 USC 1232b).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

2. Required Level of Expenditure

Compliance Requirements For each fiscal year, the amount of expenditures for special education and related services provided to federally connected children with disabilities must be at least equal to the amount of funds received or credited under Section 7003(d) of the ESEA for that fiscal year. This is demonstrated by comparing the amount of Section 7003(d) funds received or credited with the result of the following calculation:

a. Divide total LEA expenditures for special education and related services for all children with disabilities by the average daily attendance (ADA) of all children with disabilities served during the year.

b. Multiply the amount determined in paragraph a, above, by the ADA of the federally connected children with disabilities claimed by the LEA for the year.

If the amount of Section 7003(d) funds received or credited is greater than the amount calculated above, an overpayment equal to the excess Section 7003(d) funds exists. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities (Section 7003(d) of ESEA (20 USC 7703(d)); 34 CFR section 222.53(d)).

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

Suggested Audit Procedures

a. Review the LEA’s calculation to ascertain if it shows that the required level of expenditure for federally connected children was met. Check accuracy of calculation.

b. Trace amounts used in the calculation of supporting records.

c. If the LEA’s calculation shows that an overpayment was made, verify that the average per pupil expenditure for federally connected children with disabilities exceeded the average per pupil expenditure for non-federally connected children to the extent of the overpayment.

IV. OTHER INFORMATION

Given the nature of the Section 7002 funds, a recipient expending only Section 7002 funds would have no compliance requirements subject to testing for the Impact Aid program or would only be subject to the Wage Rate Requirements (20 USC 1232b) if 7002 funds were spent for construction or minor remodeling. Selecting the Impact Aid program as a major federal program in fiscal years where no (or only one) compliance requirements are subject to testing could result in the exclusion of other programs as major federal programs. Therefore, if a recipient had Impact Aid expenditures only from Section 7002 funds during its fiscal year, the auditor must exclude the amount of the 7002 Impact Aid expenditures from the determination of the Type A/B program threshold. If a recipient had Impact Aid expenditures from multiple sections, including Section 7002, the entire amount of Impact Aid expenditures should be considered when determining the Type A/B program threshold and the 7002 funds would only be subject to Wage Rate Requirements testing, if applicable. All Impact Aid expenditures, including Section 7002 funds excluded from the Type A/B program threshold, must be reported on the Schedule of Expenditures of Federal Awards.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.042 TRIO – STUDENT SUPPORT SERVICES

ASSISTANCE LISTING 84.044 TRIO – TALENT SEARCH

ASSISTANCE LISTING 84.047 TRIO – UPWARD BOUND

ASSISTANCE LISTING 84.066 TRIO – EDUCATIONAL OPPORTUNITY CENTERS

ASSISTANCE LISTING 84.217 TRIO – MCNAIR POST-BACCALAUREATE ACHIEVEMENT

I. PROGRAM OBJECTIVES

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

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

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

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

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

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

II. PROGRAM PROCEDURES

All TRIO grants are competitive discretionary grants and are awarded for five years. Eligible applicants for SSS and McNair grants are institutions of higher education or combinations of such institutions.

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

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

Source of Governing Requirements

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

Availability of Other Program Information

Other program information is available at http://www2.ed.gov/about/offices/list/ope/trio/index.html.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	N	N	N	N	Y	N	Y

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. *UB Program*

(1) Services and activities a UB project must provide (see III.N.1, “Special Test and Provisions – Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:

(a) Academic tutoring to enable students to complete secondary or postsecondary courses;

(b) Advice and assistance in secondary and postsecondary course selection;

(c) Assistance in preparing for college entrance exams and completing college admissions applications;

(d) Providing information on the full range of federal student financial aid programs and benefits and resources for locating public and private scholarships, and assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(e) Providing guidance on and assistance in reentering secondary school, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, or general educational development (GED) programs or postsecondary education;

(f) Education or counseling services designed to improve the financial and economic literacy of students or the student's parents, including financial planning for postsecondary education; and

(g) Core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature (required for projects that have received funds for at least two years, see III.N.2, "Special Test and Provisions - Core Curriculum Instruction in the Upward Bound Program") (34 CFR section 645.11).

(2) Services and activities a UB project may provide include the following:

(a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(c) On-campus residential programs;

(d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;

(f) Programs and activities for participants who are limited-English proficient, from groups traditionally underrepresented in higher education, individuals with disabilities, homeless children or youths, participants in foster care or aging out of foster care or other disconnected participants; and

(g) Other activities designed to meet the purposes of the Upward Bound program in Math-Science or Veterans programs services to their participants as discussed in 34 CFR section 645.1 (34 CFR section 645.12).

b. *SSS Program*

(1) Services and activities an SSS project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:

(a) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(b) Advice and assistance in postsecondary course selection;

(c) Information on the full range of federal student financial aid programs and benefits and resources for locating public and private scholarships, and assistance in completing financial aid applications (including the Free Application for Federal Student Aid);

(d) Education or counseling services designed to improve the financial and economic literacy of students;

(e) Activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and

(f) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education (34 CFR section 646.4(a)).

(2) Services and activities an SSS project may provide include:

(a) Individualized counseling for personal, career, and academic matters provided by assigned counselors;

(b) Information, activities, and instruction designed to acquaint students with the range of career options available to the students;

(c) Exposure to cultural events and academic programs not usually available to disadvantaged students;

(d) Mentoring programs involving faculty or upper class students, or a combination thereof;

(e) Securing temporary housing during breaks in the academic year for students who are or were formerly homeless children and youths and foster care youths;

(f) Programs and activities that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth or other disconnected students;

(g) Other activities designed to meet the purposes of the SSS program (34 CFR section 646.4(b)); and

(h) The following cost items are allowable if reasonably related to allowed project activities: (a) cost of remedial and special classes, and courses in English language instruction for students of limited English proficiency, under certain circumstances; (b) in-service training of project staff; (c) activities of an academic or cultural nature; (d) transportation and, with the prior approval of the secretary, meals and lodging of participants and staff to and from approved educational and cultural activities sponsored by the project; (e) purchase, lease, or rental of computer hardware, computer software, or other equipment to be used for student development, student records and project administration; (f) professional development travel for staff; (g) project evaluation; (h) grant aid to eligible students, under certain circumstances; and (i) temporary housing during breaks in the academic year for students who are homeless children, youths or were formerly homeless, and students who are foster care youth (34 CFR section 646.30).

c. *TS Program*

(1) Services and activities a TS project must provide (see III.N.1, “Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide”) include the following:

(a) Connections for participants to high-quality academic tutoring services to enable the participants to complete secondary or postsecondary courses;

(b) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection;

(c) Assistance in preparing for college entrance examinations and completing college admission applications;

(d) Information on the full range of federal student financial aid programs and benefits (including federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships, and assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA);

(e) Guidance and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into GED programs, or entry into postsecondary education; and

(f) Connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education (34 CFR section 643.4(a)).

(2) Services and activities a TS project may provide include the following:

(a) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(b) Personal and career counseling or activities;

(c) Information and activities designed to acquaint youth with the range of career options available to them;

(d) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth;

(e) Workshops and counseling for families of participants served;

(f) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(g) Programs and activities that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants;

(h) Other activities designed to meet the purposes of the TS program (34 CFR section 643.4(b)); and

(i) Specific activities may include the following, if reasonably related to the objectives of the TS project:

(i) transportation, meals, and lodging with prior approval for visits to postsecondary educational institutions, participation in "College Day" activities, career field trips, and transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study; (ii) purchase of testing and test preparation materials; (iii) fees for college admissions applications and entrance examinations with the exceptions noted in 34 CFR section 643.30(c); (iv) in-service staff training; (v) rental of space, if space is not available at the site of the grantees and/or is not owned by the grantee; (vi) purchase, lease, or rental of computer hardware, computer software, and other equipment for students development, project administration, and recordkeeping; and (vii) tuition for a course that is part of a rigorous secondary school program of study (as defined in 34 CFR section 643.7, and recognized by ED) if the conditions of 34 CFR section 643.30(h) are met (34 CFR section 643.30).

d. *EOC Program*

Allowable services and activities under the EOC program include the following:

(1) Public information campaigns designed to inform the community about opportunities for postsecondary education and training;

(2) Academic advice and assistance in course selection;

(3) Assistance in completing college admission and financial aid applications;

(4) Assistance in preparing for college entrance examinations;

(5) Education or counseling services designed to improve the financial and economic literacy of participants;

(6) Guidance on secondary school reentry or entry to a GED program or other alternative education program for secondary school dropouts;

(7) Individualized personal, career, and academic counseling;

(8) Tutorial services;

(9) Career workshops and counseling;

(10) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combinations of these persons;

(11) Programs and activities that are specifically designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants;

(12) Other activities designed to meet the purposes of the EOC program (34 CFR section 644.4); and

(13) Specific activities may include the following, if reasonably related to the objectives of the EOC project: (a) transportation, meals, and lodging with prior approval for visits to postsecondary educational institutions, participation in "College Day" activities, and career field trips; (b) purchase of testing materials; (c) fees for college admissions applications and entrance examinations with the exceptions noted in 34 CFR section 644.30(c); (d) in-service staff training; (e) rental of space, if space is not available at the site of the grantees and/or is not owned by the grantee; and (f) purchase, lease, or rental of computer hardware, computer software, and other equipment for students development, project administration, and recordkeeping (34 CFR section 644.30).

e. *McNair Program*

(1) Services and activities a McNair project must provide (see III.N.1, "Special Test and Provisions - Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide") include the following:

(a) Opportunities for research and other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study;

(b) Summer internships;

(c) Seminars and other educational activities designed to prepare students for doctoral study;

(d) Tutoring;

(e) Academic counseling; and

(f) Assistance to students in securing admission to and financial aid for enrollment in graduate programs (34 CFR section 647.4(a)).

(2) Services and activities a McNair project may provide include the following:

(a) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education;

(b) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students;

(c) Exposure to cultural events and academic programs not usually available to project participants;

(d) Activities of an academic or scholarly nature, such as trips to institutions of higher education offering doctoral programs, and special lectures, symposia, and professional conferences, which have as their purpose the encouragement and preparation for project participants for doctoral study;

(e) Stipends of up to $2,800 per year for students engaged in research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins (see III.E.1.e, “Eligibility - Eligibility for Individuals”);

(f) Necessary tuition, room and board, and transportation for students engaged in research internships during the summer;

(g) Purchase, lease, or rental of computer hardware, computer software, or other equipment for student development, project administration, and recordkeeping; and

(h) Other activities designed to meet the purposes of the McNair program (34 CFR sections 647.4(b) and 647.30).

2. *Activities Unallowed*

a. *All Programs* – The following cost items can never be charged to any TRIO program: (1) tuition, fees, stipends, and other forms of direct financial support for employees; (2) research not directly related to the evaluation or improvement of the project (except for the research activities of McNair participants); and (3) construction, renovation, and remodeling of any facilities (34 CFR sections 643.31, 644.31, 645.41, 646.31, and 647.31).

b. *SSS Program* – SSS funds cannot be used for activities involved in recruiting students for enrollment at the grantee institution or for tuition, fees, stipends, and other forms of direct financial support for staff or participants, except for grant aid for participants (34 CFR sections 646.30 and 646.31).

c. *UB Program* – The cost of room and board for the following persons may not be charged to the program: (1) administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants; and (2) participants in Veterans UB projects. Meals for staff are also unallowable except as provided in 34 CFR sections 645.40 (d) and (m), and in 645.41(c) (34 CFR section 645.41).

d. *TS Program* – TS funds cannot be used for (1) stipends and other forms of direct financial support for participants, or (2) application fees for financial aid (34 CFR section 643.31).

e. *EOC Program* —EOC funds cannot be used for tuition, fees, stipends, and other forms of direct financial support for project participants (34 CFR section 644.31).

f. *McNair Program* – McNair funds cannot be used for tuition, stipends, test preparation and fees, or any other form of student financial support to staff or participants not expressly allowed under 34 CFR section 647.30 (see paragraphs 1.e.(2)(c) through (g), above) (34 CFR section 647.31(a)).

C. Cash Management

See Part 4, 84.000 ED Cross-Cutting Section.

E. Eligibility

1. Eligibility for Individuals

a. *SSS Program*

(1) Eligible Participants – A student is eligible to participate in a SSS project if the student meets all of the following requirements: (a) is a citizen or national of the United States or meets the residency requirements for federal student financial assistance; (b) is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution; (c) has a need for academic support as determined by the grantee in order to pursue successfully a postsecondary educational program; and (d) is a low-income individual, a first-generation college student, or an individual with disabilities (34 CFR sections 646.3 and 646.7).

(2) Grant Aid to SSS Students – Grant aid to students is restricted to students who meet all of the following criteria: (a) participating in the SSS project, undergoing their first two years of postsecondary education; and (b) receiving federal Pell Grants. In exceptional cases, grant aid may be offered to students who have completed their first two years of postsecondary education and are receiving federal Pell Grants (34 CFR section 646.30(i)).

The amount of grant aid awarded to an SSS student may not exceed the maximum appropriated Pell Grant ($6,345 for the 2020–2021 academic year) or be less than the minimum appropriated Pell Grant ($639 for the 2020–2021 academic year) (20 USC 1070a-14(d)(1)).

b. *TS Program – Eligible Participants*

An individual is eligible to participate in a TS project if the individual meets all of the following requirements: (1) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (2) has completed five years of elementary education or is at least eleven years of age but not more than 27 years of age (an individual more than 27 years of age may participate in a TS project if there is no EOC in the area, or a veteran regardless of age); and (3) is enrolled in or has dropped out of any grade from six through 12, or has graduated from secondary school or dropped out of the postsecondary education and needs one or more of the services provided by the project (34 CFR section 643.3).

c. *UB Program*

(1) Eligible Participants – An individual is eligible to participate in a Regular, Veterans, or Math-Science UB project if the individual meets all of the following requirements: (a) is a citizen, national, or permanent resident of the United States, or is in the United States for other than a temporary purpose; (b) is a potential first-generation college student, a low-income individual, or an individual who has a high risk for academic failure; (c) has a need for academic support in order to pursue successfully a program of education beyond high school; and (d) at the time of initial selection has completed the 8th grade but has not entered the 12th grade and is at least 13 years old but not older than 19. A veteran, regardless of age, who meets all other criteria is eligible to participate (34 CFR sections 645.3 and 645.6).

(2) Stipends – Stipends for regular and Math-Science projects may not exceed $40 per month from September to May of the academic year and $60 for each of the summer months (June, July, and August). Youth participating in a work-study position may be paid a stipend of $300 per month during June, July, and August. Stipends for participants in veterans' projects may not exceed $40 per month. To be eligible for a stipend, participants must show evidence of satisfactory participation in project activities, including regular attendance and performance in accordance with the number of sessions in which a student participated (20 USC 1070a-13(f); 34 CFR section 645.42).

d. *EOC Program – Eligible Participants*

An individual is eligible to participate in an EOC project if the individual meets all of the following requirements: (1) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (2) is at least 19 years of age (an individual less than 19 years of age can be served by the EOC project if TS services are not available); and (3) expresses a desire to enroll or is enrolled in a program of postsecondary education and requests information or assistance in applying for admission or financial aid for such a program. A veteran, regardless of age, is eligible to participate in an EOC project if he or she meets eligibility requirements (34 CFR section 644.3).

e. *McNair Program*

(1) Eligible Participants – A student is eligible to participate in a McNair project if the student meets all of the following requirements: (a) is a citizen, national, or permanent resident of the United States or is in the United States for other than a temporary purpose; (b) is currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance programs; (c) is a low-income individual who is a first-generation college student or a member of a group that is underrepresented in graduate education or, under certain circumstances, underrepresented in certain academic disciplines; and (d) has not enrolled in doctoral level study (34 CFR sections 647.3 and 647.7).

(2) McNair Stipends – Stipends of up to $2,800 per year for students engaged in approved research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins (20 USC 1070a-15(f); 34 CFR section 647.30).

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

Not Applicable

3. Eligibility for Subrecipients

Not Applicable

L. Reporting

1. Financial Reporting

a. *SF-270, Request for Advance or Reimbursement* – Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Not Applicable

2. Performance Reporting

a. *Student Support Services Program Annual Performance Report (OMB No. 1840-0525)* – Grantees must submit an annual performance report to ED each year of the project period.

Key Line Items – The following line items contain critical information:

Section II, *Record Structure for Participant List*, fields:

15 Eligibility
17 First Enrollment Date (at grantee institution)
18 Date of First Project Service
19 College Grade Level (entry into project)
22 Participant Status (during academic year)
23 Enrollment Status (at end of the academic year)
24 Academic Standing
27 College Grade Level (at the end of the academic year)
31 Undergraduate Degree/Certificate Completed at Grantee Institution

b. *Upward Bound, and Upward Bound Math-Science Programs Annual Performance Report (OMB No. 1840-0831)* – Grantees must submit an annual performance report to ED each year of the project period.

Key Line Items – The following line items contain critical information:

Section II, *Record Structure for Participant List for Upward Bound and Upward Bound Math-Science Projects*, fields:

16 Eligibility (at time of initial selection)
17 At Risk: Reading Language Arts or Math Proficiency Not Achieved (at time of initial selection)
18 At Risk: Low Grade Point Average (at time of initial selection)
19 At Risk: Pre-Algebra or Algebra Course Not Successfully Completed by Beginning of 10th Grade (at time of initial selection)
20 Limited English Proficiency (at time of initial selection)
24 Date of First Project Service
25 Grade Level at First Service
27 Participant Status for reporting year
28 Participation Level for reporting year
29 Served by Another Federally Funded College Access Program for reporting year
30 Grade Level at the beginning of academic year being reported
37 Secondary School Retention and Graduation Objective – Numerator, for reporting year
45 Date of Last Project Service

c. *Talent Search Annual Performance Report (OMB No. 1840-0826)* – Grantees must submit an annual performance report to ED each year of the project periods.

Key Line Items – The following line items and sections contain critical information:

(1) Section II, *Demographic Profile of Project Participants and Listing of Target School*, subsections:

A. Types of Participants Assisted
B. Participant Distribution by Eligibility
F. Veterans Served
G. Participants with Limited English Proficiency
J. TS participants also served during reporting year by another federally funded program
L. Target Schools

(2) Section IV, *Educational Status of Talent Search Participants* (at end of the reporting period or the following fall), lines:

A1. Persisted in school for the next academic year at the next grade level or graduated high school.
B1. Received regular secondary school diploma within standard number of years but did not complete a rigorous program of study.
C1. Enrolled in postsecondary education or notified of deferred enrollment columns (b) and (c).

d. *Educational Opportunity Centers Program Annual Performance Report For Program Year (OMB Number 1840-0830)* – Grantees must submit an annual performance report to ED each year of the project period.

Key Line Items – The following line items contain critical information:

Section II: *Demographic Profile of Project Participants, Target Schools, Invitational Priorities*

H. EOC Participants also served during the reporting year by another federally funded program Section IV, *Educational Status of EOC Participants (at the end of the reporting period or for the following fall)*, lines:

A1. Received a secondary school diploma or its equivalent
B1. Completed a financial aid application
D2. Had a secondary school diploma or credential at the time of first service in the reporting year and enrolled in a postsecondary education program

e. *Ronald E. McNair Post-Baccalaureate Achievement Program Performance Report (OMB No. 1840-0640)* – Grantees must submit an annual performance report to the department each year of the project period.

Key Line Items – The following items contain critical information:

Section II, *Record Structure for Participant List*, fields:

15	Low-income
16	First-generation
17	Under-represented racial/ethnic group
18	First Postsecondary Education Enrollment Date
20	Project Entry Date
21	Grade Level at Project Entry
22	Participant Status (during academic year being reported)
23	Enrollment Status (during academic year being reported)

3. Special Reporting

Not Applicable

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

N. Special Tests and Provisions

1. Services that Student Support Services, Talent Search, Upward Bound or McNair Projects Must Provide

Compliance Requirements Recipients of TRIO Programs funded under SSS, TS, UB and McNair programs must provide specific services and activities. The services and activities that each program must provide are listed in III.A.1, “Allowable Activities,” above, and are as follows:

a. UB Program (34 CFR section 645.11), see III.A.1.a.(1) above

b. SSS Program (34 CFR section 646.4(a)), see III.A.1.b.(1) above

c. TS Program (34 CFR section 643.4(a)), see III.A.1.c.(1) above

d. McNair Program (34 CFR section 647.4(a)), see III.A.1.e.(1) above

A grantee must provide all of the required services in the applicable SSS, TS, UB, or McNair program regulations to its participants (either directly through the project or through another service provider, as permitted by the applicable regulations). However, not all participants may need all of the required services or may choose not to take advantage of them.

Audit Objectives Determine whether the required services were provided to SSS, TS, UB, or McNair participants.

Suggested Audit Procedures

Review records of services received by participants, calendars, or logs of service providers (i.e., counselors or tutors) and expenditure records to verify that the required services and activities were provided to participants.

2. Core Curriculum Instruction in the Upward Bound Program

Compliance Requirements UB projects that have received funding for a least two years must provide core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature to its participants in the next and succeeding years. However, not all participants may need instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature, or may choose not to take advantage of this instruction (34 CFR section 645.11 (b)).

Audit Objectives Determine whether UB projects that have received funding for at least two years provided instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature in its core curriculum in the next and succeeding years.

Suggested Audit Procedures

a. Ascertain if the UB project has received funding for at least two years.

b. Verify by reviewing participant files, records of services received by participants, expenditure records and class rosters or enrollment records that project participants have available core curriculum instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature in the next and succeeding years.

3. Minimizing Duplication of Services under the TS and UB Programs

Compliance Requirements To minimize the duplication of services and promote collaborations so that more students can be served, TS and UB projects are required to collaborate with other TRIO projects, Gaining Early Awareness and Readiness for Undergraduate programs (GEAR UP) projects (Assistance Listing 84.334), or projects from other programs serving similar populations that are serving the same target schools or target area (34 CFR sections 643.11(b) and 645.21(a)(4)).

In addition, the recipients of TS and UB grants are required to keep records, to the extent practicable, of any services TS or UB participants receive during the project year from another TRIO program or another federally funded program that serves populations similar to those served under the TS and UB programs (34 CFR sections 643.32(c)(5) and 645.43(c)(5)).

Audit Objectives Determine whether the TS or UB project: (1) collaborates with other TRIO projects, GEAR UP projects, or programs serving similar populations and the same target schools or target area to minimize the duplication of services and promote collaborations so that more students can be served; and (2) keeps records of any services TS or UB participants receive during the project year from another TRIO program or another federally funded program that serves populations similar to those served under the TS and UB programs.

Suggested Audit Procedures

a. Review project files (e.g., approved application, Upward Bound Program Assurances, or Talent Search Program Assurances) for information on collaboration plans and documentation that demonstrates the plans were implemented (e.g., memoranda of understanding), and, for records of services received by participants and referrals from federally funded projects, high school counselors, and community-based organizations.

b. Verify that the TS or UB grantee collaborates with entities operating projects or programs serving similar populations to minimize the duplication of services.

c. Review and assess participant files, project databases, referrals from service providers, tutors, and instructors.

d. Verify that the TS or UB project maintains records of services received by participants from another federal TRIO program or another federally funded program that serves similar populations.

IV. OTHER INFORMATION

1. Certain compliance requirements that apply to multiple ED programs, including the TRIO cluster, are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable to the TRIO cluster requirements, references are made to the specific part of the ED Cross-Cutting Section.

2. A citizen, national, or permanent resident of the United States, includes a permanent resident of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or resident of one of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.048A CAREER AND TECHNICAL EDUCATION—BASIC GRANTS TO STATES (Perkins V)

I. PROGRAM OBJECTIVES

On July 31, 2018, the president signed into law the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. No. 115-224) (Perkins V), which reauthorized and amended the Carl D. Perkins Career and Technical Education Act of 2006. Perkins V provides grants to states and outlying areas to develop the academic knowledge and technical and employability skills of secondary students and postsecondary students by (1) building on the efforts of states and localities to develop challenging academic and technical standards and to assist students in meeting such standards; (2) promoting the development of services and activities that integrate rigorous and challenging academic and career and technical instruction, and that link secondary education and postsecondary education; (3) increasing state and local flexibility in providing services and activities designed to develop, implement and improve career and technical education; (4) conducting and disseminating national research and disseminating information on best practices that improve career and technical education programs and programs of study, services, and activities; (5) providing technical assistance; (6) supporting partnerships among secondary schools, postsecondary institutions, baccalaureate degree-granting institutions, area career and technical education schools, local workforce investment boards, business and industry, and intermediaries; and (7) providing individuals with opportunities to develop, in conjunction with other educational and training programs, the knowledge and skills needed to keep the United States competitive; and (8) increasing the employment opportunities for populations who are chronically unemployed or underemployed, including individuals with disabilities, individuals from economically disadvantaged families, out-of-workforce individuals, youth who are in, or have aged out of, the foster care system, and homeless individuals.

II. PROGRAM PROCEDURES

A. Overview

Participating states must designate or establish a state board of career and technical education (defined in Perkins V as the "eligible agency" (Section 3(18) of Perkins V (20 USC 2302(18)), and herein referred to as the "state") to administer and supervise state career and technical education programs. In order to receive funds for any program year, the state must have an approved state plan for career and technical education or an approved combined state plan under the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. No. 113-128).

B. Allocation and Uses of Funds

The Department of Education (ED) allocates funds to the state based on a statutory formula described in Section 111 of Perkins V. From the amount allotted to the state under Section 111 for any fiscal year, the state shall make available funds for the following statutorily prescribed programs and activities.

Programs and Activities	Section of Perkins V	Statutory Amount of Section 111 Funds
Secondary and postsecondary career and technical education programs	Section 112(a)(1)	Not less than 85 percent, of which not more than 15 percent of the 85 percent may be "reserved" under section 112(c)
State leadership activities	Section 112(a)(2)	Not more than 10 percent
State administration activities	Section 112(a)(3)	Not more than 5 percent, or $250,000, whichever is greater

The state may operate these programs and activities directly and/or transfer funds through contracts or grants to other state agencies to administer one or more of them.

In administering secondary and postsecondary career and technical education programs under Section 112(a)(1) of Perkins V, the state makes grants to eligible recipients ("hereinafter referred to as subrecipients") as defined in Section 3(21) of Perkins V (20 USC 2302(21)). Subrecipients submit applications to the state in order to receive funds, which are distributed by statutory formula.

The state and subrecipients may use their funds for a wide range of CTE programs, activities, and services as described in law:

1. Secondary and postsecondary career and technical education programs – Section 135 of Perkins V (20 USC 2355);

2. State leadership activities – Section 124 of Perkins V (20 USC 2344);

3. State administration activities – Section 112(a)(3) of Perkins V (20 USC 2322)(a)(3)).

Source of Governing Requirements

This program is authorized by the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V) (20 USC 2301 et seq., as amended by Pub. L. No. 115-224).

Availability of Other Program Information

Program and policy guidance applicable to the Perkins V requirements in this program supplement are available on the Perkins Collaborative Resource Network (PCRN) at http://cte.ed.gov/. The relevant documents are:

1. State allocations under Perkins V (under Grant Programs/State Allocations tab);

2. Guidance for the submission of state plans, revisions, budgets, and performance levels for Perkins V (under the Grant Programs/State Plans tab);

3. Guidance for the submission of Consolidated Annual Reports (CAR) under Perkins V (under the Accountability/CAR tab); and

4. Prior approval authority regarding program income for Perkins V subrecipients (under Grant Programs/State Formula Grants/Related Sources/Program Memorandum).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status Discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	Y	N	N	N	Y	N

A. Activities Allowed or Unallowed

1. *Activities Allowed*

a. **S**tate Leadership Activities – Required Uses.

A state shall use state leadership funds for supporting:

(1) Preparation for nontraditional fields in current and emerging professions, programs for special populations, and other activities that expose students, including special populations, to high-skill, high-wage, and in-demand occupations;

(2) Individuals in state institutions, such as state correctional institutions, including juvenile justice facilities, and educational institutions that serve individuals with disabilities;

(3) Recruiting, preparing, or retaining career and technical education teachers, faculty, specialized instructional support personnel, or paraprofessionals, such as preservice, professional development, or leadership development programs;

(4) Technical assistance for eligible recipients; and

(5) Reporting on the effectiveness of such use of funds in achieving the goals described in sections 122(d)(2) and the state determined levels of performance described in sections 113(b)(3)(A) and reducing disparities or performance gaps as described in sections 113(b)(3)(C)(ii)(II).

b. State Leadership Activities – Other Permissible Uses of Funds. In addition to the required State Leadership Activities (1)– (5) listed above, a state may use state leadership funds for a broad variety of permissive activities listed in Section 124(b) of Perkins V (20 USC 2344(b)). While not an exhaustive list, examples of allowable activities include;

(1) Developing statewide programs of study;

(2) Establishing statewide articulation agreements aligned to approved programs of study;

(3) Supporting subrecipients in eliminating inequities in student access to

(a) high-quality programs of study that provide skill development; and

(b) effective teachers, faculty, specialized instructional support personnel, and paraprofessionals;

(4) The creation, evaluation, and support of competency based curricula;

(5) Improvement of career guidance and academic counseling programs that assist students in making informed academic and career and technical education decisions, including academic and financial aid counseling;

(6) Support for career and technical student organizations;

(7) Support for establishing and expanding work-based learning opportunities that are aligned to career and technical education programs and programs of study; and

(8) Other state leadership activities that improve career and technical education.

c. State Administration – A state may use funds reserved for state administration for:

(1) Developing the state plan;

(2) Reviewing local applications;

(3) Monitoring and evaluating program effectiveness;

(4) Ensuring compliance with all applicable federal laws;

(5) Providing technical assistance; and

(6) Supporting and developing state data systems relevant to the provisions of Perkins V (Section 112(a)(3) of Perkins V (20 USC 2322(a)(3))).

d. Subrecipient (Eligible Recipient*)* Activities- Funds made available to subrecipients (referred to in the Perkins V law as eligible recipients) such as secondary school districts or local education agencies at the secondary level and community and technical colleges at the postsecondary level shall be used to develop, coordinate, implement or improve career and technical education programs to meet the needs identified in the comprehensive local needs assessment (described in Section 134(c) of Perkins V) at the secondary and postsecondary levels. The subrecipient plan or approved application describes the specific activities to be carried out. Requirements for, and examples of, uses of funds are identified in Section 135(b), (c) and (d) of Perkins V (20 USC 2355(b)), (c), and (d)).

e. Perkins funds made available to subrecipients shall be used to support career and technical education programs that are of sufficient size, scope, and quality to be effective and that—

(1) Provide career exploration and career development activities through an organized, systematic framework designed to aid students, including in the middle grades, before enrolling and while participating in a career and technical education program, in making informed plans and decisions about future education and career opportunities and programs of study;

(2) Provide professional development for teachers, faculty, school leaders, administrators, specialized instructional support personnel, career guidance and academic counselors, or paraprofessionals;

(3) Provide within career and technical education the skills necessary to pursue careers in high-skill, high-wage, or in-demand industry sectors or occupations;

(4) Support integration of academic skills into career and technical education programs and programs of study to support—

(a) CTE participants at the secondary school level in meeting the challenging state academic standards adopted under Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. No. 115-224, by the state in which the eligible recipient is located; and

(b) CTE participants at the postsecondary level in achieving academic skills;

(5) Plan and carry out elements that support the implementation of career and technical education programs and programs of study and that result in increasing student achievement of the local levels of performance established under Section 113; and

(6) Develop and implement evaluations of the activities carried out with funds under this part, including evaluations necessary to complete the comprehensive needs assessment required under Section134(c) and the local report required under Section 113(b)(4)(B).

f. Schoolwide Programs- See Part II.B.2 of the 84.000 ED Cross-Cutting Section.

2. *Activities Unallowed*

   a. State Leadership Activities –A state may not use state leadership funds for administrative costs unless expressly authorized under subsection (a) (Section 124(c) of Perkins V (20 USC 2344(c))).

B. Allowable Costs/Cost Principles

See Part III.B. of 84.000 ED Cross-Cutting Section.

C. Cash Management

See Part III.C. of 84.000 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

   Subrecipients (Eligible Recipients) as Determined by the State is as follows:

   a. Secondary Career and Technical Education Programs

      (1) The state determined sub-recipient (eligible recipient) as defined in section 3 (21)(a) of Perkins V. A subrecipient must be:

         (a) A local educational agency (LEA), including a public charter school that is eligible to receive $15,000 or more under Section 131(c) of Perkins V;

         (b) An area career and technical education school or an educational service agency that meets the requirements in Section 131(e) of Perkins V; or

         (c) A consortium of LEAs that meets the requirements in Section 131(f) of Perkins V. (20 USC 2351 (f).

      (2) The state must treat a secondary school funded by the Bureau of Indian Education (BIE) within the state as if such school were a LEA within the state for the purpose of receiving a distribution under Section 131 of Perkins V (Section 131(h) of Perkins V (20 USC 2351(h))).

(3) Except as noted below, the state must provide funds to public charter schools offering a career and technical education program in the same manner as it provides those funds to other schools; career and technical education programs within a charter school must be of sufficient size, scope, and quality to be effective (Section 133(d) of Perkins V (20 USC 2353(d))). For the definition of "charter school" applicable to Perkins V, see Section 4310 (20 USC 7221i) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) at https://www2.ed.gov/documents/essa-act-of-1965.pdf.

(4) For any program year, unless a state has an approved alternative formula, a state must distribute the amount reserved for the secondary school career and technical education programs as follows:

(a) Thirty percent to each LEA in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such LEA for the preceding fiscal year compared to the total number of such individuals who reside in the school districts served by all LEAs in the state for such preceding fiscal year, as determined on the basis of the most recent satisfactory data provided to the secretary by the Bureau of the Census for the purpose of determining eligibility under Title I of the ESEA; or student membership data collected by the National Center for Educational Statistics through the Common Core of Data survey system; and

(b) Seventy percent to each LEA in proportion to the number of individuals aged 5 through 17, inclusive, who reside in the school district served by such LEA and are from families with incomes below the poverty level for the preceding fiscal year, as determined on the basis of the most recent satisfactory data used under Section 1124(c)(1)(A) of the ESEA (20 USC 6333(c)(1)(A)), compared to the total number of such individuals who reside in the school districts served by all the LEAs in the state for such preceding fiscal year (Section 131(a) of Perkins V (20 USC 2351(a))).

(5) An LEA that does not meet the minimum grant requirement of $15,000 can form a consortium with one or more LEAs to meet the minimum grant requirement (Section 131(f) of Perkins V (20 USC 2351(f))).

(6) The state must waive the minimum grant requirement for an LEA that is in a rural, sparsely populated area or that is a public charter school operating a secondary school career and technical education program if the LEA demonstrates that the LEA is unable to enter into a consortium for purposes of providing activities under Title I, Part C of Perkins V (Section 131(c)(2) of Perkins V (20 USC 2351(c)(2))).

(7) If the state reserves 15 percent or less pursuant to Section 112(a)(1) (20 USC 2322(a)(1)), it may distribute those funds on a competitive basis or through any alternative method (Section 133(a) of Perkins V (20 USC 2353(a))).

b. Postsecondary Career and Technical Education Programs

(1) A subrecipient (Eligible Recipient) as defined in section 3 (20) of Perkins V must be an eligible institution, which is

(a) A consortium of two or more of the entities described in subparagraphs (B) through (F);

(b) A public or nonprofit private institution of higher education that offers and will use funds provided under this title in support of career and technical education courses that lead to technical skill proficiency, or a recognized postsecondary credential, including an industry-recognized credential, a certificate, or an associate degree except that, for the purpose of Section 132, the term “recognized postsecondary credential” as used in this subparagraph shall not include a baccalaureate degree;

(c) A local educational agency providing education at the postsecondary level;

(d) An area career technical educational school providing education at the postsecondary level;

(e) An Indian tribe, tribal organization, or tribal education agency that operates a school or may be present in the state;

(f) A postsecondary education institution controlled by BIE or operated by or on behalf of any Indian tribe that is eligible to contract with the secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 USC 5301 et seq.) or the Act of April 16, 1934 (25 USC 5342 et seq.);

(g) A tribally controlled college or university; or

(h) An educational service agency (Section 3(17) of Perkins V (20 USC 2302(17))).

(2) Unless a state has an approved alternative formula, the state must distribute the amounts reserved for the postsecondary career and technical education programs to each subrecipient in proportion to the number of Pell grant recipients and recipients of assistance from BIE enrolled in programs meeting the requirements of Section 135 of Perkins V at that subrecipient in the preceding year compared to the total of such subrecipients enrolled in those programs in the state in the preceding year (Section 132(a) of Perkins V (20 USC 2352(a))). The minimum grant is $50,000; a state must reallocate amounts allocated to subrecipients that are less than $50,000 to other subrecipients or consortia in accordance with Section 132, except as provided below (Section 132(c) of Perkins V (20 USC 2352(c))).

(3) A subrecipient that does not meet the minimum grant requirement of $50,000 may form a consortium with one or more subrecipients to meet the minimum grant requirement (Section 132(a)(3) of Perkins V (20 USC 2352(a)(3))). The state may waive the minimum grant requirement for subrecipients in rural, sparsely populated areas (Section 132(a)(4) of Perkins V (20 USC 2352(a)(4))).

(4) If the state reserves 15 percent or less for its postsecondary program, it may distribute these funds on a competitive basis or through any alternative method (Section 133(a) of Perkins V (20 USC 2353(a))).

G. Matching, Level of Effort, Earmarking

1. Matching

A state must match, from nonfederal sources and on a dollar-for-dollar basis, the funds reserved for administration of the state plan. The matching requirement may be applied overall, rather than line-by-line, to state administrative expenditures. (Section 112(b) of Perkins V (20 USC 2322 (b)))

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

a. General

(1) A state must maintain its fiscal effort in the preceding year from state sources for career and technical education on either an aggregate or a per-student basis when compared with such effort in the second preceding year unless this requirement is specifically waived by the Secretary of Education. For example, to receive its Federal Fiscal Year (FY) 2023 grant award, a state must maintain its level of fiscal effort on either an aggregate or per-student basis in State Fiscal Year (SFY) 2022 (July 1, 2021 -June 30, 2022) at the level of its fiscal effort in SFY 2021 (July 1, 2029-June 30, 2021)

b. If a state has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a program year, the maintenance of effort requirement for the year after the year the waiver was granted is determined by comparing the amount spent for career and technical education programs from non-federal sources in the first preceding program year with the amount spent in the third preceding program year (i.e. the year prior to the waiver) (Section 211(b)(3) of Perkins V (20 USC 2391(b)(3)).

In computing the fiscal or aggregate expenditures, the Secretary shall, at the request of the state, exclude competitive or incentive-based programs established by the state, capital expenditures, special one-time project costs, and the cost of pilot programs (Section 211(b)(1)(B) of Perkins V (20 USC 2391(b)(1)(B)).

(1) Administration

- A state shall provide from non-federal sources for state administration under Perkins V, an amount that is not less than the amount provided by the state from non-federal sources for state administrative costs for the preceding fiscal or program year. (Section 223(a) of Perkins V (20 USC 2413(a)).

2.2 Level of Effort – *Supplement Not Supplant*

a. The state and its subrecipients may use funds for career and technical education activities that supplement, and not supplant, non-federal funds expended to carry out career and technical education activities (Section 211(a)of Perkins V (20 USC 2391(a))). The examples of instances where supplanting is presumed to have occurred as described in Part III.G.2.2 of the 84.000 ED Cross-Cutting Section also apply to Perkins V.

b. Notwithstanding the above paragraph, funds made available under Perkins V may be used to pay for the costs of career and technical education services required in an individualized education plan (IEP) developed pursuant to Section 614(d) of the Individuals with Disabilities Education Act (IDEA) and services necessary to meet the requirements of Section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to career and technical education (Section 224(c) of Perkins V (20 USC 2414(c))).

3. Earmarking

a. *States* – Subject to the requirements discussed below regarding the minimum amount for state administration, a state must reserve the following percentages:

(1) *Secondary and Postsecondary Career and Technical Education Programs* – not less than 85 percent. A state must distribute all of these funds to its eligible recipients. A state may reserve no more than 15 percent of the 85 percent of funds to make grants for activities described in Section 135 of Perkins V (20 USC 2355) to subrecipients in (a) rural areas; (b) areas with high percentages of CTE concentrators or CTE participants; and (c) areas with high numbers of CTE concentrators or CTE participants; and (d) areas with disparities or gaps in performance as described in Section 113(b)(3)(C)(ii)(II) (sections 112(a)(1) and (c) of Perkins V (20 USC 2322(a)(1) and (c))).

(2) *State Leadership Activities* – not more than 10 percent. Within the state leadership activities not more than 2 percent of the amount allocated to each state in Section 111 of Perkins V (20 USC 2321) shall be allotted to activities that serve individuals in state institutions. Also, not less than $60,000 and not more than $150,000 of the amount allocated to each state in Section 111 of Perkins V shall be made available for services that prepare individuals for nontraditional fields Also, an amount must be made available for the recruitment of special populations to enroll in CTE programs, which must be not less than the lesser of an amount equal to 0.1 percent or $50,000 (Section 112(a)(2) of Perkins V (20 USC 2322(a)(2))).

(3) *State Administration* – not more than 5 percent or $250,000, whichever is greater, for administration of the state plan (Section 112(a)(3) of Perkins V (20 USC 2322 (a)(3))).

b. Subrecipients – Subrecipients under the secondary and postsecondary career and technical education programs may use no more than 5 percent of those funds for administrative costs (Section 135(d) of Perkins V (20 USC 2355(d))).

H. Period of Performance

See Part III.H. of the 84.000 ED Crosscutting Section.

M. State Monitoring of Eligible recipients

1. Each state must evaluate annually, using the local adjusted levels of performance described in Section 113(b)(4) of Perkins V (20 USC 2323(b)(4)), the career and technical education activities of each eligible recipient receiving funds under sections 131 and 132 of Perkins V (Section 123(b)(1) of Perkins V (20 USC 2343(b)(1))).

2. The state determines whether a subrecipient failed to meet at least 90 percent of an agreed upon local level of performance for any of the core indicators of performance described in Section 113(b)(4) of Perkins V for all CTE concentrators and, if so, required the subrecipient to develop and implement the improvement plan required by Section 123(b)(2) of Perkins V (20 USC 2343(b)(2)).

IV. OTHER INFORMATION

Certain compliance requirements that apply to multiple ED programs, including Perkins V, are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable to the Perkins V requirements, references are made to the specific part of the ED Cross-Cutting Section. Further, the Other Information section in 84.000 also provides information that is relevant to this program. (See Other Information, 2. Schoolwide Programs).

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.126 REHABILITATION SERVICES–VOCATIONAL REHABILITATION GRANTS TO STATES

I. PROGRAM OBJECTIVES

The purpose of Title I of the Rehabilitation Act of 1973, as amended (Act), which authorizes the State Vocational Rehabilitation (VR) Services program, is to assist states in operating statewide comprehensive, coordinated, effective, efficient, and accountable VR programs, each of which is (1) an integral part of a statewide workforce development system; and (2) designed to assess, plan, develop, and provide VR services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice, and economic self-sufficiency so that such individuals may prepare for and engage in gainful employment.

II. PROGRAM PROCEDURES

A. Overview

Federal funds are distributed to the states on a formula basis. The program is administered by an agency designated by the state as having overall administrative responsibility for the VR program. If the designated state agency is not an agency primarily concerned with VR, or vocational and other rehabilitation of individuals with disabilities, it must include a designated state unit within the agency that is responsible for the designated state agency's VR program (state VR agency).

To receive funds under Title I of the Act, a state must submit, and have approved by the secretaries of Education and Labor, a Unified or Combined State Plan in accordance with Section 102 or Section 103, respectively, of the Workforce Innovation and Opportunity Act (WIOA) (29 USC 3112 and 3113). The Unified or Combined State Plan must include a VR services portion, which contains both assurances and descriptions that are required by Title I of the Act and the implementing regulations (34 CFR Part 361). The VR services portion of the Unified or Combined State Plan is one of the key bases of the Department of Education's, Rehabilitation Services Administration's monitoring of the state's administration of the VR program.

Services are provided directly by state VR agency staff, purchased from community- based vendors, or arranged to be provided by other public entities. Services identified in Section 103(a) of the Act (29 USC 723(a)), except those of an assessment nature, are provided in accordance with an Individualized Plan for Employment (IPE), which can be developed by the individual, or with assistance from others, including a qualified VR counselor employed by the state VR agency or, as appropriate, a disability advocacy organization. The services identified in the IPE are those determined by the individual and qualified VR counselor to be necessary for the individual to achieve an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. State VR agencies also may provide services to groups of individuals with disabilities, including students and youth with disabilities.

B. Other

WIOA requires the VR program to collaborate with other workforce development, educational, and human resource programs in a one-stop service delivery system. WIOA's objective is to create a seamless delivery system by linking the agencies operating these programs in order to provide universal access to the programs operated by each agency. While the one-stop system operates as a common portal for gaining access to these programs, each program provides its respective services to persons meeting its respective eligibility criteria.

Agencies responsible for administering the programs whose services are delivered in a one-stop system are known as "partners;" those whose participation is mandated by WIOA, including the state VR agency, are "required partners." Each partner must enter into a Memorandum of Understanding (MOU) with the Local Workforce Development Board regarding the operation of the one-stop system. The MOU covers the services to be provided through the one-stop system, funding for those services and for the operating costs of the system, including infrastructure costs and other shared costs of one-stop centers, and the methods for referring individuals between one-stop operators and partners. It establishes how each partner will participate in the one-stop system and share in the cost of its operation. Each partner's resources may be used only for (1) services that are authorized under that partner's program and delivered to individuals who are eligible for those services; and (2) operating costs of the one-stop center, including infrastructure costs and shared services costs allocable to the partner's program.

In addition to the MOU required by WIOA, the Act requires that a state VR agency's VR services portion of the Unified or Combined State Plan provide for a network of cooperative agreements binding that agency's central and local offices to the central and local offices, respectively, of the other partners in the one-stop service delivery system. states can choose to use the same document to meet the requirements for both the MOU and the cooperative agreements. As used henceforth in this discussion, "MOU" refers to whatever document(s) a state agency uses to meet these requirements.

Source of Governing Requirements

The VR program is authorized by Title I of the Rehabilitation Act of 1973, as amended by Title IV of WIOA (29 USC 701 et seq.). Program regulations are found at 34 CFR Part 361.

Availability of Other Program Information

The Rehabilitation Service Administration's (RSA) website contains information pertinent to the program. The following documents are most pertinent to the critical areas to be tested under the VR program:

1. Instructions for completing the Vocational Rehabilitation Financial Report (RSA- 17) for the State Vocational Rehabilitation Services program (DCL-23-03)

https://rsa.ed.gov/sites/default/files/subregulatory/DCL-23-03_0.pdf

2. Period of Performance Frequently Asked Questions
RSA: Period of Performance for Formula Grant Awards FAQs (3.21.2017) (PDF) (ed.gov)

3. One-Stop Infrastructure Costs Frequently Asked Questions
https://rsa.ed.gov/sites/default/files/subregulatory/rsa-faq-one-stop-infrastructure-costs-12-27-2016.pdf

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
N	N	N	N	N	N	Y	Y	N	Y	N	N

H. Period of Performance

Under section 111(a)(1) of the Rehabilitation Act, the Department pays to each state each federal fiscal year an amount equal to the federal share of the cost of providing VR services and administering the VR program. Consistent with the definition of "period of performance" at 2 CFR section 200.1 and the requirements governing information that must be contained in a Grant Award Notification (GAN) at 2 CFR section 200.211, the VR GAN specifies the beginning and end dates for each VR grant award. Therefore, state VR agencies may incur obligations or make expenditures under a grant award if they are incurred during the period of performance for that award. Any obligations or expenditures incurred outside of that period of performance would need to be paid with funds available from a different VR grant award that aligns with the time period when the obligations or expenditures were incurred.

I. Procurement and Suspension and Debarment

See Part 4, 84.000 ED Cross-Cutting Section under the “Applicability of BABAA to ED Programs” section.

L. Reporting

1. Financial Reporting

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Not applicable

d. *RSA-17 (OMB No. 1820-0017), Vocational Rehabilitation Financial Report* – Applicable

e. *SF-429 (OMB No. 4040-0016), Real Property Status Report* – Applicable

State VR grantees must report Federal interest in real property, to the extent applicable, pursuant to the requirements of 2 CFR 200.330. One of the testing areas is procurement and the Federal interest issues will arise most often in the context of procurement of real property or procurement contracts for capital improvements to real property.

2. Performance Reporting

Report Title: *Case Service Report (RSA-911)*
OMB PRA Number: *OMB No. 1820-0508*
Report Authority: *Rehabilitation Act of 1973 and Grant Award Notification Attachment titled* “Grant Terms and Conditions for Performance and Financial Reports”

Reporting period/submission date/s: Data are submitted on a quarterly basis, no later than 45 days after the end of each quarter in accordance with the following schedule:

1. Reporting Period: July 1 – September 30
   Report Due: November 15
2. Reporting Period: October 1 – December 31

Report Due: February 15
3. Reporting Period: January 1 – March 31
   Report Due: May 15
4. Reporting Period: April 1 – June 30
   Report Due: August 15

Link to report and report instructions:
https://rsa.ed.gov/sites/default/files/subregulatory/DCL-23-04.pdf

Key Line Items - *Supporting documentation* must be included in the service record or case management system for the data elements listed below pursuant to 34 CFR 361.47 and consistent with Federal requirements at 2 CFR 200.303. Dates reported in the case management system must match the supporting documentation The following data elements contain critical information:

1. Date of Application (element 7)
2. Date of Eligibility Determination (element 38)
3. Date of Initial Individualized Plan for Employment (IPE) (element 398)
4. Start Date of Employment in Primary Occupation (element 350)
5. Employment Outcome at Exit (element 356)
6. Date of Exit (element 353)
7. Hourly Wage at Exit (element 359)

3. Special Reporting

Not Applicable

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

IV. OTHER INFORMATION

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

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.181 SPECIAL EDUCATION—GRANTS FOR INFANTS AND FAMILIES

I. PROGRAM OBJECTIVES

The purposes of the Individuals with Disabilities Education Act (IDEA), Part C (Part C) state formula grant program are to (1) develop and implement a statewide, comprehensive, coordinated, multi-disciplinary interagency system that provides early intervention services for infants and toddlers with disabilities and their families; (2) facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage); (3) enhance the state's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; (4) enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and (5) encourage states to expand opportunities for children under the age of 3 years who would be at risk of having substantial developmental delay if they did not receive early intervention services.

II. PROGRAM PROCEDURES

Generally, the state is responsible for maintaining and implementing a statewide system to identify, evaluate, and provide early intervention services to eligible children and their families. Such a system includes a public awareness and child find system, development and implementation of an individualized family service plan for eligible children, maintenance of a central directory of information about early intervention services, and personnel development and contracting for or otherwise providing services to eligible children and their families.

The state designates a state lead agency that is responsible for administering, and supervising activities funded by this program. Program services may be carried out by the lead agency, other state agencies, or by public or private organizations either under contract to the state or through other arrangements with such agencies. The lead agency also monitors activities that are covered by the program, whether or not this program funds them. The state also must establish a State Interagency Coordinating Council that, among other things, advises and assists the lead agency in the development and implementation of policies and achieving participation, cooperation, and coordination of all appropriate public agencies in the state.

The amount of a state's allocation under Part C for a fiscal year is based on its proportion of the general population of infants and toddlers, from birth through 2 years of age, in the state (i.e., the ratio of the number of infants and toddlers in the state compared to the number of infants and toddlers in all the states).

Source of Governing Requirements

These programs are authorized under 20 USC 1431 through 1445. Implementing regulations specific to this program are in 34 CFR Part 303.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	Y	Y	Y	N	N	N	N

A. Activities Allowed or Unallowed

1. *Activities Allowed*

   See also Part 4, 84.000 ED Cross-Cutting Section. Each state, in its IDEA Part C application, must include a description of the uses of funds for the fiscal year or years covered by the application, consistent with the requirements in 34 CFR sections 303.205 and 303.501. Generally, allowable activities include:

   a. Maintaining a statewide, comprehensive, coordinated, multi-disciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

b. Providing direct early intervention services for infants and toddlers with disabilities and their families, which are otherwise not funded through other public or private sources.

c. Expanding and improving on services under Part C that are otherwise available for infants and toddlers and their families.

d. Providing a free appropriate public education, in accordance with Part B of the IDEA, to children with disabilities from their third birthday to the beginning of the following school year.

e. With the written consent of the parents, continuing to provide early intervention services under this part to children with disabilities from their third birthday (in accordance with 34 CFR section 303.211) until such children enter, or are eligible under state law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with Part B.

f. In any state that does not provide services for at risk infants and toddlers, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of (a) identifying and evaluating at-risk infants and toddlers, (b) making referrals of the infants and toddlers identified and evaluated, and (c) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant and toddler for services.

g. A state may charge rent, occupancy, or space maintenance costs as a direct cost to its IDEA Part C grant award, only if it indicates so in Section IV.B.2, "Restricted Indirect Cost Rate/Cost Allocation Plan Information," of its IDEA Part C grant application and receives approval from ED in its grant award letter (34 CFR section 303.225(c)(3)).

h. Subject to approval by the governor, the State Interagency Coordinating Council may use IDEA Part C funds to (1) conduct hearings and forums; (2) reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives); (3) pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business (otherwise council members must serve without compensation from IDEA Part C funds); (4) hire staff; and (5) obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act (20 USC 1441(d); 34 CFR section 303.603).

B. Allowable Costs/Cost Principles

See also Part 4, 84.000 ED Cross-Cutting Section.

Further, under IDEA the acquisition of equipment or construction or alteration of facilities must be approved by ED based on a determination by ED that the program would be improved by allowing funds to be used for those purposes (see 20 USC 1404, 1433, and 1438; 34 CFR sections 303.104 and 303.501).

C. Cash Management

See also Part 4, 84.000 ED Cross-Cutting Section.

F. Equipment/Real Property Management

Further, acquisition of equipment and construction or alteration of facilities by the IDEA Part C program must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1405 and 34 CFR section 303.104.

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

Although the following requirement is identified as a supplement not supplant requirement in the law and regulation, this Supplement classifies this type of requirement as maintenance of effort.

The total amount of state and local funds budgeted for expenditure in the current fiscal year for early intervention services for children eligible under Part C and their families must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowances may be made for:

(a) decreases in the number of children who are eligible to receive Part C early intervention services; and

(b) unusually large amounts of funds expended for such long-term purposes such as the acquisition of equipment and the construction of facilities (20 USC 1437(b)(5)(B); 34 CFR section 303.225(a)(2) and (b)).

Monies received from Medicaid reimbursements attributable to federal funds, a parent's private health insurance, or a parent or family fees paid under the state's system of payments are not included in "state and local funds" under the state's calculation of the level of effort under 34 CFR section 303.225(b) (34 CFR sections 303.520(d)(2), (d)(3), and (e)(3)).

If a state has enacted a state statute that meets the requirements in 34 CFR section 303.520(b)(2) regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the state may reestablish a new baseline of state and local expenditures under 34 CFR section 303.225(b) in the next federal fiscal year following the effective date of the statute (34 CFR section 303.520(b)(3)).

2.2 Level of Effort – *Supplement Not Supplant*

Not Applicable

3. **Earmarking**

Not Applicable

H. Period of Performance

See also Part 4, 84.000 ED Cross-Cutting Section.

I. Procurement and Suspension and Debarment

Further, acquisition of equipment and construction or alteration of facilities by the IDEA Part C program must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1405 and 34 CFR section 303.104.

See Part 4, 84.000 ED Cross-Cutting Section.

IV. OTHER INFORMATION

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

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.282 CHARTER SCHOOLS

I. PROGRAM OBJECTIVES

The objectives of the Expanding Opportunity Through Quality Charter Schools Program (CSP), authorized under Title IV, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), are to expand opportunities for all students, particularly for children with disabilities, English learners, and other traditionally underserved students, to attend charter schools and meet challenging state academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage states to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

II. PROGRAM PROCEDURES

A. Overview

The ESEA was reauthorized by the ESSA (Pub. L. No. 114-95) on December 10, 2015. In accordance with Section 4(a)(1)(B) of the ESSA and Section 4302(c) of the ESEA, as amended by the ESSA, CSP grants awarded in fiscal year (FY) 2016 and earlier years operate in accordance with the requirements of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB). CSP grants awarded in FY 2017 and later years are subject to the provisions of the ESEA, as amended by the ESSA. The CSP encompasses multiple subprograms, including Grants to State Entities (SE Grants), Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants), Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants), and National Dissemination Grants.

B. Grants to State Entities

Prior to FY 2017, CSP funds generally were awarded on a competitive basis to state educational agencies (SEAs) in states with statutes specifically authorizing charter schools. Beginning with new awards in FY 2017, eligible entities under the CSP are state entities (SEs), which consist of SEAs, state charter school boards, governors, and charter school support organizations. For CSP grants awarded in FY 2016 and earlier, SEAs were authorized to use their CSP funds to award subgrants to eligible applicants for planning, program design, and initial implementation of charter schools; and to support the dissemination of information about, and successful practices in, charter schools. For CSP grants awarded in FY 2017 and later years, an SE must use not less than 90 percent of

CSP funds to award subgrants to eligible applicants to open and prepare for the operation of new charter schools; open and prepare for the operation of replicated high-quality charter schools; or to expand high-quality charters schools. An SE must also reserve not less than 7 percent of funds to provide technical assistance to eligible applicants and authorized public chartering agencies.

C. Developer Grants and State Entity Subgrants

As noted above, SEAs or SEs receiving a CSP grant are authorized to make subgrants to eligible applicants. If an eligible SEA or SE elects not to participate in this program, or its application is not approved, eligible applicants, including charter schools that operate in the state, may apply directly to the secretary for a grant. Prior to FY 2017, an eligible applicant (i.e., charter school developer or charter school) was limited to receiving not more than one grant or subgrant for planning and initial implementation activities and not more than one grant or subgrant for dissemination activities, unless the charter school is granted a waiver. A charter school was authorized to apply to the SEA for funds to carry out dissemination activities if the charter school was in operation for at least three consecutive years and demonstrated overall success, including substantial progress in improving student achievement; high levels of parent satisfaction; and the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school. A charter school could receive a dissemination grant or subgrant, whether or not the charter school applied for or received funds under the CSP for planning or implementation.

For CSP grants awarded in FY 2017 and later years, an eligible applicant may apply for a grant or subgrant to open and prepare for the operation of a new charter school; open and prepare for the operation of a replicated high-quality charter school; or to expand a high-quality charter school. An applicant is limited to receiving a grant or subgrant for a period of not more than five years, of which an eligible applicant may use not more than 18 months for planning and program design. An eligible applicant may not receive more than one grant or subgrant for each individual charter school for a five-year period, unless the eligible applicant demonstrates that such individual charter school has at least three years of improved educational results for students enrolled in the charter school, with respect to the elements described in section 4310(8)(A) and (D) of the ESEA, as amended by the ESSA. The CSP no longer authorizes separate grants or subgrants for dissemination activities.

D. Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools

The Consolidated Appropriations Act, 2010 (Pub. L. No. 111-117, 123 Stat. 3264, December 16, 2009) authorized the secretary to make awards to nonprofit charter management organizations (CMOs) and other not-for-profit entities for the replication and expansion of successful charter school models. This authority was extended in subsequent appropriations acts through FY 2016. Similar authority is now codified in statute under the ESEA, as amended by the ESSA. Under the new law, the secretary is authorized to award competitive grants to nonprofit CMOs to enable them to open and prepare for the operation of one or more replicated high-quality charter schools or to expand one or more high-quality charter schools.

E. National Dissemination Grants

Prior to FY 2017, CSP Grants for National Leadership Activities were awarded to support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope. For CSP FY 2017 and later years, the CSP will award National Dissemination Grants on a competitive basis to support efforts by eligible entities to support the charter school sector and increase the number of high-quality charter schools available to our Nation's students by disseminating best practices regarding charters schools.

Source of Governing Requirements

This program was authorized by Title V, Part B, Subpart 1 of the ESEA, as amended by NCLB (20 USC 7221-7221j), for awards made in FY 2016 and earlier years. CSP Replication and Expansion grants were authorized under the Department's appropriations acts from FY 2010, through FY 2016 (see e.g., Consolidated Appropriations Act, 2016 (2016 Appropriations Act) (Pub. L. No. 114-113)).

Beginning with FY 2017 grant awards, this program is authorized by Title IV, Part C of the ESEA, as amended by the ESSA (20 USC 7221-7221j). There are no program-specific regulations. However, 34 CFR Part 76, Subpart H prescribes administrative requirements that states and local educational agencies must follow when allocating funds to new or expanding charter schools under ED's formula grant programs.

The transition provisions under the ESEA, as amended by the ESSA, as clarified by the 2016 Appropriations Act, also apply.

Availability of Other Program Information

Information on this program can be found in the following documents posted on ED's website:

1. Charter Schools Program, Nonregulatory Guidance (January 2014) at http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc;

2. Guidance on the Use of Funds to Support Preschool Education (December 2014) at http://www2.ed.gov/programs/charter/csppreschoolfaqs.doc; and

3. Dear Colleague Letter on Flexibility for Recipients of Charter Schools Program Grants in FY 2016 and Earlier (November 2017) at https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/state-entities/funding-and-legislation/.

4. Charter Schools Program Final Rule for priorities, requirements, definitions, and selection criteria for State Entity Grants, Developer Grants, and CMO Grants (July 2022) at https://www.federalregister.gov/documents/2022/07/06/2022-14445/final-priorities-requirements-definitions-and-selection-criteria-expanding-opportunity-through

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	Y	N	N	Y	N	N	Y	N

A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *Use of Funds by SEAs*

Funds must be used to award subgrants to eligible applicants. For grants awarded under the ESEA, as amended by NCLB, funds may also be used to establish a revolving loan fund for eligible applicants that have received implementation subgrants, for state dissemination activities, and for administrative costs of the program. For grants awarded under the ESEA, as amended by the ESSA, funds may be used for administration, which may include providing technical assistance to subgrantees and authorized public chartering agencies.

2. *Use of Funds by Eligible Applicants*

a. *ESEA, as amended by NCLB*

(1) Each eligible applicant may use these funds in accordance with its approved application to plan and implement a charter school, or to disseminate information about the charter school and successful practices in charter schools (20 USC 7221c(f)(2)).

(2) An eligible applicant receiving a CSP grant or subgrant may use funds for (1) post-award planning and design of the educational program, which may include (a) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (b) professional development of teachers and other staff who will work in the charter school; and (2) initial implementation of the charter school, which may include (a) informing the community about the school; (b) acquiring necessary equipment and educational materials and supplies; (c) acquiring or developing curriculum materials; and (d) other initial operational costs that cannot be met from state or local sources (20 USC 7221c(f)(3)).

(3) A charter school receiving funds for dissemination activities may use funds to assist other schools in adapting the charter school’s program (or certain aspects of the charter school’s program), or to disseminate information about the charter school, through such activities as (1) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school’s developers, and that agree to be held to at least as high a level of accountability as the assisting charter school; (2) developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership; (3) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and (4) conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools (20 USC 7221c(f)(6)(B)).

b. *ESEA, as amended by the ESSA*

(1) Each eligible applicant may use the funds in accordance with its approved application to open and prepare for the operation of a new charter school, open and prepare for the operation of a

replicated high-quality charter school or expand a high-quality charter school.

(2) In addition, an eligible applicant receiving a CSP grant or subgrant must use the funds for one or more of the following activities:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying the costs associated with (A) providing professional development; and (B) hiring and compensating, during the eligible applicant's planning period specified in the application for subgrant funds that is required under this section, one or more of the following:

(i) Teachers

(ii) School leaders

(iii) Specialized instructional support personnel

(b) Acquiring supplies, training, equipment (including technology) and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to the activities described in subsection (b)(1) when such costs cannot be met from other sources.

3. *Grants for the Replication and Expansion of High-Quality Charter Schools*

a. Grant funds may be used to replicate or expand a high-quality charter school. Specifically, for grants awarded under the ESEA, as amended by NCLB, funds may be used for (i) post-award planning and design of the educational program; and (ii) initial implementation of the charter school (see paragraph 2.b, above). For grants awarded under the ESEA, as amended by the ESSA, funds may be used to open and prepare for the operation of new charter schools and replicated high-quality charter schools and expand high-quality charter schools.

b. For grants awarded under the ESEA, as amended by NCLB, grant funds also may be used for initial operational costs associated with the expansion or improvement of the entity's oversight or management of its schools provided that the specific schools being created or expanded under the grant are beneficiaries of such expansion or improvement.

c. A charter school that has received replication and expansion of high-quality charter schools funds is not eligible to receive funds for the same purpose under section 5202(c)(2) of the ESEA (i.e., other funding under this program), including for planning and program design or the initial implementation of a charter school (20 USC 7221c(f)(3); Program Announcements issued in the *Federal Register* May 24, 2010 (75 FR 28789-28795); July 12, 2011 (76 FR 40890-40898); March 6, 2012 (77 FR 13304-13311); June 20, 2014 (79 FR 35323-35333); June 12, 2015 (80 FR 33499-33510); May 10, 2016 (81 FR 28837-28847); January 13, 2017 (82 FR 4322-4332); November 30, 2018 (83 FR 61610-61619); November 26, 2019 (84 FR 65134-65142); and November 10, 2022 (87 FR 67876-67888).

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section.

C. Cash Management

See Part 4, 84.000 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 applicant" is a charter school developer that has applied to an authorized public chartering authority to operate a charter school and has provided that authority with adequate and timely notice of its application for funding under the CSP ((20 USC 7221i(6)).

b. A “charter school” is a public school that

(1) In accordance with a specific state statute authorizing the granting of charters to schools, is exempt from significant state or local rules that inhibit the flexible operation and management of public schools;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with federal civil rights laws;

(8) Is a school to which parents choose to send their children and admits students on the basis of a lottery, if more students apply than can be accommodated;

(9) Agrees to comply with the same federal and state audit requirements as do other elementary and secondary schools in the state, unless such requirements are specifically waived for the purpose of this program;

(10) Meets all applicable federal, state, and local health and safety requirements;

(11) Operates in accordance with state law;

(12) Has a written performance contract with the authorized public chartering agency in the state that includes a description of how student performance will be measured in charter schools pursuant to state assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve children in early childhood education programs or postsecondary students. Under the ESEA, as amended by the ESSA, a charter school may automatically enroll students who are

in the immediate prior grade of an affiliated charter school, as long as the charter school complies with the lottery requirement when admitting other students ((20 USC 7221i(2)).

c. The term “developer” means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators, and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

A for-profit entity does not qualify as an eligible applicant for purposes of the CSP. However, a CSP grant recipient may enter into a contract with a for-profit entity for the provision of goods and services (20 USC 7221i(5)).

d. A “high-quality charter school” is a charter school that:

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by the state;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, as amended by the ESSA (20 USC 7221i(8)).

I. Procurement and Suspension and Debarment

See Part 4, 84.000 ED Cross-Cutting Section.

IV. OTHER INFORMATION

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated for each individual program. When applicable, Section III references the ED Cross-Cutting Section for these requirements. Also, as discussed in the ED Cross-Cutting Section, SEAs and LEAs, including charter school LEAs, may have been granted waivers from certain compliance requirements. Further, the Other Information section in 84.000 also provides information that is relevant to this program. (See other Information, 1. Consolidated Administrative Funds).

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.287 TWENTY-FIRST CENTURY COMMUNITY LEARNING CENTERS

I. PROGRAM OBJECTIVES

The objective of this program is to establish or expand community learning centers (Centers) that provide students with academic enrichment opportunities during non-school hours or periods when school is not in session (e.g., before school, after school, or during summer recess) to complement the students' regular academic program. Centers, which can be located in elementary or secondary schools or other similarly accessible facilities, provide a range of high-quality services to support student learning and development, including tutoring and mentoring, homework help, academic enrichment (such as hands-on science or technology programs), and community service opportunities, as well as music, arts, sports and cultural activities. At the same time, Centers help working parents by providing a safe environment for students during non-school hours or periods when school is not in session and offer families of participation students active and meaningful engagement in their child's education.

Under the 21st Century Community Learning Centers (21st CCLC) program, funds flow to state educational agencies (SEAs) by formula, based on each state's share of Title I, Part A funds. SEAs, in turn, use their allocations to make competitive subgrants to eligible entities, which consist of local educational agencies (LEAs), community-based organizations (CBOs), Indian tribes or tribal organizations, and other public or private entities, or consortia of two or more of such agencies, organizations, or entities.

II. PROGRAM PROCEDURES

Source of Governing Requirements

This program is authorized under Title IV, Part B of the Elementary and Secondary Education Act of 1965 (ESEA). Additional information regarding the ESEA is available at https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/the-elementary-secondary-education-act-the-every-student-succeeds-act-of-2016/every-student-succeeds-act-essa/. The text of the 21st CCLC program can be found beginning on page 226 at https://www.govinfo.gov/content/pkg/COMPS-748/pdf/COMPS-748.pdf.

Availability of Other Program Information

1. Nita M. Lowey 21st Century Community Learning Centers Non-Regulatory Guidance (September 4, 2024) to https://www.ed.gov/sites/ed/files/2024-09/OESE%2021st%20CCLC%20Non-Regulatory%20Guidance%202024.pdf.

2. Title VIII, Part F of the Elementary and Secondary Education Act of 1965: Equitable Services for Eligible Private School Children, Teachers, and Other

Educational Personnel (July 17, 2023) https://www2.ed.gov/about/inits/ed/non-public-education/files/esea-titleviii-guidance-2023.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	N	N	Y	N	Y	Y

A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *Activities Allowed*

a. *SEAs*

SEAs may use 21st CCLC program funds for the following:

(1) Competitive subawards (20 USC 7172(c)(1)).

(2) State administration (20 USC 7172(c)(2)):

(a) The administrative costs of carrying out its responsibilities under the program;

(b) Establishing and implementing a peer review process for subgrant applications; and

(c) Awarding funds to eligible entities, in consultation with other state agencies responsible for administering youth development and adult education programs.

b. State activities (20 USC 7172(c)(3))

(1) Monitoring and the evaluation of programs and activities.

(2) Providing capacity building, training, and technical assistance.

(3) Conducting a comprehensive evaluation (directly, or through a grant or contract) of the effectiveness of programs and activities.

(4) Providing training and technical assistance to eligible entities that are applicants for, or recipients of, subawards under this program.

(5) Ensuring that any eligible entity that receives an award under this part from the state aligns the activities provided by the program with challenging state academic standards.

(6) Ensuring that any such eligible entity identifies and partners with external organizations, if available, in the community.

(7) Coordinating funds received under this part with other federal and state funds to implement high-quality programs.

(8) Providing a list of prescreened external organizations, as described under section 4203(a)(11) of the ESEA.

(9) Working with teachers, principals, parents, the local workforce, the local community, and other stakeholders to review and improve state policies and practices to support the implementation of effective programs.

c. *LEAs, CBOs, and Other Public or Private Entities (20 USC 7175)*

Subrecipients may use funds to carry out a broad array of activities during non-school hours or periods when school is not in session (e.g., before and after school, during summer recess) that advance student academic achievement and support student success, including---

(1) Academic enrichment learning programs, mentoring programs, remedial education programs, and tutoring services, that are aligned with---

   (A) the challenging State and academic standards and any local academic standards and
   (B) local curricula that are designed to improve student academic achievement;

(2) Well-rounded education activities, including such activities that enable students to be eligible for credit recovery or attainment;

(3) Literacy education programs including financial literacy programs and environmental literacy programs;

(4) Programs that support a healthy and active lifestyle, including nutritional education and regular, structured physical activity programs;

(5) Services for individuals with disabilities;

(6) Programs that provide after school activities for students who are English learners that emphasize language skills and academic achievement;

(7) Cultural programs;

(8) Telecommunications and technology education programs;

(9) Expanded library service hours;

(10) Parenting skills program that promote parental involvement and family literacy;

(11) Programs that provide assistance to students who have been truant, suspended, or expelled to allow the students to improve their academic achievement;

(12) Drug and violence prevention programs and counseling programs;

(13) Programs that build skills in science, technology, engineering, and mathematics (STEM), "including computer science, and that foster innovation in learning by supporting nontraditional STEM education teaching methods;" as stated in the United States Code; and

(14) Programs that partner with in-demand fields of the local workforce or build career competencies and career readiness and ensure that local workforce and career readiness skills are aligned with the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) and the Workforce Innovation and Opportunity Act (29 USC 3101 et seq.).

Note that a subrecipient may provide one or more of these activities, consistent with the SEA's approved consolidated state plan and the subrecipient's 21st CCLC program application to the SEA.

Under 20 USC 7174(a)(2)a subrecipient may use funds to conduct authorized activities during the school day that—

(a) Are part of an expanded learning program that provides students at least 300 additional program hours before, during, or after the traditional school day;

(b) Supplement but do not supplant regular school day requirements; and

(c) Are carried out jointly by an LEA receiving funds under Title I, Part A of the ESEA and another eligible entity and that propose to target services to students, and their families, who primarily attend schools: (1) implementing comprehensive or targeted support and improvement activities under section 1111(d) of the ESEA or other schools determined by an LEA to be in need of intervention and support to improve student academic achievement and other outcomes and (2) that enroll students who may be at risk for academic failure, dropping out of school, involvement in criminal or delinquent activities, or who lack strong positive role models.

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section.

C. Cash Management

See Part 4, 84.000 ED Cross-Cutting Section.

J. Program Income

1. See 2 CFR 200.307 Program Income located at https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1307&rgn=div8. A recipient or subrecipient that earns program income must deduct the amount of program income from the amount of the Federal award unless it has received prior written approval from ED to add the amount of program income to the amount of the Federal award. If the recipient or subrecipient receives prior written approval to add the amount of program income

to the Federal award, the program income must be used for the purposes and under the conditions of the Federal award.

M. Subrecipient Monitoring

See 2 CFR 200.332 Requirements for Pass-through Entities located at eCFR :: 2 CFR 200.332 -- Requirements for pass-through entities.

N. Special Tests and Provisions

1. Participation of Private School Children

See Part 4, 84.000 ED Cross-Cutting Section.

IV. OTHER INFORMATION

Note: Certain compliance requirements that apply to multiple ED programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable, Section III references the ED Cross-Cutting Section for these requirements. Further, the Other Information section in 84.000 also provides information that is relevant to this program.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.365 ENGLISH LANGUAGE ACQUISITION STATE GRANTS

I. PROGRAM OBJECTIVES

The objective of Title III, Part A of the Elementary and Secondary Education Act (ESEA) is to improve the education of English learners (ELs) by helping them attain English proficiency and meet challenging state academic standards. The program also provides enhanced instructional opportunities for immigrant children and youths.

II. PROGRAM PROCEDURES

A. Overview

The Department of Education (ED) provides Title III, Part A funds to each state educational agency (SEA) on the basis of a statutory formula that takes into account the number of ELs and immigrant children and youth in each state. To receive funds, an SEA must submit to ED for approval either (1) an individual state plan as provided under Section 3113 of the ESEA (20 USC 6823), or (2) a consolidated plan that includes Part A of Title III in accordance with Section 8302 of the ESEA (20 USC 7842). The plan must be updated to reflect substantive changes.

SEAs use Title III, Part A funds for administration, to carry out state activities, and to make two types of subgrants to LEAs.

B. Subprograms/Program Elements

The two types of subgrants are (1) for school districts that have experienced a significant increase in the number of immigrant children and youth in their schools, and (2) for school district to use to serve EL children. In order to receive one of these subgrants, an LEA must submit to the SEA a plan under either Section 3116 of the ESEA (20 USC 6826) or an approved consolidated plan under Section 8302 of the ESEA (20 USC 7842).

LEAs that receive immigrant subgrants use those funds to pay for enhanced instructional opportunities for immigrant children. LEAs receiving EL subgrants must support activities that increase the English proficiency and academic achievement of ELs by providing effective language instruction educational programs, supplemental activities, and professional development for teachers and school leaders relating to ELs (20 USC 6825). In addition, LEAs receiving subgrants under Part A of Title III are required to assess the English language proficiency of the ELs they serve (20 USC 6823). SEAs are required to develop statewide entrance and exit procedures for ELs and assist subgrantees in meeting the state’s long-term goals for progress towards English language proficiency.

Source of Governing Requirements

This program is authorized by Title III, Part A of the ESEA (20 USC 6821 through 6871, 7011 through 7014). There are no program regulations; however, the general ESEA requirements in 34 CFR Part 299 apply.

Availability of Other Program Information

Other program information is available at https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/english-language-acquisition-state-grants/.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status Discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	N	Y	Y

A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

Certain compliance requirements which apply to multiple ESEA programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III references the ED

Cross-Cutting Section for these requirements. Also, as discussed in the ED Cross-Cutting Section, SEAs and LEAs may have been granted waivers from certain compliance requirements.

1. *Activities Allowed*

a. *SEAs*

SEAs must use funds under this program for the following purposes:

(1) To make subgrants (20 USC 6821(b)(1), 6824).

(2) State administration (20 USC 6821(b)(3)).

(3) One or more of the following state activities (20 USC 6821(b)(2)):

(a) Establishing and implementing statewide entrance and exit procedures for ELs.

(b) Professional development and other activities, which may include assisting personnel in meeting state and local certification and licensing requirements for teaching ELs.

(c) Planning, evaluation, administration, and interagency coordination related to LEA subgrants.

(d) Providing technical assistance and other forms of assistance to LEA subgrantees.

(e) Providing recognition, which may include providing financial awards, to subgrantees that have significantly improved EL achievement and progress in meeting the state ELP goal and academic standards.

b. *LEAs*

(1) LEAs receiving immigrant subgrants shall use the funds awarded to pay for activities that provide enhanced instructional opportunities for immigrant children and youth. These activities include (20 USC 6825(e)):

(a) Family literacy, parent outreach, and training activities designed to assist parents and families to become active participants in the education of their children.

(b) Support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth.

(c) Provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth.

(d) Identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds.

(e) Basic instruction services that are directly attributable to the presence in the school district of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services.

(f) Other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education.

(g) Activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents and families of immigrant children and youth by offering comprehensive community services.

(2) LEAs receiving EL subgrants use the funds for the following purposes, which, as stated may be required or discretionary:

(a) Administrative costs (20 USC 6825(b)).

(b) *Required Activities* – An LEA is required to use EL subgrant funds to:

(i) Increase the English proficiency of ELs by providing effective language instruction educational programs that meet the needs of ELs and demonstrate success in increasing English proficiency and student academic achievement (20 USC 6825(c)(1)).

(ii) Provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel (20 USC 6825(c)(2)).

(iii) Provide and implement other effective activities that supplement language instruction educational programs, which must include parent, family, and community engagement activities, and may include coordination with related programs (20 USC 6825(c)(3)).

c. *Authorized Activities* – An LEA may, but is not required to, use EL subgrant funds for the following activities (20 USC 6825(d)):

(1) Upgrading program objectives and effective instruction strategies.

(2) Improving the instruction program for ELs by identifying, acquiring, and upgrading curricula, instruction materials, educational software, and assessment procedures.

(3) Providing tutorials and academic or vocational education for ELs and intensified instruction.

(4) Developing and implementing effective preschool, elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.

(5) Improving the English proficiency and academic achievement of ELs.

(6) Providing community participation programs, family literacy services, and parent and family outreach and training activities to ELs and their families to improve the English language skills of ELs and to assist parents and families in helping their children to improve their academic achievement and becoming active participants in the education of their children.

(7) Improving the instruction of ELs, which may include ELs with disabilities, by providing for (i) the acquisition or development of educational technology or instructional materials; (ii) access to, and participation in, electronic networks for materials, training, and communication; and (iii) incorporation of these resources into curricula and programs.

(8) Offering early college, high school, or dual or concurrent enrollment courses designed to help ELs achieve success in postsecondary education.

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

See Part 4, 84.000 ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant*

See Part 4, 84.000 ED Cross-Cutting Section.

3. Earmarking

SEAs

a. SEAs can reserve up to 5 percent of their entire grant to carry out state activities and for administration (**Note:** Under the circumstances described in paragraph 3a (1) an SEA can have a reservation for administration that exceeds 5 percent) (20 USC 6821(b)(2)):

(1) SEAs are authorized to reserve up to 2.5 percent of their grant, or $175,000, whichever is greater, for the costs of administration. Because SEAs can use up to $175,000 of their grant for administration, they may, because of that option, reserve more than 5 percent of their grant for administration (20 USC 6821(b)(3)).

(2) SEA reserved funds not used for administration can be used to carry out one or more of the state activities (see III.A.1.c) (20 USC 6821(b)(2)).

b. A SEA must expend at least 95 percent for subgrants to LEAs that submit approvable plans under either Section 3116 of the ESEA, (20 USC 6826) or an approvable consolidated plan under Section 8305 of the ESEA (20 USC 7845) as follows (20 USC 6821, 6824(a)):

(1) *Immigrant Subgrants* – SEAs are required to reserve not more than 15 percent of their grants for subgrants to LEAs that have experienced a significant increase, as compared to the average of the two preceding fiscal years, in the percentage or numbers of immigrant children and youth, who have enrolled, during the fiscal year for which the grant is made, in public and nonpublic elementary and secondary schools in the geographic areas served by the LEA. In awarding these subgrants, SEAs must equally consider LEAs that have limited or no experience in serving immigrant children and youth and the quality of the local plans that the LEAs submit under Section 3116 of the ESEA (20 USC 6826). While an SEA must make at least one award, SEAs have discretion to award these subgrants on a competitive, formula, or some other basis (20 USC 6824(d)).

(2) *EL Subgrants* – SEAs are required to use funds not used for state activities, SEA administration, or immigrant subgrants to award subgrants to LEAs, or consortia of LEAs, to serve ELs. SEAs shall allocate EL subgrants to their LEAs on a formula basis. The formula is based on the number of ELs in schools served by a particular LEA as a percentage of the number of such ELs in the entire state. The SEA, however, shall not award a subgrant if the amount of the subgrant, under the statutory formula for EL subgrants, would be less than $10,000 (20 USC 6824).

c. *LEA Administrative Costs* **–** An LEA receiving an EL subgrant may use no more than 2 percent of that subgrant for administrative costs (20 USC 6825(b)).

H. Period of Performance

See Part 4, 84.000 ED Cross-Cutting Section.

M. Subrecipient Monitoring

See Part 4, 84.000 ED Cross-Cutting Section.

N. Special Tests and Provisions

1. Participation of Private School Children

See Part 4, 84.000 ED Cross-Cutting Section.

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

See Part 4, 84.000 ED Cross-Cutting Section.

IV. OTHER INFORMATION

Certain compliance requirements that apply to multiple programs are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III references 84.000 for these requirements. Further, Section IV (Other Information) of the Cross-Cutting Section also provides information that is relevant to this program. (See Other Information, 1. Consolidation of Administrative Funds and 2. Schoolwide Programs).”

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.367A SUPPORTING EFFECTIVE INSTRUCTION STATE GRANTS (formerly Improving Teacher Quality State Grants)

I. PROGRAM OBJECTIVES

The objective of the Supporting Effective Instruction state grant program (formerly Improving Teacher Quality state grants program) in Title II, Part A of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), is to provide funds to state educational agencies (SEAs), and local educational agencies (LEAs) to: (1) increase student achievement consistent with the challenging state academic standards, (2) improve the quality and effectiveness of teachers, principals, and other school leaders, (3) increase the number of teachers, principals, and other school leaders who are effective in improving student academic achievement in schools, and (4) provide low-income and minority students greater access to effective teachers, principals, and other school leaders.

II. PROGRAM PROCEDURES

A. Overview

Funds are obtained by a state on the basis of the Department of Education’s (ED) approval of either (1) an individual state plan as provided in Section 2101 of the ESEA (20 USC 6611) or (2) a consolidated application that includes the program, in accordance with Section 8302 of the ESEA (20 USC 7842).

B. Equitable Service

After timely and meaningful consultation with appropriate private school officials, SEAs and LEAs must provide services to teachers and other educational personnel in private schools on an equitable basis that address their needs under the program and are equitable to the level of services provided to teachers and other educational personnel in the SEA and LEA (see generally ESEA section 8501).

Source of Governing Requirements

This program is authorized by Title II, Part A, of the ESEA, as amended by the ESEA sections 2101-2104 (which is 20 USC 6611-6614). The program purpose and definitions in ESEA Title II, sections 2101 and 2102 (20 USC 6601 and 6602) also apply to this program.

While there are no program regulations, general ESEA requirements in 34 CFR parts 76, 77, and 299 apply. See also Part 4, 84.000 ED Cross Cutting Section.

Availability of Other Program Information

1. Building Systems of Support for Excellent Teaching and Leading – Non-Regulatory

Guidance (September 27, 2016)
https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf

2. Improving Teacher Quality State Grants – Non-Regulatory Guidance (October 5, 2006)
https://oese.ed.gov/files/2019/09/guidance-2.pdf

3. Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA) (November 21, 2016)
https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf

4. Non-Regulatory Guidance: Title VIII, Part F of the Elementary and Secondary Education Act of 1965: Equitable Services for Eligible Private School Children, Teachers, and Other Educational Personnel (July 17, 2023).
https://www2.ed.gov/about/inits/ed/non-public-education/files/esea-titleviii-guidance-2023.pdf

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	Y	N	N	N	N	Y	Y

A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

Certain compliance requirements that apply to multiple ESEA programs are discussed once in the Department of Education (ED) Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. When applicable, Section III 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.

1. *Activities Allowed*

   a. State Use of Funds

      (1) State Administration and Activities – SEAs have the authority to set aside 5 percent of a state's total allocation to carry out statewide activities related to improving educator quality. Allowable state-level activities are identified in Section 2101(c)(4) of the ESEA. While not an exhaustive list, examples of allowable activities include:

      (2) Carrying out programs that establish, expand, or improve alternative routes for state certification of teachers, principals, or other school leaders;

      (3) Carrying out activities that focus on ensuring teachers have the necessary subject-matter knowledge and teaching skills, as demonstrated through measures determined by the state, and principals or other school leaders have the instructional leadership skills to help teachers teach and to help students meet such challenging state academic standards;

      (4) Reforming and teacher, principal, or other school leader certification, recertification, licensing, or tenure systems or preparation program standards and approval processes to ensure that they are aligned with such challenging state standards;

      (5) Developing, or assisting local educational agencies in, developing career opportunities and advancement initiatives that promote professional growth and emphasize multiple career paths; and

      (6) Developing, or assisting local educational agencies in developing, strategies that provide differential pay, or other incentives, to recruit and retain teachers in high-need academic subjects and teachers, principals, or other school leaders, in low-

income schools and school districts (Section ESEA 2101(c)(4) (20 USC 6611(c)(4))).

b. SEAs may use a certain amount (not more than 3 percent of the amount reserved for subgrants to LEAs under Section 2101(c)(1)) for one or more of the activities for principals or other school leaders described in Section 2101(c)(4). For more information, about this additional SEA reservation of funds, please see Part 3 of the *Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading*, available at https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf (ESEA Section 2101(c)(3)).

c. LEA Use of Funds- After conducting meaningful consultation, as required by ESEA Section 2102(b)(3), LEAs may use funds for a broad range of activities designed to improve educator effectiveness that are identified in ESEA Section 2103(b). While not an exhaustive list, examples of allowable activities include:

(1) Providing "professional development" (as the term is defined in ESEA Section 8101(42) (20 USC 7801(42))) to teachers, instructional leadership teams, principals, or other school leaders that is focused on improving teaching and student learning and achievement;

(2) Developing and implementing initiatives to recruit, hire, and retain teachers, principals, and other school leaders;

(3) Providing training, technical assistance, and capacity-building in local educational agencies to assist teachers, principals, or other school leaders with selecting and implementing formative assessments, designing classroom-based assessments, and using data from such assessments to improve instruction and student academic achievement carrying out initiatives that provide teacher, paraprofessional, principal, or other school leader advancement and professional growth, and an emphasis on leadership opportunities, multiple career paths, and pay differentiation. LEAs also may use funds to hire teachers to reduce class size (ESEA sections 2103(b) (20 USC 6613(b))).

2. *Activities Unallowed*

a. SEAs may use not more than 1 percent of their total Title II allocation for state administration activities.

b. SEAs may also use not more than 2 percent of the state's total Title II, Part A state allocation to establish or expand teacher, principal, or other school leader preparation academies to prepare teachers, principals, and other school leaders to serve in high-need schools. For more information, please see the guidance described in A.1.a.ii, above (ESEA Section 2101(c)(4)(B)(xii)).

B. Allowable Costs/Cost Principles

(All grantees) See Part 4, 84.000 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. LEAs apply to the SEAs for program funds. The amount of each LEA's allocation that an SEA provides is based solely on the following formula:

(1) Twenty percent of the funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves (based on the most recent Census data, as determined by the secretary); and

(2) Eighty percent of the funds must be distributed to LEAs based on the relative numbers of individuals ages 5 through 17 who reside in the area the LEA serves and who are from families with incomes below the poverty line (based on the most recent Census data, as determined by the secretary) (ESEA Section 2102(a)).

G. Matching, Level of Effort, Earmarking

1. Matching (LEAs)

Not Applicable

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

(SEAs/LEAs) See Part 4, 84.000 ED Cross-Cutting Section.

2.2 Level of Effort – *Supplement Not Supplant*

(SEAs/LEAs) See Part 4, 84.000 ED Cross-Cutting Section.

3. Earmarking

a. LEA Subgrant Reservation: SEAs must reserve not less than 95 percent of their Title II allocation for subgrants to LEAs (Section 2101(c)(1) of the ESEA).

(1) Additionally, SEAs may reserve not more than 3 percent of the amount reserved for subgrants to LEAs under Section 2101(c)(1) for one or more of the activities for principals or other school leaders described in Section 2101(c)(4). For more information, about this additional SEA reservation of funds, please see Part 3 of the *Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading*, available at https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf (ESEA Section 2101(c)(3)).

b. State Administration and Activities – SEAs have the authority to set aside 5 percent of a state's total allocation to carry out statewide activities related to improving educator quality. (ESEA Section 2101(c)(1) and (4)).

(1) Limitation on administration: Within this 5 percent, SEAs may use not more than 1 percent of their total Title II allocation for state administration. (ESEA Section 2101(c)(2)).

(2) Limitation on statewide activities reservation: SEAs may reserve not more than 2 percent of the state's total Title II, Part A state allocation to establish or expand teacher, principal, or other school leader preparation academies to prepare teachers, principals, and other school leaders to serve in high-need schools. For more information, please see the guidance described in A.1.a.ii, above (ESEA Section 2101(c)(4)(B)(xii)).

c. See Part 4, 84.000 ED Cross-Cutting Section.

N. Special Tests and Provisions

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

See Part 4, 84.000 ED Cross-Cutting Section.

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

See Part 4, 84.000 ED Cross-Cutting Section.

IV. OTHER INFORMATION

Funds under the Small, Rural School Achievement (SRSA) program (Assistance Listing 84.358A) may be used for activities allowed under other programs, including this program Title II, Part A.

Expenditures for allowable activities under Title II, Part A from funds awarded for the SRSA Funds Program should be included in the audit universe and total expenditures of Assistance Listing 84.358A (i.e., from the program from which they originated) for purposes of (1) determining Type A programs and (2) completing the Schedule of Expenditures of Federal Awards (SEFA).

See Part IV. Other Information, 1. Consolidation of Administrative Funds, 2. Schoolwide Programs, and 3. Transferability of the 84.000 ED Crosscutting Section.

Certain compliance requirements that apply to multiple ED programs, including Title II, Part A, are discussed once in the ED Cross-Cutting Section of this Supplement (84.000) rather than being repeated in each individual program. Where applicable to the Perkins V requirements, references are made to the specific part of the ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.424 STUDENT SUPPORT AND ACADEMIC ENRICHMENT PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Student Support and Academic Enrichment Grant program in Title IV, Part A of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) (Pub. L. No. 114-95), is to provide funds to state educational agencies (SEAs) and local educational agencies (LEAs) to improve students' academic achievement by increasing the capacity of states, LEAs, schools, and local communities to: 1) provide all students with access to a well-rounded education; 2) improve school conditions for student learning; and 3) improve the use of technology in order to improve the academic achievement and digital literacy of all students.

II. PROGRAM PROCEDURES

Funds are obtained by a state on the basis of the Department of Education's (ED) approval of either 1) an individual state plan as provided in Section 4103 of the ESEA (20 USC 7113) or 2) a consolidated application that includes the program, in accordance with Section 8302 of the ESEA (20 USC 7842).

Source of Governing Requirements

This program is authorized by Title IV, Part A of the ESEA, as amended by the ESSA (Pub. L. No. 114-95) (20 USC 7101-7122). The program purpose and definitions in Title IV, Part A of the ESEA, sections 4101 and 4102 (20 USC 7111 and 7112) also apply to this program. While there are no program regulations, general ESEA requirements in 34 CFR Part 299 apply.

Availability of Other Program Information

a. Student Support and Academic Enrichment Grants Non-Regulatory Guidance (October 21, 2016) https://www2.ed.gov/policy/elsec/leg/essa/essassaegrantguid10212016.pdf.

b. Provisions in the Consolidated Appropriations Act of 2017 That Relate to the Title IV, Part A Student Support and Academic Enrichment Grant Program https://safesupportivelearning.ed.gov/sites/default/files/ProvisionsConsolidatedAppropriationsAct2017_Title%20IVASSAE.pdf.

c. Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA) (November 21, 2016) https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	Y	N	Y	Y	N	N	N	N	Y

A. Activities Allowed or Unallowed

See also Part 4, 84.000 ED Cross-Cutting Section.

1. *Activities Allowed*

   a. *State Use of Funds*

      (1) *Subgrants to LEAs* (Section 4104(a)(1) of the ESEA (20 USC 7114(a)(1))) – SEAs must reserve not less than 95 percent of their Title IV, Part A allocation for subgrants to LEAs.

      (2) *State Administration* (Section 4104(a)(2) of the ESEA (20 USC 7114(a)(2))) – SEAs may reserve up to 1 percent of their Title IV, Part A allocation for administrative costs.

      (3) *State Activities* (Section 4104(a)(3) of the ESEA (20 USC 7114(a)(3))) – States may reserve the remainder of funds not reserved for subgrants or administrative costs for state activities. Examples of allowable state-level activities are identified in

Section 4104(b) of the ESEA and may include monitoring and providing technical assistance and capacity building to LEAs; identifying and eliminating state barriers to the coordination and integration of programs, initiatives, and funding streams that meet the purposes of the program; and otherwise supporting LEAs in carrying out activities in the three Title IV, Part A program content areas: well-rounded education, safe and healthy students, and effective use of technology.

b. *LEA Use of Funds*

LEAs may use funds for a broad span of activities designed to improve student academic achievement by improving conditions for learning in three areas: well-rounded education (examples of allowable activities in section 4107 of the ESEA), safe and healthy students (examples of allowable activities in section 4108 of the ESEA), and effective use of technology (examples of allowable activities in section 4109 of the ESEA).

Under Section 4106(e)(2)(C)–(E) of the ESEA, an LEA or consortium of LEAs that receives $30,000 or more in Title IV, Part A funds, must use:

(1) Not less than 20 percent of funds to support one or more of the activities authorized under section 4107 pertaining to well-rounded educational opportunities;

(2) Not less than 20 percent of funds to support one or more activities authorized under section 4108 pertaining to safe and healthy students; and

(3) A portion of funds to support one or more activities authorized under section 4109 pertaining to the effective use of technology, including an assurance that it will not use more than 15 percent of the funds reserved for this section for purchasing technology infrastructure as described in section 4109(b).

Under section 3511 of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, the Department provided authority for LEAs that receive $30,000 or more to receive waivers of 1) the content area spending requirements in sections 4106(e)(2)(C), (D), and (E) – the requirements to use a minimum percentage of Title IV, Part A funds for activities under sections 4107, 4108, and 4109 for fiscal year (FY) 2019 funds and any available FY 2018 carryover funds; and 2) the spending limitation in section 4109(b) – the 15 percent limit on the use of funds under section 4109 to purchase technology infrastructure for FY 2019 funds and any available FY 2018 carryover funds.

c. *Transferability*

Funds under the Small Rural Schools Achievement (SRSA) Alternative Uses of Funds Program (Assistance Listing 84.358A) may be used for activities allowed under other programs, including this program. Expenditures under Assistance Listing 84.424 from funds awarded for the SRSA Alternative Uses of Funds Program should be included in the audit universe and total expenditures of Assistance Listing 84.424 (i.e., from the program from which they originated) for purposes of (1) determining Type A programs, and (2) completing the Schedule of Expenditures of Federal Awards (SEFA).

See Part 4, 84.000 ED Cross-Cutting Section.

B. Allowable Costs/Cost Principles

(All grantees) See Part 4, 84.000 ED Cross-Cutting Section.

C. Cash Management

See Part 4, 84.000 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. LEAs or consortia of LEAs are the eligible subrecipients (section 4106(a)-(b) of the ESEA).

b. LEAs apply to the SEAs for program funds. The amount of each LEA's allocation that an SEA provides is determined by formula in the same proportion as to the LEA's prior year's Title I, Part A allocation (Section 4105(a)(1) of the ESEA). In order to receive an allocation under Title IV, Part A, an LEA must have received a Title I, Part A allocation the previous fiscal year.

c. However for the 2017–2018 school year, SEAs had the option of awarding subgrants on a competitive basis pursuant to authority provided in the 2017 Consolidated Appropriations Act, Pub. L. No. 115-31 available here: https://safesupportivelearning.ed.gov/sites/default/files/ProvisionsConsoli datedAppropriationsAct2017_Title%20IVASSAE.pdf. Such competitive subgrants must be not less than $10,000.

G. Matching, Level of Effort, Earmarking

1. Matching (LEAs)

Not Applicable

2. Level of Effort

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

Not Applicable

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

See Part 4, 84.000 ED Cross-Cutting Section.

3. Earmarking

See Part 4, 84.000 ED Cross-Cutting Section.

H. Period of Performance

(All grantees) See Part 4, 84.000 ED Cross-Cutting Section.

N. Special Tests and Provisions

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

See also Part 4, 84.000 ED Cross-Cutting Section.

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

See Part 4, 84.000 ED Cross-Cutting Section.

IV. OTHER INFORMATION

See Part 4, 84.000 ED Cross-Cutting Section.

DEPARTMENT OF EDUCATION

ASSISTANCE LISTING 84.425 EDUCATION STABILIZATION FUND (ESF)

ESF INTRODUCTION

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020, and provided $30.75 billion for the Education Stabilization Fund (ESF) to prevent, prepare for, and respond to coronavirus, domestically or internationally. The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), was signed into law on December 27, 2020, and provided an additional $81.88 billion for the ESF programs. Finally, the American Rescue Plan Act of 2021 (ARP Act) was enacted on March 11, 2021, and included approximately $165 billion for the ESF.

Although funds from the CARES, CRRSA, and ARP Acts were allocated to the U.S. Department of Education (ED) under a single Federal program (ESF), ED awarded ESF funds to grantees under 23 subprograms (one subprogram, 84.425Q, was awarded only to for-profit institutions and therefore not included in this Compliance Supplement). An alphabetic character at the end of the 84.425 Assistance Listing Number (ALN) was used to delineate the specific subprogram. Each subprogram has its own funding requirements and compliance requirements.

The ESF Compliance Supplement is broken down into two sections. Section 1 of the ESF Compliance Supplement identifies the objectives and compliance requirements of the subprograms generally focused on elementary and secondary education. Section 2 identifies the objectives and compliance requirements of the subprograms focused on higher education.

The table below identifies the subprograms included in each section by name and Assistance Listing Number with alphabetic character identifier. It also identifies the subprograms that are not included in the Compliance Supplement. For those subprograms not addressed in the Compliance Supplement, auditors must refer to Part 7 of the Compliance Supplement, “Guidance for Auditing Programs Not Included in This Compliance Supplement” and, where applicable, Notices Inviting Applications and other award documentation.

ESF Section	Assistance Listing No. with Alpha	Subprogram Name
Section 1		
	84.425A	Education Stabilization Fund–State Educational Agency (Outlying Areas) (ESF-SEA)
	84.425C	Governor’s Emergency Education Relief (GEER) Fund
	84.425D	Elementary and Secondary School Emergency Relief (ESSER) Fund
	84.425H	Education Stabilization Fund – Governors (Outlying Areas) (ESF-Governor)
	84.425R	Coronavirus Response and Relief Supplemental Appropriations Act, 2021 – Emergency Assistance to Non-Public Schools (CRRSA EANS) program

ESF Section	Assistance Listing No. with Alpha	Subprogram Name
	84.425U	American Rescue Plan - Elementary and Secondary School Emergency Relief (ARP ESSER)
	84.425V	American Rescue Plan - Emergency Assistance to Non-Public Schools (ARP EANS) program
	84.425X	American Rescue Plan–State Educational Agency (Outlying Areas) (ARP-OA SEA)
Section 2		
	84.425E	Higher Education Emergency Relief Fund (HEERF) Student Aid
	84.425F	HEERF Institutional Aid
	84.425J	HEERF Historically Black Colleges and Universities (HBCUs)
	84.425K	HEERF Tribally Controlled Colleges and Universities (TCCUs)
	84.425L	HEERF Minority Serving Institutions (MSIs)
	84.425M	HEERF Strengthening Institutions Program (SIP)
	84.425N	HEERF Fund for the Improvement of Postsecondary Education (FIPSE) Formula Grant
	84.425P	Institutional Resilience and Expanded Postsecondary Opportunity (HEERF IREPO)
	84.425S	HEERF Supplemental Assistance to Institutions of Higher Education (SAIHE) program
	84.425T	HEERF Supplemental Support Under American Rescue Plan (SSARP) Program
Neither Section 1 nor Section 2		
	84.425B	Discretionary Grants: Rethink K-12 Education Models Grants
	84.425G	Discretionary Grants: Reimagining Workforce Preparation Grants
	84.425W	American Rescue Plan – Elementary and Secondary School Emergency Relief –Homeless Children and Youth
	84.425Y	American Rescue Plan – American Indian Resilience in Education (AIRE)

OTHER INFORMATION

Major Program Determination

Many auditees will have received and expended funds under multiple ESF subprograms. For major program purposes, auditors must evaluate 84.425 in its entirety. All ESF subprogram expenditures, even those expenditures of subprograms not addressed in this ESF Compliance Supplement, must be considered as part of the ESF program for major program determination purposes.

Identifying Subawards on the SEFA and Data Collection Form

For purposes of SEFA and Data Collection Form (Form SF-SAC) reporting, auditees should identify the individual subprogram(s) the funds were expended under, including each separate Assistance Listing Number (ALN) with the applicable alpha character. A total for the ESF in its entirety should also be provided. Auditees may need to determine which subprogram funds were expended through review of grant documents and inquiry of the source agency.

In order to identify more precisely subprogram expenditures, while also incorporating guidance issued by OMB on separately identifying COVID-19 expenditures, ED issued a memo to grantees on August 4, 2021, requesting that auditees include on the Federal Awards page of the Data Collection Form: (1) whether the program is novel coronavirus 2019 (COVID-19) relief assistance; and (2) the subprogram Assistance Listing Number alpha.

Therefore, to apply this requirement to the ESF subprograms, on the Federal Awards workbook for the submission, under Column D: Additional Award Identification, include the phrase "COVID-19" to be consistent with OMB's guidance in Appendix VII of the Compliance Supplement. Then place a comma (,) after COVID-19 and include the full Assistance Listing number and capitalized alpha character (A, B, C, etc.)

Example: A grantee listing the program "Higher Education Emergency Relief Fund – Student Aid Portion" (ALN 84.425E) on the SEFA would complete the Federal Awards page of the Data Collection Form in the following manner:

A	B	C	D	E
Award Reference (auto generated)	Federal Agency Prefix	ALN Three-Digit Extension	Additional Award Identification	Federal Program Name
1	84	425	COVID-19, 84.425E	COVID 19 Education Stabilization Fund

Note: Please note the inclusion of "COVID-19, 84.425E" in column D for the COVID-19 Higher Education Emergency Relief Fund – Student Aid Portion subprogram.

Consolidation of Administrative Funds (SEAs and LEAs)

State and local administrative funds for ESSER, GEER, and EANS (84.425C, D, R, U, and V) that are consolidated (as described in Part 4 ED Cross-Cutting, III.A.1, "Activities Allowed or Unallowed – Consolidation of Administrative Funds (SEAs and LEAs")) should be included in the audit universe and the total expenditures of the programs from which they originated for purposes of (1) determining Type A programs and (2) completing the Schedule of Expenditures of Federal Awards (SEFA). A footnote showing, by program, amounts of administrative funds consolidated is encouraged.

ESF SECTION 1 – ELEMENTARY AND SECONDARY EDUCATION

ASSISTANCE LISTING 84.425A EDUCATION STABILIZATION FUND – STATE EDUCATIONAL AGENCY (OUTLYING AREAS)

ASSISTANCE LISTING 84.425C GOVERNOR'S EMERGENCY EDUCATION RELIEF FUND

ASSISTANCE LISTING 84.425D ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

ASSISTANCE LISTING 84.425H EDUCATION STABILIZATION FUND – GOVERNORS (OUTLYING AREAS)

ASSISTANCE LISTING 84.425R CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT, 2021 – EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS (CRRSA EANS)

ASSISTANCE LISTING 84.425U AMERICAN RESCUE PLAN – ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF (ARP ESSER)

ASSISTANCE LISTING 84.425V AMERICAN RESCUE PLAN – EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS (ARP EANS)

ASSISTANCE LISTING 84.425X AMERICAN RESCUE PLAN – OUTLYING AREAS STATE EDUCATIONAL AGENCY (ARP-OA-SEA)

I. PROGRAM OBJECTIVES

CARES Act

For each of the subprograms under the CARES Act, a recipient submitted a unique application in the form of a Certification and Agreement for Funding applicable to the program (see "Source of Governing Requirements").

The objective of the GEER Fund (84.425C) is to provide local educational agencies (LEAs), institutions of higher education (IHEs), and other education-related entities with emergency assistance as a result of the Coronavirus Disease 2019 (COVID-19).

The objective of the ESSER Fund (84.425D) is to provide State educational agencies (SEAs) and LEAs, including charter schools that are LEAs, with emergency relief funds to address the impact that COVID-19 has had, and continues to have, on elementary and secondary schools across the nation.

The objective of the ESF-SEA (84.425A) and ESF-Governor Funds (84.425H) is to allocate funds to the Outlying Areas—American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands—for the purpose of providing SEAs and LEAs (ESF-

SEA) and SEAs, LEAs, IHEs, and other education-related entities (ESF-Governor) with emergency assistance to address the impact of COVID-19.

CRRSA Act

For each of the subprograms funded under the CRRSA Act (ESSER II, GEER II, ESF II-SEA and ESF II-Governor), ED made awards as supplements to the CARES Act awards, and recipients were not required to submit another Certification and Agreement.

ED made CRRSA EANS awards to each Governor with an approved Certification and Agreement. CRRSA EANS does not apply to the Outlying Areas.

The objective of the CRRSA EANS (84.425R) subprogram is to provide Governors with a reservation of funds under the CRRSA Act to provide services or assistance to eligible non-public schools to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the state. The SEA administers the CRRSA EANS subprogram on behalf of the Governor.

ARP Act

For each of the programs funded under the ARP Act (ARP ESSER, ARP EANS, and ARP-OA SEA), ED made new awards and included additional terms and conditions for the use of those funds.

The objectives of the ARP ESSER Fund (84.425U) and of the ARP-OA SEA Fund (84.425X) are to provide SEAs and LEAs with emergency relief funds to help schools return safely to in-person instruction, maximize in-person instructional time, sustain the safe operation of schools, and address the academic, social, emotional, and mental health impacts of the COVID-19 pandemic on the Nation's students.

The objective of the ARP EANS (84.425V) program is to provide Governors with additional funds under the ARP Act to provide services or assistance to eligible non-public schools to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the state. Like CRSSA EANS, the SEA administers the ARP EANS program on behalf of the Governor.

Note: For purposes of this Section 1 of the 2023 Compliance Supplement, references to the ESF are to the programs generally focused on elementary and secondary education, which are identified on page 1 of this Section.

Note: For purposes of this document, ESSER refers to ESSER I, ESSER II, and ARP ESSER funds, while ESSER I refers only to funds under the CARES Act; ESSER II refers only to funds under the CRRSA Act; and ARP ESSER refers only to funds under the ARP Act. ESF-SEA refers to ESF I-SEA and ESF II-SEA funds, while ESF I-SEA refers only to funds under the CARES Act; ESF II-SEA refers only to funds under the CRRSA Act; and ARP-OA SEA refers only to funds under the ARP Act. Finally, GEER refers to both GEER I and GEER II funds, while GEER I refers only to funds under the CARES Act and GEER II refers only to funds under the CRRSA Act. Similarly, ESF-Governor refers to both ESF I-Governor and ESF II-Governor funds, while ESF I-Governor refers only to funds under the CARES Act and ESF II-Governor refers only to funds under the CRRSA Act. CRRSA EANS refers to funds under the CRRSA Act and ARP EANS refers to funds under the ARP Act.

II. PROGRAM PROCEDURES

A. GEER Fund

Under the GEER Fund, ED allocated funds to Governors, as well as the mayor of the District of Columbia; 60 percent was based on each State's population of individuals ages 5 through 24 and 40 percent was based on the number of children counted under section 1124(c) (indicators of poverty) of the Elementary and Secondary Education Act of 1965 (ESEA). The Governor or mayor uses GEER funds to: (1) provide emergency support through grants to LEAs that the SEA deems to have been most significantly impacted by COVID-19; (2) provide emergency support through grants to IHEs serving students within the State that the Governor determines have been most significantly impacted by COVID-19; and (3) provide support to any other IHE, LEA, or education-related entity within the State that the Governor or mayor deems essential for carrying out emergency educational services. In order to receive GEER funds under the CARES Act, a Governor submitted to ED a completed "Certification and Agreement." The CRRSA Act authorized additional funding for the GEER Fund, which ED distributed as supplemental awards (GEER II). GEER I and GEER II are subject to all of the same requirements (with the exception of equitable services for LEAs under GEER II).

B. CRRSA EANS and ARP EANS

Under the CRRSA EANS program, ED awarded grants by formula to each Governor (or the mayor of the District of Columbia) with an approved "Certification and Agreement" to provide services or assistance to eligible non-public schools (for purposes of the CRRSA EANS program, an eligible non-public school is an elementary or secondary school that— is non-profit; is accredited, licensed, or otherwise operates in accordance with State law; was in existence prior to March 13, 2020, the date COVID-19 was declared a national emergency; and did not, and will not, apply for and receive a loan under the Small Business Administration's Paycheck Protection Program (PPP) (15 USC 636(a)(37)) that is made on or after December 27, 2020. This limitation applies for as long as the non-public school is a participant in the CRRSA EANS program.) to address the impact that COVID-19 has had, and continues to have, on non-public school students and teachers in the State.

Under the ARP EANS program, ED awarded grants by formula to each Governor (or the mayor of the District of Columbia) with an approved application to provide services or assistance to eligible non-public schools. The same eligibility requirements for non-public schools apply under the ARP EANS program as did under the CRRSA EANS program with one exception. Under the ARP EANS program, an SEA may provide services or assistance only to non-public schools that (1) enroll a significant percentage of students from low-income families and (2) are most impacted by COVID-19. The

Notice of Final Requirements established 40 percent as the poverty threshold, but gave States the option of proposing an alternate significant poverty percentage. Each State was required to identify in its application the threshold to be used in determining if a non-public school enrolls a significant percentage of students from low-income families and the factor or factors to be used in determined which non-public schools are most impacted by COVID-19. States' approved applications may be found here: https://oese.ed.gov/arp-eans-awards/.

A non-public school that participates in the CRRSA EANS or ARP EANS program is not a recipient of Federal financial assistance, and therefore is not subject to requirements that apply to subrecipients (e.g., single audit requirements, SEFA reporting).

C. ESSER Fund

Under ESSER I, ED allocated funds to each SEA by a formula based on the State's fiscal year (FY) 2019 share of funds under Title I, Part A (84.010) of the ESEA. An SEA, in turn, allocated ESSER I funds to LEAs by formula based on FY 2019 Title I, Part A allocations. In order to receive an ESSER I allocation under the CARES Act, an SEA submitted to the Department a completed "Certification and Agreement."

The CRSSA Act provided an additional $54.3 billion for the ESSER Fund, which ED distributed as supplemental awards (ESSER II). These ESSER II awards to SEAs are in the same proportion as each State received funds under Title I, Part A of the ESEA for FY 2020. The SEA, in turn, allocated ESSER II funds to LEAs by formula based on FY 2020 Title I, Part A allocations.

ESSER I and ESSER II have the same Assistance Listing alpha number and are subject to virtually all of the same requirements, except for one main difference: an LEA that receives ESSER I funds under the CARES Act (Section 18005) must provide equitable services to students and teachers in the same manner as provided under section 1117 of Title I, Part A of the ESEA. ESSER II is not subject to the equitable services requirement; rather the CRRSA Act included $2.75 billion for the separate CRRSA EANS program.

The ARP Act provided $122 billion for the ESSER Fund, providing funds to SEAs and LEAs to meet the urgent needs of schools and students. On March 17, 2021, the Department awarded each State the first two-thirds of its ARP ESSER allocation. On April 21, 2021, ED released a State Plan template for the ARP ESSER Fund, which is designed to promote comprehensive planning by SEAs and LEAs. Once ED approved a SEA's plan, it made the SEA's remaining ARP ESSER allocation available to the SEA.

ARP ESSER allocations were based on the proportion that each State received under Title I, Part A of the ESEA for FY 2020. While ARP ESSER has a different alpha character (84.425U), it is subject to most of the same requirements as ESSER II except for the following: an SEA must reserve certain amounts of its ARP ESSER State-level funds for specific purposes, and an LEA that receives ARP ESSER funds must submit to the SEA an ARP LEA plan for the use of funds, must engage in meaningful stakeholder consultation when developing its ARP LEA plan, must submit and make publicly available a plan for the safe return to in-person instruction and continuity of services, and must reserve at least 20 percent of its ARP ESSER award to address learning loss.

D. ESF-SEA and ESF-Governor (Outlying Areas)

Under the ESF-SEA Fund, ED allocated funds to SEAs in the Outlying Areas based on the same proportion that each Outlying Area received under Title I, Part A of the ESEA in the most recent fiscal year. By statute, ED used this same formula to make allocations to States under the ESSER Fund. In order to receive ESF I-SEA funds, an SEA submitted to ED a completed "Certification and Agreement." The ESF II-SEA funds were awarded to each Outlying Area under the same grant terms and conditions that applied to the ESF I-SEA funds.

Under the ESF-Governor Fund, ED allocated funds to Governors in the Outlying Areas, with 60 percent of the award based on population ages 5 to 24 and 40 percent of the award based on the relative number of children counted under section 1124(c) (indicators of poverty) of the ESEA. By statute, ED used this same formula to make allocations to Governors under the GEER Fund. In order to receive ESF I-Governor funds, Governors submitted to ED a completed "Certification and Agreement." The ESF II-Governor funds were awarded to each Outlying Area under the same grant terms and conditions that applied to the ESF I -Governor funds.

Under ARP-OA SEA, ED allocated funds to the SEAs in the Outlying Areas based on the same proportion as each Outlying Area received under Title I, Part A of the ESEA for FY 2020. ARP-OA SEA grant terms and conditions were attached to each SEA's grant award notification. Each SEA received its full ARP-OA SEA allocation within 30 days of enactment of the ARP Act.

Source of Governing Requirements

These programs are authorized, as applicable, by the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), the CRRSA Act, Pub. L. No. 116-260 (December 27, 2020), and the ARP Act, Pub. L. No. 117-2 (March 11, 2021). The regulations in 34 CFR Part 76 (State-Administered Programs), 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), and 31 CFR Part 205 (Cash Management Improvement Act) apply to these programs.

On April 22, 2021, ED established requirements for the ARP ESSER Fund under section 2001 of the ARP Act. The requirements cover meaningful stakeholder consultation, LEA ARP ESSER plan requirements, and LEA plans for the safe return to in-person instruction and continuity of services, https://www.federalregister.gov/documents/2021/04/22/2021-08359/american-rescue-plan-act-elementary-and-secondary-school-emergency-relief-fund.

Additionally, on July 13, 2021, ED established final requirements for the ARP EANS program. The requirements clarified the statutory requirements applicable to the ARP EANS program, including the requirement to provide services or assistance to non-public schools that enroll a significant percentage of students from low-income families and are most impacted by COVID-19 (see https://www.govinfo.gov/content/pkg/FR-2021-07-13/pdf/2021-14862.pdf).

Finally, the application each SEA or Governor completed and signed prior to receiving a grant award also form the basis of the governing requirements for those programs for which ED required Certification and Agreements or applications:

1. Certification and Agreement for Funding under the Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund (ESSER I Fund) https://oese.ed.gov/files/2020/04/ESSERF-Certification-and-Agreement-2.pdf

2. Certification and Agreement for Funding under the Education Stabilization Fund Program Governor's Emergency Education Relief Fund (GEER I Fund) https://oese.ed.gov/files/2020/04/GEER-Certification-and-Agreement.pdf

3. Certification and Agreement for Funding under the CRRSA Act Emergency Assistance to Non-Public Schools program (CRRSA EANS) https://oese.ed.gov/files/2021/01/Final_EANS_CertificationandAgreement_FY21_1.11.21.pdf

4. Certification and Agreement for Funding under the Education Stabilization Fund-State Educational Agency Fund (ESF-SEA) https://oese.ed.gov/files/2020/05/SEA-ESF-OA-Certification-and-Agreement.pdf

5. Certification and Agreement for Funding under the Education Stabilization Fund-Governors Fund (ESF-Governor Fund) https://oese.ed.gov/files/2020/05/Governors-ESF-OA-Certification-and-Agreement.pdf

6. Application for Funding, Emergency Assistance to Non-Public Schools (EANS) program under the American Rescue Plan Act of 2021 (ARP Act) https://oese.ed.gov/files/2021/07/ARP-EANS-Application-7.7.21_FINAL.pdf

7. Approved State Applications for the Emergency Assistance to Non-Public Schools (EANS) program under the American Rescue Plan Act of 2021 (ARP Act) https://oese.ed.gov/arp-eans-awards/

8. State Plans for the American Rescue Plan Elementary and Secondary School Emergency Relief funds, https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/stateplans/

Availability of Other Program Information

A number of documents posted on ED's website provide clarity regarding the GEER Fund, ESSER Fund, EANS program, ESF-SEA Fund, and ESF-Governor Fund requirements in this Compliance Supplement.

ESF

1. Education Stabilization Fund Website https://oese.ed.gov/offices/education-stabilization-fund/

2. American Rescue Plan Website https://oese.ed.gov/offices/american-rescue-plan/

3. Frequently Asked Questions on the Maintenance of Effort Requirements Applicable to the CARES Act Programs – May 2020 https://oese.ed.gov/files/2020/06/CARES-Act-Programs-Maintenance-of-Effort-FAQ.pdf

4. Guidance on Maintenance of Effort Requirements and Waiver Requests under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor's Emergency Education Relief (GEER) Fund – 8.15.22-Update_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf

5. Frequently Asked Questions - Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs Use of Funds: ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update.pdf (ed.gov)

GEER Fund

1. Frequently Asked Questions about the Governor's Emergency Education Relief Fund (GEER Fund) https://oese.ed.gov/files/2020/05/FAQs-GEER-Fund.pdf) Website: https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/

2. Fact Sheet for GEER II https://oese.ed.gov/files/2021/01/FINAL_-GEER_FactSheet_1.8.21.pdf

3. Communication to Grantees on Activities Continuing Beyond the Obligation and Liquidation Periods: TA-on-activities-continuing-beyond-E3d.pdf (ed.gov)

EANS Program

1. Frequently Asked Questions, Emergency Assistance to Non-Public Schools (EANS) Program as authorized by the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) and the American Rescue Plan Act of 2021 (ARP Act) https://oese.ed.gov/files/2021/09/Final-EANS-FAQ-Update-9.17.21.pdf

2. ARP EANS Final Requirements https://www.federalregister.gov/documents/2021/07/13/2021-14862/american-rescue-plan-act-emergency-assistance-to-non-public-schools-program

3. Disposition of Equipment and Supplies, an Addendum to Frequently Asked Questions, Emergency Assistance to Non-Public School (EANS) Program https://oese.ed.gov/files/2023/01/EANS-Disposition-FAQs-Addendum-FINAL-1.23.23.pdf

4. Communication to Grantees on EANS Services and Assistance After the Period of Performance Ends, EANS-Services-and-Assistance-After-End-of-Period-of-Performance.pdf (ed.gov) and TA-on-activities-continuing-beyond-E3d.pdf (ed.gov)

ESSER Fund

1. Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf

2. Fact Sheet for ESSER II https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf

3. Fact Sheet for ARP ESSER https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf

4. Assurances for American Rescue Plan – Elementary and Secondary School Emergency
Relief (ARP ESSER) Grant Award https://oese.ed.gov/files/2021/03/ARP-ESSER-Grant-Award-Assurances_FINAL2.pdf

5. ARP ESSER Methodology and Allocation Table – March 17, 2021 https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-Methodology-and-Table.pdf

6. ARP ESSER Methodology and Allocation Table Revised – June 25, 2021 https://oese.ed.gov/files/2021/06/Revised-ARP-ESSER-Methodology-and-Allocation-Table_6.25.21_FINAL.pdf

7. Frequently Asked Questions – American Rescue Plan Elementary and Secondary School Emergency Relief (ESSER) Program – Maintenance of Equity (MOEquity) Requirements –2023-01-23-Update_22-0471-moequity-FAQs_Final-Version.pdf (ed.gov)

8. A Resources page, which includes links to Frequently Asked Questions documents as well as to materials used during technical assistance meetings or Office Hours https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/resources/

9. Communication to Grantees on Activities Continuing Beyond the Obligation and Liquidation Periods: TA-on-activities-continuing-beyond-E3d.pdf (ed.gov)

ESF-SEA, ESF-Governor, and ARP OA-SEA

1. Website: https://oese.ed.gov/offices/education-stabilization-fund/outlying-areas/

2. Frequently Asked Questions – Education Stabilization Fund-State Educational Agency (ESF-SEA) https://oese.ed.gov/files/2020/09/ESF-SEA-Final-FAQs.pdf

3. Frequently Asked Questions – Education Stabilization Fund-Governors (ESF-Governor) https://oese.ed.gov/files/2020/09/ESF-Governor-Final-FAQs.pdf

4. Frequently Asked Questions – Outlying Areas Education Stabilization Fund and American Rescue Plan Programs for State Educational Agencies & Outlying Areas Education Stabilization Fund Governors Program https://oese.ed.gov/files/2021/11/ARP-OA-SEA-FAQs-FINAL.pdf

5. Fact Sheet – American Rescue Plan Outlying Areas State Educational Agencies Fund (ARP-OA SEA) https://oese.ed.gov/files/2021/11/ARP-OA-SEA-Fact-Sheet-FINAL.pdf

6. State Educational Agency Plan for the American Rescue Plan Outlying Areas State Educational Agencies Fund https://oese.ed.gov/files/2021/06/ARP-OA-SEA-Implementation-Plan-Template_Final.pdf

7. ARP OA-SEA Allocation Table https://oese.ed.gov/files/2021/04/ARP-OAs-Methodology-and-Table.docx

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the Federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status Discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	N	Y	Y	Y

A. Activities Allowed or Unallowed

See Part 4, 84.000 ED Cross-Cutting Section for requirements applicable to Consolidation of Administrative Funds for ESSER, GEER, EANS, and the ESF Outlying Areas program (84.425A, C, D, H R, U, V, and X) and for requirements applicable to Schoolwide Programs for ESSER & GEER (84.425C, D, and U).

Governors and SEAs must demonstrate that costs incurred by Governors, SEAs, and subrecipients are allowable under the relevant statutory and regulatory provisions, assurances, and Certification and Agreement, and consistent with the purpose of the ESF, which is "to prevent, prepare for, and respond to COVID-19." The Outlying Areas must ensure that expenditures under ESF-SEA and ESF-Governor are consistent with the allowable uses of funds set forth in the signed Certification and Agreement and that expenditures under ARP-OA-SEA are consistent with the grant conditions and assurances attached to the ARP-OA SEA Grant Award Notification (GAN).

1. *Activities Allowed*

   a. *GEER Funds* - Under section 18002(c) of the CARES Act and Section 312 of the CRRSA Act, GEER I and GEER II funds may be used to:

      (1) Provide emergency support through grants to LEAs that the SEA deems have been most significantly impacted by coronavirus to support the ability of such LEAs to continue to provide educational services to their students and to support the on-going functionality of the LEA;

      (2) Provide emergency support through grants to IHEs serving students within the State that the Governor determines have been most significantly impacted by coronavirus to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution; and

(3) Provide support to any other institution of higher education, LEA, or education-related entity within the State that the Governor deems essential for carrying out emergency educational services to students for authorized activities described in section 18003(d)(1) of the CARES Act or the HEA, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.

b. *ESF-Governor Funds*- Governors in the Outlying Areas may use ESF-Governor funds to:

(1) Provide emergency support through grants to SEAs and, where applicable, to LEAs to address impacts of the coronavirus in elementary and secondary schools and to support the ability of these agencies to continue to provide educational services to their students and to support the ongoing functionality of the SEA and, where applicable, LEAs (note that SEAs may also subgrant funds received to LEAs);

(2) Provide emergency support through grants to IHEs to address the impacts of the coronavirus on IHEs and to support the ability of such institutions to continue to provide educational services and support the ongoing functionality of the institutions; and

(3) Provide support to any IHE, LEA, or education-related entity within the Outlying Area that the Governor deems essential for carrying out emergency educational services to students, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.

Governors may also use a reasonable and necessary amount of the ESF-Governor funds for administrative costs related to the allocation and management of the funds. Entities that receive ESF-Governor funds may also use a reasonable and necessary amount of the funds for administrative costs related to the management of the funds.

c. *CRRSA EANS and ARP EANS Funds*- The CRRSA Act, Pub. L. No. 116-260 (December 27, 2020) authorizes the CRRSA EANS program. A non-public school may apply to receive services and assistance from the SEA to address educational disruptions resulting from COVID-19 for:

(1) Supplies to sanitize, disinfect, and clean school facilities;

(2) Personal protective equipment (PPE);

(3) Improving ventilation systems, including windows or portable air purification systems;

(4) Training and professional development for staff on sanitization, the use of PPE, and minimizing the spread of infectious diseases;

(5) Physical barriers to facilitate social distancing;

(6) Other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control for reopening and operation of school facilities to effectively maintain health and safety of students, educators, and other staff;

(7) Expanding capacity to administer coronavirus testing to effectively monitor and suppress the virus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff;

(8) Educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;

(9) Redeveloping instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss;

(10) Leasing sites or spaces to ensure safe social distancing;

(11) Reasonable transportation costs;

(12) Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss; or

(13) Reimbursement for the expenses of any services or assistance described above that a non-public school incurred on or after March 13, 2020, except for the following:

- Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.

- Any expenses reimbursed through a loan guaranteed under the Paycheck Protection Program (15 USC 636(a)) prior to December 27, 2020.

- Staff training and professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.

- Developing instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.

- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss.

An SEA may provide these services or assistance directly to a nonpublic school or through a contract with an individual, association, agency, or organization.

Control of funds for services or assistance provided to a non-public school under the CRRSA EANS program and title to materials, equipment, and property purchased with CRRSA EANS funds, must be in a public agency, and a public agency must administer such funds, services, assistance, materials, equipment, and property. In addition, all services or assistance provided under the CRRSA EANS program must be secular, neutral, and non-ideological.

The above requirements also apply to the ARP EANS program except that under section 2002(b) of the ARP Act an SEA may not use ARP EANS funds to provide reimbursements to a non-public school for costs the school incurred to address the impact of COVID-19.

Note: For comprehensive information about allowable uses of funds under the EANS program, please see Frequently Asked Questions Emergency Assistance to Non-Public Schools Program available at Final-EANS-FAQ-Update-9.17.21.pdf (ed.gov). Please also see additional guidance about permitting under very limited circumstances services to extend for a reasonable period beyond the end of the obligation and liquidation period (https://oese.ed.gov/files/2023/06/TA-on-activities-continuing-beyond-E3d.pdf).

d. *ESSER Funds*

LEAs may use ESSER funds for a wide range of activities to address needs arising from the coronavirus pandemic. Section 18003(d) of the CARES Act provides a list of allowable LEA ESSER I activities. Section 313(3) of the CRRSA Act includes “additional” LEA allowable uses of funds under ESSER II, in particular addressing learning loss; preparing schools for reopening; and testing, repairing, and upgrading projects to improve air quality in school buildings; however, all of these uses already are permitted under the CARES Act even though not explicitly listed. Section 2001(e) of the ARP Act further expands LEA allowable uses of funds under ARP ESSER to include providing mental health supports, including through the implementation of evidence-based full-service community schools; and developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention (CDC) on reopening and operating schools to effectively maintain the health and safety of students, educators, and other staff. ED has clarified that SEAs, LEAs and schools may use funding under ESSER I, ESSER II, and ARP ESSER to support a very wide range of activities, including activities indirectly linked to the impact of COVID-19, as outlined in the ED Volume 2 COVID Handbook, available at https://www2.ed.gov/documents/coronavirus/reopening-2.pdf, provided such uses are consistent with statutory requirements and the Uniform Guidance in 2 CFR Part 200.

LEAs may use ESSER funds to support:

(1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 USC 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) ("the Perkins Act"), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.).

(2) Coordination of preparedness and response efforts of LEAs with State, local, tribal, and territorial public health departments, and other relevant agencies to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

(3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

(4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

(5) Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.

(6) Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.

(7) Purchasing supplies to sanitize and clean the facilities of an LEA, including buildings operated by such agency.

(8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the IDEA (20 USC 1401 et seq.), and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

(9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

(10) Providing mental health services and supports.

(11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

- Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction.

- Implementing evidence-based activities to meet the comprehensive needs of students.

- Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.

- Tracking student attendance and improving student engagement in distance education.

(13) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

(14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

(15) Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.

(16) Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.

Note: For comprehensive information about allowable uses of funds under ESSER and GEER, please see Frequently Asked Questions Elementary and Secondary School Emergency Relief (ESSER) Programs Governor's Emergency Education Relief (GEER) available at ESSER-and-GEER-Use-of-Funds-FAQs-December-7-2022-Update.pdf (ed.gov), including E-3.d permitting under very limited circumstances services to extend for a reasonable period beyond the end of the obligation and liquidation period. Additional guidance on this topic may be found at https://oese.ed.gov/files/2023/06/TA-on-activities-continuing-beyond-E3d.pdf.

Note: An LEA that receives ESSER I funds under the CARES Act (Section 18005) must provide equitable services to students and teachers in the same manner as provided under section 1117 of Title I, Part A of the ESEA. ESSER II and ARP ESSER are not subject to the equitable services requirement; rather the CRRSA Act and ARP Act include the separate EANS programs to address the needs of non-public school students and teachers. For more information about the major similarities and differences between ESSER I and ESSER II, see the Fact Sheet for ESSER II, available at https://oese.ed.gov/files/2021/01/Final_ESSERII_Factsheet_1.5.21.pdf and differences among ESSER I, ESSERII and ARP ESSER available at: https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf.

e. *ESF-SEA Funds*

The Outlying Areas may use ESF-SEA funds for any of the following activities listed in section 18003(d) of the CARES Act:

(1) Any activity authorized by the Elementary and Secondary Education Act of 1965 (ESEA), including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.) (IDEA), the Adult Education and Family Literacy Act (20 USC 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.) (the Perkins Act), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento) (42 USC 11431 et seq.).

(2) Coordination of preparedness and response efforts of LEAs with State, local, tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

(3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

(4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

(5) Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.

(6) Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.

(7) Purchasing supplies to sanitize and clean the facilities of a LEA, including buildings operated by such agency.

(8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under IDEA (20 USC 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

(9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

(10) Providing mental health services and supports.

(11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.

f. *ARP-OA SEA Funds*

The Outlying Areas may use ARP-OA SEA funds for any of the following activities listed in section 2001(e) and (f) of the ARP Act:

(1) Evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the ESEA (20 USC 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care.

(2) Any activity authorized by the ESEA.

(3) Any activity authorized by the IDEA.

(4) Any activity authorized by the Adult Education and Family Literacy Act (AEFLA).

(5) Any activity authorized by the Perkins Act.

(6) Coordination of preparedness and response efforts of LEAs with State, local, tribal, and territorial public health departments, and

other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

(7) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

(8) Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.

(9) Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.

(10) Purchasing supplies to sanitize and clean the facilities of an LEA, including buildings operated by such agency.

(11) Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements.

(12) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment.

(13) Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.

(14) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(15) Addressing the academic impact of lost instructional time among students, including low-income students, children with disabilities,

English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the LEA, including by—

- Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;
- Implementing evidence-based activities to meet the comprehensive needs of students;
- Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and
- Tracking student attendance and improving student engagement in distance education.

(16) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

(17) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

(18) Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.

(19) Other activities that are necessary to maintain the operation of and continuity of services in LEAs and continuing to employ existing staff of the LEA.

(20) A reasonable and necessary amount for administrative costs and emergency needs, as determined by the SEA, to address issues responding to coronavirus.

B. Allowable Costs/Cost Principles

See Part 4, 84.000 ED Cross-Cutting Section for requirements applicable to Documentation of Employee Time and Effort for ESSER, GEER, and EANS (84.425C, D, R, U, and V).

1. For ESSER I, ESSER II, ARP ESSER, ESF I-SEA, ESF II-SEA, and ARP OA-SEA Funds, auditors should refer to the Cost Principles for States, Local Governments, and Indian Tribes.

2. For GEER I, GEER II, ESF I-Governor, and ESF II-Governor Funds, a Governor (or the mayor of the District of Columbia) has broad discretion for awarding funds under these subprograms to States, local governments and Indian tribes, educational institutions, or nonprofit organizations. In order to determine which requirements, apply, auditors should examine how each respective Governor allocated the funds to subrecipients to determine which cost principles apply for each subrecipient.

3. The requirements in the Uniform Guidance apply to expenditures of ESSER, ESF-SEA, and ARP-OA SEA funds, including the requirements related to documenting personnel expenses in 2 CFR section 200.430(i). This would mean, for example, that an LEA maintains the records it generally maintains for salaries and wages, including for employees in leave status as permitted under CARES Act Section 18003(d)(12), except that an LEA must maintain time distribution records (sometimes called "time and effort" reporting) if an individual employee is splitting their time between activities that may be funded under ESSER or GEER and activities that are not allowable under ESSER or GEER. However, there are very few situations when an employee of an LEA would perform multiple activities that are not allowable under ESSER or GEER, and thus would be required to maintain time distribution records, given that an LEA is authorized to use funds on "activities that are necessary to maintain the operation of and continuity of services in [an LEA] and continuing to employ existing staff of the [LEA]" in order to "prevent, prepare for, and respond to" the COVID-19 pandemic (Section 18003(d)(12)).

CARES Act Section 18003(d)(12) and CRRSA Act Section 315 authorize grantees to continue to pay employees and Section 18002(c)(3) of the CARES Act allows LEAs, SEAs, IHEs, and other subrecipients to use funds to protect education-related jobs; the authority includes paying staff who are on leave because schools are closed due to COVID-19. Accordingly, ESSER and GEER funds may be used for that purpose even in the absence of a policy that specifically addresses these circumstances.

F. Equipment/Real Property Management

Consistent with 2 CFR section 200.311 (real property), section 200.313 (equipment), and section 200.439 (equipment and other capital expenditures), ESF (with the exception of CRRSA EANS: 84.425R & ARP EANS: 84.425V) funds may be used for these purposes. Specifically, recipients and subrecipients may use ESF funds to purchase equipment. Capital expenditures for general and special purpose equipment purchases are subject to prior approval by ED or the pass-through entity. In addition, with prior approval by the ED or the pass-through entity, recipients and subrecipients may also use ESF funds to purchase real property, perform construction or minor remodeling, and for improvements to land, buildings, or equipment that meet the overall purpose of the ESF program, which is "to prevent, prepare for, and respond to" the COVID-19 pandemic.

If Governors (or the Mayor of the District of Columbia), SEAs, and subrecipients propose to use ESF funds for construction, they must comply with any applicable requirements in 34 CFR section 76.600 and 34 CFR sections 75.600–75.617. Approved construction projects must also comply with all applicable Uniform Guidance requirements, as well as ED's regulations regarding construction, that may be applicable, at 34 CFR section 76.600.

Please note that recipients and subrecipients may use ESF funds for minor remodeling without triggering the Department's construction regulations in 34 CFR section 76.600 and 34 CFR sections 75.600–75.617. Minor remodeling means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs. See 34 CFR Part 77.1(b). For more information on requirements and flexibilities with regard to utilizing ESF funds for construction please see: https://oese.ed.gov/files/2021/06/HVAC_Use-of-funds-F06-17-2021.pdf and https://oese.ed.gov/files/2021/06/ARP-ESSER-Plan-Office-Hours-6.3.21.pdf.

Any purchases with ESF funds in this category are subject to applicable inventory control, log maintenance, and disposition requirements consistent with Part 3, Section F, "Equipment/Real Property Management" of the Compliance Supplement.

Governors, SEAs, and subrecipients must receive prior approval for capital expenditures for equipment acquisition or improvements to land, buildings, or equipment.

1. For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the Governor (or mayor of the District of Columbia) or SEA must receive prior approval from ED.

2. For capital equipment or improvements to land, buildings, or equipment that were purchased with grant funds, the Governor or SEA, as the pass-through entity, must provide prior approval to subrecipients.

3. For construction, the pass-through entity must have considered applicable ED construction requirements as part of the pass-through entity's prior approval process for construction. For example, if an LEA proposed renovating a school building to increase the filters or ventilation to its HVAC system, the pass-through entity must ensure compliance with applicable construction regulations (such as 34 CFR 75.609 (Safety and Health standards) and 75.616 (Energy Conservation)).

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort (SEA/Governor)

State Maintenance of Effort (MOE) – SEA and Governor
ESSER II, GEER II, EANS, and ARP ESSER

Under section 317 of the CRRSA Act, for FY 2022, a State that receives ESSER II, GEER II, or EANS funds under the CRRSA Act must:

a. Maintain State support for elementary and secondary education in FY 2022 at least at the proportional level of the State's support for elementary and secondary education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019; and

b. Maintain State support for higher education in FY 2022 at least at the proportional level of the State's support for higher education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019.

Under section 2004(a) of the ARP Act, a State that receives ARP ESSER funds must meet the above MOE requirement in *each* of FYs 2022 and 2023.

The CRRSA and ARP Acts have two MOE baselines:

a. Elementary and secondary education baseline, which averages the percentages of total State spending that are used to support elementary and secondary education over the three baseline years (FYs 2017, 2018, and 2019).

b. Higher education baseline, which averages the percentages of total State spending that are used to support higher education over the three baseline years (FYs 2017, 2018, and 2019).

Under the CRRSA Act: A State demonstrates MOE for FY 2022 by:

a. Comparing the percentage of total State spending used to support elementary and secondary education in FY 2022 to the baseline percentage; and

b. Comparing the percentage of total State spending used to support higher education in FY 2022 to the baseline percentage.

Under the ARP Act: A State demonstrates the above comparisons for both FY 2022 and FY 2023 relative to the baseline percentages.

When comparing the FY 2022 or FY 2023 percentages to the baseline percentage, the State, at its discretion, may round the difference to the nearest whole number using standard rounding procedures. See page 5 in August 2022 updated MOE FAQs.

A State may also include Coronavirus Relief Funds (CRF) awarded under the CARES Act and Coronavirus State and Local Fiscal Recovery Funds (SLFRF) awarded under the ARP Act by the Department of the Treasury that are spent on elementary and secondary education or higher education as State support for education when determining maintenance of effort under section 18008 of the CARES Act, section 317 of the CRRSA Act, and section 2004(a) of the ARP Act. See updated Question 3(a) in August 2022 updated MOE FAQs.

Auditors should separately corroborate the amounts reported for State support for elementary and secondary education for FY 2022 and FY 2023 with data representing either actual State expenditure data or data representing final appropriated or allocated amounts. A State may rely on either set of data to meet this requirement. Similarly, auditors should corroborate the amounts reported for state support for higher education for FY 2022 and separately for FY2023 with data representing either actual State expenditure data or data representing final appropriated or allocated amounts. A State must use data on actual State expenditures to demonstrate overall spending, consistent with the statutory reference to "overall State spending."

- For more information on how each State complies with the MOE requirements, including which funding sources a State must exclude when determining whether it has maintained effort, see Guidance on Maintenance of Effort Requirements and Waiver Requests under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor's Emergency Education Relief (GEER) Fund 8.15.22-Update_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf).

3. Earmarking - SEA

ESSER

An SEA must allocate at least 90 percent of ESSER funds to LEAs using the statutorily prescribed formula. Under ESSER I and ESSER II, an SEA may, but is not required to, reserve up to 10 percent of its funds for emergency needs as determined by the SEA.

ARP ESSER

For ARP ESSER, under section 2001(f) of the ARP Act, each SEA must reserve: (1) at least 5 percent of ARP ESSER funds for evidence-based interventions that address the academic impact of lost instructional time (i.e., learning loss); (2) at least 1 percent of ARP ESSER funds for evidence-based summer enrichment programs; and (3) at least 1 percent of ARP ESSER funds for evidence-based comprehensive afterschool programs. The interventions that are implemented with the reserved funds must respond to students' social, emotional, mental health, and academic needs and address the disproportionate impact of COVID-19 on students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children and youth in foster care, and migratory students and consistent with States' approved ARP ESSER State plans.

The remainder, if any, of ARP ESSER funds not allocated to LEAs or reserved for mandatory set-asides or administrative costs (up to 3 percent, depending on the amount otherwise reserved) may be used for emergency needs as determined by the SEA to address issues responding to COVID-19.

Allowances for Administrative Costs:

- Under section 18001(e) of the CARES Act and section 313(e) of the CRRSA Act, an SEA may reserve up to half of one percent of its total ESSER I and ESSER II allocations for administrative costs, including both direct and indirect administrative costs. This reservation must come from the portion of funds that the SEA reserves and not the funds that must be allocated to LEAs.

  Under section 2001(f)(4) of the ARP Act, an SEA may reserve not more than half of one percent of the State's total ARP ESSER award may be reserved for administrative costs, including both direct and indirect administrative costs. This reservation must come from the portion of funds that the SEA reserves for emergency needs and not the funds that must be allocated to LEAs or that must be reserved for specific purposes (i.e., learning loss, summer learning, and afterschool programming).

- Under section 312(d)(5) of the CRRSA Act, an SEA may reserve up to half of 1 percent of its total allocation or up to $200,000, whichever is greater, to administer the EANS program. This allowance applies to both the CRRSA EANS and ARP EANS programs.

- Under the GEER Fund, a Governor may charge as an expense to the GEER fund an amount that is reasonable and necessary to effectively administer the program consistent with cost principles in the Uniform Guidance.

ARP-OA SEA

Outlying Area SEAs must reserve (1) not less than 20 percent of their ARP-OA SEA allocation to carry out, directly or through subgrants or contracts, activities to address the academic impact of lost instructional time by supporting the implementation of evidence-based interventions; (2) a portion of their ARP-OA SEA allocation to carry out, directly or through subgrants to LEAs or through contracts, the implementation of evidence-based summer enrichment programs; and (3) a portion of their ARP-OA SEA allocation to carry out, directly or through subgrants to LEAs or through contracts, the implementation of evidence-based comprehensive afterschool programs.

L. Reporting

1. Financial Reporting

Not Applicable

2. Performance Reporting

Not Applicable

3. Special Reporting

Annual Reporting – *(SEA/Governor, LEA/subrecipient)*

ESSER, GEER, and EANS grantees must submit an annual performance report with data on expenditures, planned expenditures, subrecipients, and uses of funds, including for mandatory reservations. LEAs/subrecipients submit data to the SEA/Governor for the SEA's/Governor's report.

a. Report Title: *ESF – ESSER Recipient Data Collection Form*
OMB PRA Number: *OMB No. 1810-0749*
Report Authority: 20 U.S.C. 1221e-3, 1231a, and 3474)
[72 FR 3702, Jan. 25, 2007, as amended at 79 FR 76094, Dec. 19, 2014] and § 76.720 State and Outlying Areas reporting requirements
Reporting period: *Report submitted annually in the spring, based on State fiscal years. Timetables for reporting can be found at https://covid-relief-data.ed.gov/grantee-help, but timeliness is not subject to audit.*
Link to report and report instructions: https://covid-relief-data.ed.gov/grantee-help

Key Line Items - The following line items contain critical information:

1. Line 3.b1 LEA expenditures by ESSER Subgrant fund, expenditure category, and object code
2. Line 3.b10 Number of specific positions supported with ESSER Funds

3. Line 3.c Allocation of ESSER funds to schools and criteria used to allocate funds to schools
4. Line 5.a Full Time Equivalent positions

b. Report Title: *ESF – GEER Recipient Data Collection Form*
OMB PRA Number: *OMB No. 1810-0748*
Report Authority:20 U.S.C. 1221e-3, 1231a, and 3474)
[72 FR 3702, Jan. 25, 2007, as amended at 79 FR 76094, Dec. 19, 2014] and § 76.720 State and Outlying Areas reporting requirements
Reporting period: *Report submitted annually in the spring, based on State fiscal years. Timetables for reporting can be found at https://covid-relief-data.ed.gov/grantee-help, but timeliness is not subject to audit.*
Link to report and report instructions: [*https://covid-relief-data.ed.gov/grantee-help*](https://covid-relief-data.ed.gov/grantee-help)

Key Line Items - The following line items contain critical information: Lines 2.c and 2.d Reporting on administrative and non-administrative expenditures by Governors

1. Line 9.a Reporting on LEA expenditures by GEER Subgrant fund and expenditure category
2. Lines 10.a and 11.a Reporting on IHE expenditures by GEER Subgrant fund and expenditure category
3. Lines 12.a and 13.a Reporting on Other education-related entity expenditures by GEER Subgrant fund and expenditure category

c. Report Title: *ESF – EANS Recipient Annual Reporting Data Collection Form*
OMB PRA Number: *OMB No. 1810-0765*
Report Authority: 20 U.S.C. 1221e-3, 1231a, and 3474)
[72 FR 3702, Jan. 25, 2007, as amended at 79 FR 76094, Dec. 19, 2014] and § 76.720 State and Outlying Areas reporting requirements. Reporting period: *Report submitted annually in the spring, based on State fiscal years. Timetables for reporting can be found at https://covid-relief-data.ed.gov/grantee-help, but timeliness is not subject to audit.*
Link to report and report instructions: [*https://covid-relief-data.ed.gov/grantee-help*](https://covid-relief-data.ed.gov/grantee-help)

Key Line Items - The following line items contain critical information:

1. Line 3a.-6a. Reporting on CRRSA EANS Funds Returned to the Governor
2. Line 13 Reporting on SEA Obligations (including reimbursements) by allowable activity for CRRSA EANS
3. Line 15 Reporting on Non-public schools receiving services or assistance under CRRSA EANS

4. Special Reporting for Federal Funding Accountability and Transparency Act (SEA/Governor)

See Part 3.L for audit guidance.

Grantees must submit monthly FFATA data through FSRS.gov. This monthly subaward data reported by States, along with data on awards to States and expenditures by States, are pulled into the ESF Transparency Portal.

N. Special Tests and Provisions

1. Wage Rate Requirements (SEA/Governor, LEA or Other Subrecipient)

Recipients (States or SEAs) and subrecipients (including LEAs) that use ESF funds for minor remodeling, renovation or construction contracts that are over $2,000 and use laborers and mechanics must meet Davis-Bacon prevailing wage requirements. For information about the prevailing wages in the applicable region, see the Department of Labor (DOL) regional office: https://www.dol.gov/agencies/whd/government-contracts/construction/regions.

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section for a general description of the compliance requirements, the related audit objectives, and suggested audit procedures.

2. Participation of Private School Children (SEA/Governor, LEA)

See Part 4, 84.000 ED Cross-Cutting Section for requirements applicable to the participation of private school students under GEER I and ESSER I, as well as ESF-SEA, ESF-Governor, and ARP-OA SEA (84.425 A, C, D, H, and X).

3. Identifying Non-Public Schools under ARP EANS that Enroll a Significant Percentage of Students from Low-Income Families and are Most Impacted by the COVID-19 Emergency (SEA)

Compliance Requirements Under section 2002(a) of the ARP Act, services or assistance to non-public schools under the ARP EANS program are limited to “non-public schools that enroll a significant percentage of [students from low-income families] and are most impacted by the [COVID–19] emergency.” Related to these requirements, a Governor, in his or her application for ARP EANS funds, was required to identify the significant poverty percentage and factors of COVID-19 impact it would use, after approval by the Secretary, to determine which non-public schools are eligible to receive services or assistance. Under the EANS program, the statute designates the SEA as the administrator of the program. SEAs were advised (see this August 2022 communication) that “proportionality” is a methodology and not an allowable data source to determine non-public school eligibility under ARP EANS. Data used to determine the eligibility of non-public schools must be actual data that maps to students.

Audit Objectives Determine whether SEAs have implemented the significant poverty percentage and factors of COVID-19 impact in the Governor's approved application.

Suggested Audit Procedures

a. Verify that the SEA implemented the relevant criteria to determine whether a non-public school enrolled a significant percentage of students from low-income families and was most impacted by COVID-19.

ESF SECTION 2 – HIGHER EDUCATION (HIGHER EDUCATION EMERGENCY RELIEF FUND (HEERF))

ASSISTANCE LISTING 84.425E HEERF STUDENT AID

ASSISTANCE LISTING 84.425F HEERF INSTITUTIONAL AID

ASSISTANCE LISTING 84.425J HEERF HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCUs)

ASSISTANCE LISTING 84.425K HEERF TRIBALLY CONTROLLED COLLEGES AND UNIVERSITIES (TCCUs)

ASSISTANCE LISTING 84.425L HEERF MINORITY SERVING INSTITUTIONS (MSIs)

ASSISTANCE LISTING 84.425M HEERF STRENGTHENING INSTITUTIONS PROGRAM (SIP)

ASSISTANCE LISTING 84.425N HEERF FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION (FIPSE) FORMULA GRANT

ASSISTANCE LISTING 84.425P HEERF INSTITUTIONAL RESILIENCE AND EXPANDED POSTSECONDARY OPPORTUNITY (IREPO) PROGRAM

ASSISTANCE LISTING 84.425S HEERF SUPPLEMENTAL ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION (SAIHE) PROGRAM

ASSISTANCE LISTING 84.425T HEERF SUPPLEMENTAL SUPPORT UNDER AMERICAN RESCUE PLAN (SSARP) PROGRAM

Note on *Applicability to Proprietary Institutions of Higher Education***:** One subprogram, Assistance Listing 84.425Q, was awarded only to Proprietary Institutions of Higher Education and therefore is not included in this Compliance Supplement, which only applies to Public and Private Nonprofit Institutions of Higher Education. Proprietary Institutions, however, have a separate auditing requirement and may be required to submit an audit to ED using the Audit Guide developed by the ED Office of the Inspector General (OIG). Please see more information here: https://oig.ed.gov/non-federal-audits/higher-education-emergency-relief-fund-heerf-audits

I. PROGRAM OBJECTIVES

The objective of the HEERF program is to use HEERF grant funds to “prevent, prepare for, and respond to coronavirus” through grants to eligible institutions. Each subprogram (denoted by separate Assistance Listing alpha) has specific funding requirements, as described below.

II. PROGRAM PROCEDURES

Overview

Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – HEERF I

The CARES Act appropriated approximately $14 billion to the Office of Postsecondary Education for HEERF (referred to herein as HEERF I subprograms or funding).

HEERF I funding was distributed via several different subprograms, which were continued for HEERF II and HEERF III. First, 90 percent ($12.56 billion) under Section 18004(a)(1) of the CARES Act was distributed to institutions using a formula based on student enrollment, in which at least 50 percent must be reserved to provide students with emergency financial aid grants to help cover expenses related to the disruption of campus operations due to coronavirus ("Student Aid;" Assistance Listing 84.425E) and the remainder of which may be used to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus ("Institutional Aid"; Assistance Listing 84.425F). A total of 7.5 percent ($1.05 billion) was distributed under Section 18004(a)(2) of the CARES Act for grants for Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and other Minority Serving Institutions (MSIs) as well as other institutions eligible for the Strengthening Institutions Program (SIP) under parts A and B of title III, parts A and B of title V, and Subpart 4 of Part A of title VII of the Higher Education Act of 1965, as amended (HEA), to address needs directly related to the coronavirus (Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M). Finally, a total of 2.5 percent ($349 million) was distributed under Section 18004(a)(3) of the CARES Act for additional funds for institutions under Part B of title VII of the HEA, through the Fund for the Improvement of Postsecondary Education (FIPSE), to prioritize institutions that ED has determined have the greatest unmet needs. ED distributed these funds under a formula grant for institutions that received less than $500,000 under other parts of Section 18004 (Assistance Listing 84.425N) and under a competitive grant (Institutional Resilience and Expanded Postsecondary Opportunity (IREPO) Grant, Assistance Listing 84.425P).

Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) – HEERF II

The CRRSAA provided an additional $22.7 billion for institutions through the HEERF (referred to herein as HEERF II subprograms or funding). Of this amount, over $20 billion was available for supplements and new formula grants to assist public and private nonprofit colleges and universities in preparing for, preventing, and responding to coronavirus. Funding was appropriated for the existing (a)(1), (a)(2) and (a)(3) subprograms previously authorized under the CARES Act, with some changes.

Allocations to institutions under Section 314(a)(1) of CRRSAA (the analogous provision of Section 18004(a)(1) of the CARES Act) were based on a formula that includes the relative shares of Federal Pell Grant recipients, the relative shares of non-Pell Grant recipients, and the relative shares of Federal Pell and non-Pell Grant recipients exclusively enrolled in distance education prior to the coronavirus emergency.

The CRRSAA provided a minimum amount of funding that each institution must devote towards financial aid grants to students. In addition, funds allocated for students enrolled exclusively in distance education may be used only for financial aid grants to students.

For CRRSAA (a)(3) funds, ED created the Supplemental Assistance to Institutions of Higher Education (SAIHE) subprogram (Assistance Listing 84.425S) with seven categories (absolute priorities) of funding specified in a notice inviting applications and described in the CRRSAA (a)(3) SAIHE Certification and Agreement. Generally, institutions that received grants under the SAIHE subprogram must use funds for either the allowable institutional uses or making additional emergency financial aid grants to students, as specified in the CRRSAA (a)(3) SAIHE Certification and Agreement.

American Rescue Plan (ARP) – HEERF III

The ARP provided an additional $39.6 billion for institutions through the HEERF (referred to herein as HEERF III subprograms or funding) with funding appropriated through existing subprograms previously authorized under the CRRSAA. The ARP, with some changes, was a continuation of the CRRSAA (a)(1), (a)(2), and (a)(3) subprograms.

The ARP established two new required uses of HEERF III institutional grant funds for public and private nonprofit institutions in which a portion of funds must be used to: (a) implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and (b) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the HEA.

Source of Governing Requirements

The main sources of governing requirements are the CARES Act, Pub. L. No. 116-136 (March 27, 2020); the CRRSAA, Pub. L. No. 116-260 (December 27, 2020); the ARP, Pub. L. No. 117-2 (March 11, 2021); and the Consolidated Appropriations Act, 2022 (Pub. L. No. 117-103).

In addition to the required SF-424 form, a completed certification and agreement was required as part of the application used to award HEERF I funds under each Assistance Listing alpha. HEERF I grantees who received Institutional and/or Student Aid funds received HEERF II grant awards automatically with a supplemental agreement attached. Eligible institutions that did not receive HEERF I Institutional and/or Student Aid funds had to submit a certification and agreement as part of their applications for HEERF II funds. Similarly, HEERF II grantees who received Institutional and/or Student Aid funds received HEERF III grant awards automatically with a supplemental agreement attached. Eligible institutions that did not receive HEERF II Institutional and/or Student Aid funds had to submit a certification and agreement as part of their applications for HEERF III funds.

The certification and agreements and supplemental agreements help form the basis of the governing requirements for these subprograms:

1. Student Aid Fund (Assistance Listing 84.425E)

a. *HEERF I* – (a)(1) Student Aid PortionAgreement Certification and Agreement

b. *HEERF II* – (a)(1) Student Aid Portion Supplemental Agreement

c. *HEERF II* – (a)(1) Student Aid Portion Certification and Agreement (Gold C&A)

d. *HEERF III* – (a)(1) Student Aid Portion Supplemental Agreement

e. *HEERF III* – (a)(1) Student Aid Portion Certification and Agreement

2. Institutional Aid Fund (Assistance Listing 84.425F)

a. *HEERF I* – (a)(1) Institutional Portion Certification and Agreement

b. *HEERF II* – (a)(1) Institutional Portion Supplemental Agreement

c. *HEERF II* – (a)(1) Institutional Portion Certification and Agreement (Blue C&A)

d. *HEERF III* – (a)(1) Institutional Portion Supplemental Agreement

e. *HEERF III* – (a)(1) Institutional Portion Certification and Agreement

3. (a)(2) Programs (Assistance Listings 84.425J, 84.425K, 84.425L, 84.425M)

a. *HEERF I* – (a)(2) Programs Certification and Agreement

b. *HEERF II* – (a)(2) Programs Supplemental Agreement

c. *HEERF II* – (a)(2) Programs Certification and Agreement (Purple C&A)

d. *HEERF III* – (a)(2) Programs Supplemental Agreement

e. *HEERF III* – (a)(2) Programs Certification and Agreement

4. (a)(3) Programs (Assistance Listings 84.425N, 84.425S, and 84.425T)

a. *HEERF I* – (a)(3) FIPSE Formula Certification and Agreement

b. *HEERF I* – (a)(3) IREPO Notice Inviting Applications (NIA)

b. *HEERF II* – (a)(3) SAIHE Certification and Agreement

c. *HEERF III* – (a)(3) SSARP Certification and Agreement

Furthermore, the regulations in the Education Department General Administrative Regulations (EDGAR) 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (non-procurement) in 2 CFR Part 180, as adopted and amended as regulations of ED in 2 CFR Part 3485; and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200, as adopted and amended as regulations of ED in 2 CFR Part 3474 (Uniform Guidance) also apply.

Availability of Other Program Information

Rulemaking for Student Eligibility

On May 14, 2021, ED published its Final Rule (FR) regarding eligibility to receive emergency financial aid grants to students under HEERF. It was effective the same day. The FR constitutes ED's binding final rule regarding student eligibility for HEERF assistance and amends ED's position to allow any individual who is or was enrolled (as defined in 34 CFR 668.2) at an eligible institution (as defined in 34 CFR 600.2) on or after March 13, 2020, the date of declaration of the national emergency concerning the novel coronavirus disease, to receive HEERF assistance.

Frequently Asked Questions (FAQs) and Other Guidance

Several documents posted on ED's HEERF I website, HEERF II website, and HEERF III website contain information pertinent to the compliance requirements described in this compliance supplement. ED strongly encourages auditors to regularly check the HEERF websites for updated FAQs and other pertinent guidance and reporting information. Earlier-released documents listed may also be applicable to later subprograms. The information below is current as of August 2023:

FAQs

1. ARP HEERF III FAQs (May 11, 2021, and updated October 27, 2022) (this is the most comprehensive set of FAQs for the HEERF grant program)

2. CARES Act HEERF Rollup FAQs (Compilation of all five previously-released HEERF FAQ documents in one document) (updated November 20, 2020)

3. CRRSAA HEERF II Section 314(a)(1) Frequently Asked Questions (January 14, 2021, and updated March 19, 2021)

4. HEERF Lost Revenue FAQs (March 19, 2021)

5. Using American Rescue Plan and Other Pandemic Relief Funds to Provide Incentives to Students to Get the COVID-19 Vaccination (July 2021)

6. HEERF (a)(2) Construction FAQs (May 2022)

Webinars

7. HEERF Quarterly Reporting Webinar Information and Notes (June 23, 2022)

8. Overview of HEERF funds in the American Rescue Plan for Public and Private Institutions (June 2021)

Other Materials

9. HEERF I and HEERF II Comparison Fact Sheet (January 14, 2021, and updated March 19, 2021)

10. HEERF Notice of Interpretation for Period of Allowable HEERF Expenses (March 22, 2021)

11. HEERF Period of Allowable Expenses Grant Records Notice (March 19, 2021)

12. Fund for the Improvement of Postsecondary Education; Supplemental Assistance to Institutions of Higher Education CRRSAA a3 NIA (March 29, 2021)

13. Fund for the Improvement of Postsecondary Education; Supplemental Support under American Rescue Plan (SSARP) ARP a3 NIA (February 3, 2022)

14. HEERF Quarterly Reporting Changes June 2022 (June 17, 2022)

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this Federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the Federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status Discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N

A. Activities Allowed or Unallowed

Institutions must demonstrate that costs incurred are allowable under the relevant statutory provisions and consistent with the purpose of the ESF "to prevent, prepare for, and respond to coronavirus." In general, the CARES Act authorized broad uses of HEERF funds, with specific standards for the different subprograms described below.

The CRRSAA expanded the allowable uses for supplemental awards and new awards made under Section 314(a)(1) of the CRRSAA. The expanded use of funds authority also applies to unexpended HEERF I funds as of December 27, 2020 (the date of enactment of the CRRSAA).

The ARP is largely a continuation of the CRRSAA subprograms but added two new required uses of HEERF III institutional portion grant funds for public and private nonprofit institutions and eliminated the institutional use of funds "to carry out student support activities authorized by the HEA that address needs related to coronavirus."

Auditors are strongly encouraged to review the FAQ documents and guidance materials which provide specific examples that help interpret these statutory standards.

1. *Activities Allowed*

   a. *Emergency Financial Aid Grants to Students (Student Aid Portion)*

      For the (a)(1) Student Aid Portion (Assistance Listing 84.425E), disbursements made under the Student Aid Portion are required to be made directly to students. ED's final rule (Eligibility to Receive Emergency Financial Aid Grants to Students under the Higher Education Emergency Relief Programs, May 14, 2021) on student eligibility for HEERF states that all students who are or were enrolled in an institution of higher education on or after the date of the declaration of the national emergency due to the coronavirus (March 13, 2020) are eligible for emergency financial aid grants from the HEERF, regardless of whether they completed a FAFSA or are eligible for Title IV.

HEERF I Student Aid Portion funds expended prior to December 27, 2020: These funds must be paid to the student "for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child-care)" (CARES Act Section 18004(c)).

HEERF II, and HEERF III, and HEERF I fund liquidated (spent) on or after December 27, 2020*:* These funds must be used to provide financial aid grants to students (including students exclusively enrolled in distance education), which may be used for "any component of the student's cost of attendance or for emergency costs that arise due to coronavirus, such as tuition, food, housing, healthcare (including mental health care), or child care" (CRRSAA section 314(c)(3); ARP section 2003).

The CRRSAA and ARP requires that schools prioritize students with exceptional need, such as students who receive Pell Grants. However, students do not need to be Pell recipients or students who are eligible for Pell grants in order to receive a financial aid grant.

Beyond Pell eligibility, other types of exceptional need could include students who may be eligible for other Federal or State need-based aid or have faced significant unexpected expenses either for themselves or that would affect their financial circumstances, such as the loss of employment, reduced income, or food or housing insecurity. In addition, the CRRSAA and ARP explicitly states that emergency financial aid grants to students may be provided to students exclusively enrolled in distance education provided they have exceptional need (HEERF III FAQs questions 11 and 12).

Institutions may not condition the receipt of financial aid grants to students on continued or future enrollment in the institution and may not require a student to consent to the application of the financial aid grants to satisfy a student's outstanding account balance as a condition of receipt of or eligibility for the financial aid grant. Institutions that add preconditions to receiving a financial aid grant that thwart this requirement may be subjected to oversight and corrective action.

Institutions may use funds under the Institutional Portion Aid Fund to provide additional emergency financial aid grants to students. If an institution chooses to do so, then those funds are subject to the requirements described in the institution's applicable Student Aid Portion (ALN 84.425E) Certification and Agreement and/or Supplemental Agreement and the *Emergency Financial Aid Grants to Students (Student Aid Portion)* section above.

As it relates to expenditures under the HEERF II and HEERF III (a)(1) Student Aid Portion or for additional emergency financial aid grants made using other HEERF grant funds, ED required that (1) the institution had a documented plan to distribute funds to students, (2) that institutions prioritized grants to students with exceptional need, (3) that the institution did not place any restrictions on the expenditure of those funds beyond what is in the statute, above, (4) the institution expended the entirety of the Student Aid Portion grant on Emergency financial aid grants to students, and (5) that the institution did not reimburse itself for any costs or expenses previously issued to students.

b. *Institutional Costs (Institutional Aid, (a)(2), and (a)(3) Funds)*

HEERF I Institutional Aid funds liquidated (spent) prior to December 27, 2020*:* For the (a)(1) Institutional Portion (Assistance Listing 84.425F), allowable expenditures incurred and liquidated prior to December 27, 2020, must have been “to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship” (CARES Act Section 18004(c)).

Other allowable expenditures under the HEERF I Institutional Aid Fund included additional emergency financial grants made to students (in accordance with the requirements of the Student Aid Fund). Additionally, institutions also could have reimbursed themselves for refunds previously made to students on or after March 13, 2020, if those refunds were necessitated by significant changes to the delivery of instruction, including interruptions in instruction, due to the coronavirus. Please see questions 31 and 44 from the HEERF I CARES Act Rollup FAQs for more information. Generally, lost revenue was not a permissible expenditure under the HEERF I Institutional Aid Fund.

HEERF II, HEERF III, and HEERF I fund, liquidated (spent) on or after December 27, 2020. Beginning December 27, 2020, any unused HEERF I Institutional funds, new HEERF II Institutional funds, HEERF III Institutional Aid Funds may be used to defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll) and to make additional financial grants to students (CRRSAA Section 314(c) (1-3); ARP Section 2003). HEERF I and HEERF II funds may also have been used to carry out student support activities authorized by the HEA that address needs related to coronavirus. The ARP eliminated this use of funds for HEERF III.

The following table describes this distinction:

Institutional Portion	Date	Uses of funds are specified in…
CARES Act HEERF I	For allowable expenditures incurred on or after March 13, 2020, and liquidated (spent) prior to December 27, 2020.	CARES Act section 18004(c)
CARES Act HEERF I	For allowable expenditures incurred on or after March 13, 2020, and liquidated (spent) on or after December 27, 2020.	CRRSAA section 314(c) (1-3)
CRRSAA HEERF II	For allowable expenditures incurred on or after March 13, 2020.	CRRSAA section 314(c) (1- 3)
ARP HEERF III	For allowable expenditures incurred on or after March 13, 2020.	CRRSAA section 314(c)(1), (c)(3), and ARP section 2003(5)

Required uses of ARP HEERF III Institutional Portion grant funds: ARP created two new requirements that a portion of HEERF III institutional funds must be used (a) to implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and (b) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the HEA (see HEERF III FAQs questions 21 and 28–35).

HEERF I (a)(2) and (a)(3) subprograms: For the HEERF I (a)(2) subprograms, (Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M) and HEERF I (a)(3) FIPSE Formula Grant (Assistance Listing 84.425N), funds "may be used to defray expenses, including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, payroll incurred by institutions and for grants to students for any component of the student's cost of attendance (as defined under section 472 of the HEA), including food, housing, course materials, technology, health care, and child care" (CARES Act Sections 18004(a)(2) and 18004(a)(3)).

HEERF II and HEERF III (a)(2) and (a)(3) subprograms: New HEERF II (a)(2) and (a)(3) funds and new HEERF III (a)(2) and (a)(3) funds (under Assistance Listings 84.425J, 84.425K, 84.425L, 84.425M, 84.425S, and 84.425T) may also be used under the allowable uses of funds detailed in CRRSAA Section 314(c) above, unless otherwise specified in the Certification and Agreement.

Excise Tax for CRRSAA HEERF II: Institutions that were required to pay an excise tax for tax year 2019 based on investment income under section 3968 of the Internal Revenue Code may only use their HEERF II funds for financial aid grants to students, or for sanitation, personal protective equipment, or other general health and safety expenses related to the coronavirus emergency, and such institutions' allocations are reduced by 50 percent, unless a waiver has been obtained from ED (CRRSAA Section 314(d)(6)). The ARP eliminated this requirement for HEERF III funds.

Construction and Real Property Expenditures under HEERF (a)(2) subprograms (Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M): Under the Consolidated Appropriations Act, 2022 (Pub. L. No. 117-103), as of March 15, 2022, HEERF (a)(2) program subgrantees may expend their HEERF (a)(2) grant funds on construction and real property for projects that are connected to the purpose of the ESF program to "prevent, prepare for, and respond to coronavirus." Any HEERF (a)(2) grantees taking advantage of this flexibility will have to receive approval from ED for their specific construction and real property projects supported by HEERF (a)(2) grant funds. HEERF (a)(2) grantees cannot use their (a)(2) grant funds on construction or real property associated with facilities related to athletics, sectarian instruction, or religious worship.

Please note that (a)(2) subprogram grantees may use HEERF grant funds for minor remodeling without triggering the requirements to follow 34 CFR sections 75.600–75.615 and receiving approval from ED. Minor remodeling means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alterations to buildings, building maintenance, or repairs. See 34 CFR Part 77.1(b) and HEERF III FAQ questions 23 and 24.

c. *IREPO Subprogram:* Under the IREPO subprogram (Assistance Listing 84.425P), the use of funds is specified in the IREPO NIA and the approved application for grant funds the applicant submitted as part of the program.

d. *SAIHE Subprogram:* Under the SAIHE subprogram (Assistance Listing 84.425S), depending on the absolute priority an institution applied for and received SAIHE grant funds under, the uses and limitations for that institutions' SAIHE funds are specified in the (a)(3) SAIHE Certification and Agreement.

e. *SSARP Subprogram:* Under the SSARP subprogram (Assistance Listing 84.425T), depending on the absolute priority an institution applied for and received SSARP grant funds under, the uses and limitations for that institutions' SSARP funds are specified in the (a)(3) SSARP Certification and Agreement.

f. *Grantees on Route or Stop Pay Status*: Additionally, some institutions' grants may have been placed on Route Pay or Stop Pay Status as indicated by a notification the grantee would have received from ED. This requires ED approval of a spending plan prior to the grantee drawing down funds or the submission of single requests with documentation. Auditors should ensure that in these circumstances that the grantee expended their HEERF grant funds consistent with the ED-approved spending plan or required documentation for single requests for funds.

B. Allowable Costs/Cost Principles

The Uniform Guidance Cost Principles described in 2 CFR Part 200, Subpart E, apply to the HEERF subprogram. As described earlier, for the HEERF subprograms covered in this section, institutions generally have broad uses of funds. Some items of cost in Subpart E of the Uniform Guidance require prior approval under 2 CFR section 200.407 by ED. However, in its HEERF II FAQs published on January 14, 2021, and HEERF III FAQs published on May 11, 2021, ED waived prior approval for certain items of cost (as described in questions 20 and 45, respectively).

1. HEERF grant funds must not be used for:

   a. funding contractors for the provision of pre-enrollment recruitment activities;

   b. marketing or recruitment (see HEERF III FAQs question 27 for information on reengagement activities);

   c. endowments;

   d. capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship;

   e. senior administrator or executive salaries, benefits, bonuses, contracts, incentives, stock buybacks, shareholder dividends, capital distributions, and stock options, or any other cash or other benefit for a senior administrator or executive;

   f. religious worship, instruction, or proselytization or equipment or supplies to be used for religious worship, instruction, or proselytization; or

   g. construction or purchase of real property, excluding HEERF (a)(2) *(Assistance Listings 84.425J, 84.425K, 84.425L, and 84.425M)* grantees*.

Please see also HEERF III FAQs question 22 for more information.

*With the exception of HEERF (a)(2) grantees using their (a)(2) grant funds that receive prior approval from ED, grantees are prohibited from using HEERF funding for the acquisition of real property or construction under 34 CFR section 75.533. This includes using HEERF grant funds on capital projects, including deferred maintenance and capital improvement.

However, this general prohibition on construction and acquisition of real property does not extend to activities that meet the definition of "minor remodeling" under 34 CFR section 77.1. Minor remodeling means minor alterations in a previously completed building, for purposes associated with the coronavirus. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building The term does not include permanent building construction, structural alterations to buildings, building maintenance, or repairs (see also HEERF III FAQs questions 23 and 24).

Reasonable direct administrative costs and indirect costs at an institution's approved negotiated indirect cost rate may be charged against Assistance Listing 84.425F (the Institutional portion). An institution may not apply an indirect cost rate to its estimated amount of lost revenue.

No administrative costs and no indirect costs are allowed to be charged against Assistance Listing 84.425E (the Student Aid Portion), as CARES Act Section 18004(c), CRRSAA Section 314 (c)(3), and ARP 2003 require that these funds be used to provide emergency financial aid grants to students. All administrative costs must be reasonable and necessary and conform to Cost Principles described in 2 CFR Part 200 Subpart E of the Uniform Guidance (see HEERF II FAQs Question 18 and HEERF III FAQs questions 43 and 44).

C. Cash Management

For CRRSAA HEERF II and ARP HEERF III, the Certification and Agreement and/or Supplemental Agreement indicate that Student Aid (ALN 84.425E) should be disbursed within 15 calendar days of the drawdown from ED's grant management system (G5), while Institutional Aid Portion, (a)(2), and (a)(3) funds (all other ALNs) should be disbursed within 3 calendar days of the drawdown from G5.

For lost revenue, the "obligation" occurs on the date the institution completes its estimate of its amount of lost revenue after the estimation period.

G. Matching, Level of Effort, Earmarking

1. Matching

Not Applicable

2. Level of Effort

Not Applicable

3. Earmarking

Institutions must use no less than 50 percent of funds received under Section 18004(a)(1) of the CARES Act to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus. Conversely, institutions may use up to 50 percent of the funds they receive under Section 18004(a)(1) to "cover any costs associated with significant changes to the delivery of instruction due to the coronavirus so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities, including marketing and advertising; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship." See https://www2.ed.gov/about/offices/list/ope/heerfInstitutionalcertificationagreement42020v2a.pdf.

Section 314(d)(5) of the CRRSAA requires institutions to provide at least the same amount of funding in financial aid grants to students as was required to be provided under its original Student Aid HEERF I allocation amount. The minimum amount of CRRSAA Section 314(a)(1) funding that each institution must devote towards financial aid grants to students is represented in the "Student Aid" (Assistance Listing 84.425E) of their supplement of new Student Aid award and included in the HEERF II Allocation Table.

Additionally, an institution that utilizes the expanded use of funds authority under the CRRSAA for its unspent HEERF I funds must ensure at least 50 percent of the funds it received under CARES Act section 18004(a)(1) (generally, its HEERF I Student Aid award) is used for financial aid grants to students.

Under ARP, the amount of funds that a public and private nonprofit institution must devote to financial aid grants to students is the full amount allocated under the Student Aid (84.425E) subprogram of HEERF III.

The division of the (a)(1) funds into the Student Aid and Institutional Aid was made by ED. Each were given as separate grant awards, the Student Aid under Assistance Listing 84.425E and the Institutional Aid under Assistance Listing 84.425F.

The order of incurring costs which will be attributed to the Student Aid and Institutional Aid is not relevant to the earmarking requirement but, rather, the relationships between these two portions must be met and measured by the end of the period of performance. Therefore, testing this requirement is only applicable at the end of the period of performance as defined below.

ARP created two new requirements that a portion of HEERF III institutional funds must be used (a) to implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and (b) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the HEA by the end of the performance period. As noted in Question 35 of the ARP HEERF III ARP FAQs, institutions must document how the amount of the HEERF grant spent on these two required activities was reasonable and necessary given the unique needs and circumstances of the institution (see HEERF III FAQs questions 21 and 28–35).

Under the SAIHE subprogram (Assistance Listing 84.425S), depending on the absolute priority an institution applied for and received SAIHE grant funds under, the uses and limitations for that institutions' SAIHE funds are specified in the (a)(3) SAIHE Certification and Agreement.

Under the SSARP subprogram (Assistance Listing 84.425T), depending on the absolute priority an institution applied for and received SSARP grant funds under, the uses and limitations for that institutions' SSARP funds are specified in the (a)(3) SSARP Certification and Agreement.

H. Period of Performance

Period of Performance: In the CARES Act, CRRSAA, and ARP Certification and Agreements, all institutions were given one calendar year (12 months) from the date of award in their HEERF Grant Award Notifications (GAN) to complete the performance of their HEERF grants.

Institutions generally must expend their HEERF grant funds within one year from the date when ED processed the most recent obligation of funds for each specific grant. Thus, institutions that received a supplemental award under ARP have one year to spend all remaining HEERF I, HEERF II, and new HEERF III funds for each grant from the date their HEERF III supplemental award is made. The specific period of performance will be indicated in Box 6 of the institution's most recent GAN. (See HEERF III FAQs Question 39.)

Note: The performance period was extended to June 30, 2023, as of April 24, 2022, for all HEERF grant awards in an open status (grant awards that had not entered the closeout phase and had a balance of $1,000 or more). Institutions were also permitted to submit a No Cost Extension by June 20, 2023, if they could adequately demonstrate that any remaining HEERF grant funds expended during this additional period would not be used merely for the purpose of using unobligated balances, as required by 2 CFR § 200.308(e)(2). If approved, institutions received an extension until June 30, 2024, for institutional grant funds (84.425F, 84.425J, 84.425K, 84.425L, 84.425M, 84.425N, and 84.425S) and until December 31, 2023, for student grant funds (84.425E). A copy of the

No Cost Extension Request Form, with additional information, is available at https://www2.ed.gov/about/offices/list/ope/heerfnocostextension2023.pdf.

Pre-award Costs: For CARES Act HEERF I awards, institutions were allowed to incur pre-award costs consistent with 2 CFR section 200.458 and 34 CFR section 75.263 on or after March 13, 2020, the date of the declaration of the national emergency due to the coronavirus, to the date of their HEERF grant award for their (a)(1) Institutional Portion, (a)(2), and (a)(3) funds as long as those expenditures would have been allowable if incurred after the date of the HEERF grant award.

For the (a)(1) Student Aid, institutions were only able to refund themselves for institutionally-funded emergency grants to students that were made (1) for authorized expenses related to the disruption of campus operations due to coronavirus as set forth in Section 18004(c) of the CARES Act; (2) to students eligible to receive emergency financial aid grants under the CARES Act; and (3) on or after March 13, 2020, the date the of the declaration of the national emergency due to the coronavirus.

For the HEERF II and HEERF III awards, funds may be used for all costs incurred on or after March 13, 2020.

L. Reporting

1. Financial Reporting

a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. *SF-425, Federal Financial Report* – Not Applicable

2. Performance Reporting

Not Applicable

3. Special Reporting

a. Annual Report

a. Title of Report: HEERF I, II, & III Annual Performance Report Form
PRA Number: 1840-0850
Reporting Cycle: Annual Reports cover calendar year HEERF expenditures. Year 3 reporting covering 2022 data will be published in 2024 on the ESF data website (https://covid-relief-data.ed.gov/). Year 4 reporting covering calendar year 2023 will begin in the Summer of 2024. The reporting portal generally opens in the Spring or Summer each year, but the exact open and close dates for each year will be published on the HEERF Reporting page:

https://www2.ed.gov/about/offices/list/ope/heerfreporting.html
https://www2.ed.gov/about/offices/list/ope/heerfreporting.html
Authoritative Requirement: CARES Act 18004(e); CRRSAA 314(e); 2 CFR 200.328; 2 CFR section 200.329; 34 CFR 75.720(b)
Blank Copy of the Report: The forms for each year are available at https://covid-relief-data.ed.gov/grantee-help/heerf
Report Instructions: User guides for each year are available at https://covid-relief-data.ed.gov/grantee-help/heerf

Key Line Items:

1. Institutional expenditures for "Implementing evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines" and "Conducting direct outreach to financial aid applicants." (Question 9a)

b. Quarterly Report

b. Title of Report: Quarterly Budget and Expenditure Reporting for all HEERF I, II, and III grant funds
PRA Number: 1840-0849
Reporting Cycle: The reporting period is a calendar quarter. An institution must post each quarterly report on its primary website no later than 10 days after the end of each calendar quarter.
Authoritative Requirement: CARES Act 18004(e); CRRSAA 314(e); 2 CFR 200.328; 2 CFR section 200.329;
Blank Copy of the Report: https://www2.ed.gov/about/offices/list/ope/heerfquarterlyreport2022.pdf
Report Instructions: Instructions included at the bottom of the form. Also see Question 36 on the ARP FAQs and Reporting Tips here.

Key Line Items:

1. Numbers of students and amounts disbursed for Emergency Financial Aid Grants Awarded to Students by category during the quarter (Question 2b)
2. Institutional expenditures during the quarter by category (Question 3b)
3. Sources of lost revenue (Question 3c) These are estimates reported by the institution, so the auditor is only expected to trace the reported estimates to records that accumulate or summarize the estimates.

ED understands that timeliness of report postings may be unique and challenging to audit, particularly because auditors are asked to verify information posted on a webpage which may not be accessible during audit fieldwork. For these public reporting requirements, auditors may accept as evidence of compliance, contemporarily produced emails, webmaster logs, or other relevant documentation establishing a good-faith indication that the institution posted the required information at approximately the timelines and using the specific reporting templates described in Question 36 on the ARP FAQs.

4. Special Reporting for Federal Funding Accountability and Transparency Act

Not Applicable