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Fiscal Accountability Requirements That Apply to Title I-A of the Elementary and Secondary Education Act (ESEA)

The Elementary and Secondary Education Act (ESEA) was comprehensively reauthorized by the Every Student Succeeds Act (ESSA; P.L. 114-95) on December 10, 2015. The Title I-A program is the largest grant program authorized under the ESEA and is funded at $14.9 billion for FY2016. Title I-A of the ESEA authorizes aid to local educational agencies (LEAs) for the education of disadvantaged children. Title I-A grants provide supplementary educational and related services to low-achieving and other students attending pre-kindergarten through grade 12 schools with relatively high concentrations of students from low-income families.

A long-standing principle of federal aid to K-12 education is that federal funding should add to, not substitute for, state and local education funding. With respect to the ESEA, this goal is embodied in three types of federal fiscal accountability requirements: (1) maintenance of effort (MOE), (2) supplement, not supplant (SNS), and (3) comparability. To receive Title I-A funds, an LEA must meet all three fiscal requirements (ESEA Section 1118).

Maintenance of Effort

MOE requirements have been included in the ESEA since its enactment in 1965. In general, the MOE requirements apply to LEAs, not states, and are enforced by state educational agencies (SEAs). MOE requires that LEAs provide, from state and local sources, a level of funding (either aggregate or per pupil, whichever is more favorable to the LEA) in the preceding year that is at least 90% of the amount provided in the second preceding year for public elementary and secondary education. In other words, an LEA will generally not meet the MOE requirement if education funding from state and local sources decreases by more than 10% from year to year.

If an LEA fails to meet the MOE requirement, Title I-A funding would be reduced proportionally, based on the extent to which the requirement is not met. For example, if state and local public K-12 education expenditures in the preceding year are equal to 85.5% of the amount for the second preceding year—that is, 95% of the required 90% level—then the Title I-A grant would be reduced by 5%. When this occurs, the required level of spending for the succeeding year's calculation is based on the full 90% level of expenditures, not the actual level of spending. Further, the MOE requirement can be waived by the Secretary in cases of "(1) exceptional or uncontrollable circumstances, such as a natural disaster; or (2) a precipitous decline in the financial resources of the local educational agency."

The ESSA modified the MOE provisions in two ways. First, if an LEA fails to meet its MOE requirement but had met it for the five immediately preceding fiscal years, the LEA would not have its funding reduced. Second, "a change in the organizational structure of the local educational agency" was added as an additional example of exceptional or uncontrollable circumstances for which the Secretary may grant a waiver of the MOE requirements.

Supplement, Not Supplant

SNS provisions were added to the ESEA in the 1970 ESEA Amendments (P.L. 91-230). SNS requires that Title I-A funds be used so as to supplement and not supplant state and local funds that would otherwise be provided to Title I-A schools. The ESSA made several changes to the SNS provisions with respect to the determination of SNS.

SNS Prior to Enactment of the ESSA

For Title I-A schools operating targeted assistance programs (i.e., programs in which supplemental educational services are provided to specific students), SNS provisions prohibit states or LEAs from using Title I-A funds to supplant state and local funds. State or local funds expended for programs that meet the intent and purposes of Title I-A do not have to be included in SNS determinations. Further, no LEA is required to provide services under Title I-A through a particular instructional method or in a particular instructional setting in order to demonstrate compliance with the SNS provisions.

In practice, supplanting may be difficult to define operationally, in part because it may depend on knowing what states or LEAs might have done in the absence of federal funding. According to U.S. Department of Education (ED) policy guidance, "any determination about supplanting is very case specific and it is difficult to provide general guidelines without examining the details of a situation." There are three conditions under which it is generally presumed that SNS violations have occurred:

1. An LEA used Title I-A funds to provide services that the LEA was required to make available otherwise under federal, state, or local law;
2. An LEA used Title I-A funds to provide services that the LEA provided with non-federal funds in the prior year(s); or
3. An LEA used Title I-A funds to provide services for children participating in a Title I program that the LEA provided with non-federal funds to children not participating in Title I.

A second set of SNS provisions apply to Title I-A schools that operate schoolwide programs. Schoolwide programs are generally authorized under Title I-A if the percentage of low-income students served by a school is 40% or higher. In these schools, Title I-A funds may be used to improve the academic achievement of all students in the school (as opposed to only serving students with the greatest academic needs). Schools operating schoolwide programs are required to use Title I-A funds to supplement the amount of funds that would, in the absence of Title I-A funds, be made available from non-federal sources for the school.

According to guidance provided by ED, it is generally an LEA's responsibility, and not the school's, to ensure the SNS requirement is met and that a school operating a schoolwide program receives all the non-federal funds it would receive if it were not a Title I-A schoolwide program. That is, an LEA cannot reduce the amount of state or local funds provided to a school because it is operating a schoolwide program. In its 2008 guidance, ED stated that an LEA should be able to demonstrate through its regular procedures for distributing funds that state and local funds are distributed "fairly and equitably" to all schools without regard to the receipt of federal education funds. In 2015, ED provided additional guidance with respect to demonstrating SNS in schoolwide programs, noting that the SNS requirement for schoolwide programs "is simply that the school receive all non-Federal funds it would receive if it did not receive Title I funds." In that guidance, ED provided examples of how an LEA might allocate non-federal funds to demonstrate that Title I-A funds were supplemental (e.g., weighted-per-pupil funding formula) and specified instances in which the use of Title I-A funds would likely not be supplemental even if an LEA used one of the sample methodologies to distribute funds.

SNS Following Enactment of the ESSA

Under the ESSA, the SNS provisions that apply to Title I-A were altered. Essentially, the ESSA eliminated the first set of SNS provisions (three conditions) discussed above that apply to targeted assistance schools. In their place, the ESSA applied to all Title I-A schools SNS provisions that are similar to those that are currently applied to schoolwide programs. More specifically, the ESSA added statutory language specifying that LEAs are not required to identify that an individual cost or service supported with Title I-A funds is supplemental.

In addition, the ESSA requires that an LEA demonstrate that the methodology used to allocate state and local funds to Title I-A schools ensures that the school receives all of the state and local funds it would have received in the absence of Title I-A funds. The statutory language does not establish a standard or requirement regarding how to demonstrate that a Title I-A school receives all of the state and local funds it would have received in the absence of Title I-A funds. It also prohibits the Secretary from prescribing the specific methodology used by an LEA to meet this requirement.

Comparability

Comparability provisions were first included in statute in the 1970 ESEA Amendments (P.L. 91-230). Comparability requires that a comparable level of services be provided with state and local funds in Title I-A schools compared with non-Title I-A schools prior to the receipt of Title I-A funds. No changes were made to the comparability provisions by the ESSA.

The statutory language states that an LEA will be considered to have met this requirement if the LEA has filed a written assurance with the SEA that it has established and implemented (1) an LEA agency-wide salary schedule; (2) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and (3) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

However, in making a determination regarding comparability, there is a statutory prohibition against LEAs using staff salary differentials for years of employment when determining expenditures per pupil from state and local funds or instructional salaries per pupil from state and local funds. That is, actual teacher salaries cannot be used in the determination of comparability. (Some opponents of this provision refer to this as the "comparability loophole.") In practice, this means that when LEAs are making comparability determinations, they are prohibited from making these determinations using actual per-pupil expenditures.

Prohibition Related to the Use of Per-Pupil Expenditures

The ESSA maintained an ESEA provision that applies to all programs authorized under Title I, including Title I-A. This provision states: "Nothing in this title shall be construed to mandate equalized spending per pupil for a State, local educational agency, or school." This provision appears to clarify that per-pupil expenditures in Title I-A schools do not have to be equal to the per-pupil expenditures in a non-Title I-A school for an LEA to meet the SNS or comparability requirements.

Department of Education Guidance

The following ED materials provide guidance on fiscal accountability issues.

U.S. Department of Education, Title I Fiscal Issues: Maintenance of Effort; Comparability; Supplement, Not Supplant; Carryover; Consolidating Funds in Schoolwide Programs; and Grantback Requirements, February 2008, http://www2.ed.gov/programs/titleiparta/fiscalguid.pdf.

U.S. Department of Education, *Dear Chief State School Officer Letter on Schoolwide Programs*, July 3, 2015, http://www2.ed.gov/policy/elsec/guid/eseatitleiswguidance.pdf.

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