

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 both. 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	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	Special Education—Grants to States (IDEA, Part B)	IDEA
84.173	Special Education—Preschool Grants (IDEA Preschool)	
84.042	TRIO—Student Support Services	TRIO Cluster
84.044	TRIO—Talent Search	
84.047	TRIO—Upward Bound	
84.066	TRIO—Educational Opportunity Centers	
84.217	TRIO—McNair Post-Baccalaureate Achievement	
84.048	Career and Technical Education – Basic Grants to States (Perkins IV)	CTE
84.126	Rehabilitation Services – Vocational Rehabilitation	

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 for 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://oese.ed.gov/offices/office-state-grantee-relations-evidence-based-practices/ed-flex/awards/>.

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

- ESEA: <https://oese.ed.gov/files/2020/04/invite-covid-fiscal-waiver-19-20.pdf>
- Adult Ed and Perkins: <https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/tydings-covid-waiver-letter-aefta.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>
- ESEA programs: <https://www.federalregister.gov/documents/2020/05/18/2020-10563/notice-of-waivers-granted-under-section-3511-of-the-coronavirus-aid-relief-and-economic-security>

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;” III.L.3, “Special Reporting;” 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 and 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, 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 non-ESEA programs: the McKinney-Vento Homeless Assistance Act, ESSER, GEER (if administered by a 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; Title I, Part C; 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; 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://www2.ed.gov/policy/elsec/leg/essa/legislation/index.html>.

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 5–11 below, which were issued after enactment of the ESSA, are applicable to the extent they are not inconsistent with any changes made by ESSA. 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) <https://oese.ed.gov/files/2020/07/equitable-services-guidance-100419.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. 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>
6. Title IX, Part E Uniform Provisions Subpart 1—Private Schools: Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel (March 2009) <https://oese.ed.gov/files/2020/07/equitableserguidance.doc>
7. Non-Regulatory Guidance: Early Learning in the Every Student Succeeds Act (November 2016) <https://oese.ed.gov/files/2020/07/essaelguidance10202016.pdf>
8. 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>
9. Letter to Chief State School Officers on Granting Administrative Flexibility for Better Measures of Success (September 7, 2012) <http://www2.ed.gov/policy/fund/guid/gposbul/time-and-effort-reporting.html?exp=3>

10. Within-District Allocations Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Draft)
<https://oese.ed.gov/files/2020/03/Draft-Within-District-Allocations-Guidance-3-11-2020-1.pdf>
11. 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>

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

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 nonfederal 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 nonfederal 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).

2. *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 (84.424). This section also applies to 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.

3. *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 (84.424).

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); Title I, Part C (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); Title I, Part C (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.

4. *Small Rural Schools Achievement (SRSA) 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 (84.424).

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 (84.424). 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, and R) (consolidated administrative funds and schoolwide programs).

- a. *Consolidated Administrative Funds*: 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* – 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.
- c. In a September 7, 2012, letter to Chief State School Officers, ED authorized SEAs to approve LEAs' use of a substitute system for time-and-effort reporting for employees whose salaries are supported by multiple cost objectives, but who work on a predetermined schedule. ED also provided guidance to clarify the meaning of a "single cost objective." For more detail, see *Letter to Chief State School Officers on Granting Administrative Flexibility for Better Measures of Success* (Sept. 7, 2012) (<https://www2.ed.gov/policy/fund/guid/gposbul/time-and-effort-reporting.html>).

2. *Indirect Costs*

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 (84.424).

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:

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

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

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

Also excluded from the SWCAP Section I indirect costs are any occupancy and maintenance type costs as described in 34 CFR section 76.568. However, because

these costs are allocated and not incurred at the departmental level, they do not require reclassification to the “other expenditure” denominator.

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

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

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

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

The other ED programs (those not having a statutory non-supplant requirement) that allow indirect costs do not require a restricted rate and should follow the 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*

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)*

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 (84.424).

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); Vocational Rehabilitation (84.126); IDEA, Part C (84.181), and ESSER, GEER, EANS, ESF – SEA, ESF - Governor (84.425A, C, D, H, and R).

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 DUNS (Data Universal Numbering System) 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); Title II, Part A (84.367); as described in II, “Program Procedures – General and Program-Specific Cross-Cutting Requirements,” this requirement is a general cross-cutting requirement that need only be tested once to cover all major programs to which it applies.

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

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

If an LEA fails to maintain fiscal effort, 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

MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424). See III.G.2.2 – Level of Effort in the Title I, Part A (84.010) program-specific requirements in this Supplement for the supplement not supplant provisions applicable to that program.

General – An SEA and LEA may use program funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the federal funds, be made available from nonfederal sources for the education of participating students. In no case may an LEA use federal program funds to supplant funds from nonfederal 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 nonfederal 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 nonfederal 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 nonfederal 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).

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

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 2020 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

Title II, Part A (84.367); and Title IV, Part A (84.424).

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)

ESEA program in the Supplement to which this section applies are MEP (84.011); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).

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

All ESEA and other programs as identified in the program documents except subrecipients under Career Technical Education (CTE) – LEAs and SEAs must obligate funds during the 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability plus a 12-month period for carryover. For example, funds from the fiscal year 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.”

Title I, Part A – An LEA that receives \$50,000 or more in Title I, Part A funds may not carry over beyond the initial 15 months of availability more than 15 percent of its Title I,

Part A funds. An SEA may grant a waiver of the percentage limitation for an LEA once every three years if the LEA's request is reasonable and necessary or if supplemental appropriations for Title I, Part A become available for obligation (Section 1127 of ESEA (20 USC 6339)). 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.

L. Reporting

1. Financial Reporting

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);

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

2. Performance Reporting

Not Applicable

3. Special Reporting

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

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

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

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

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

Current expenditures to be included are those for free public education, including administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. Current expenditures to be excluded are those for community services, capital outlay, debt service, and expenditures from funds received under Title I of the ESEA. To determine its expenditures under Title I of the ESEA in a schoolwide program, an LEA could calculate the percentage of funds that Title I contributed to the schoolwide program and then apply that percentage to the total expenditures in the schoolwide program. Other reasonable methods may also be used (Section 8101(12) of ESEA (20 USC 7801(12))).

Except when provided otherwise by state law, average daily attendance generally means the aggregate number of days of attendance of all students during a school year divided by the number of days that school is in session during such school year. For purposes of ESEA, average daily membership (or similar data) can be used in place of average daily attendance in states that provide state aid to LEAs on the basis of average daily membership or such other data. When an LEA in which a child resides makes a tuition or other payment for the free public education of the child in a school of another LEA, the child is considered to be in attendance at the school of the LEA making the payment, and not at the school of the LEA receiving the payment. Similarly, when an LEA makes a tuition payment to a private school or to a public school of another LEA for a child with disabilities, the child is considered to be in attendance at the school of the LEA making the payment (Section 8101(1) of ESEA (20 USC 7801(1))).

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

N. Special Tests and Provisions

1. Participation of Private School Children

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 (84.424).

This section also applies to ESSER and GEER (84.425C and D).

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

Compliance Requirements For programs funded under Title I, Part A (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 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) the LEA, SEA, or other agency receiving ESEA funds has conducted timely consultation with private school officials to determine the kind of educational services to provide to eligible private school children, (2) the planned services were provided, and (3) the required amount was used for private school children.

Suggested Audit Procedures

- 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 I 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.

2. Access to Federal Funds for New or Significantly Expanded 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 (84.424).

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

Note: This requirement only applies with respect to funds allocated to new, or significantly expanded, charter schools under a covered program in a state that has charter schools. A covered program means an elementary or secondary education program administered by ED under which the secretary allocates funds to states on a formula basis, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis. *Charter school* has the same meaning as provided in Title 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. Significant expansion of enrollment means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that an SEA determines to be significant.

Except as noted below, if a charter school LEA opens or expands by November 1, the SEA must allocate to the school the funds for which it is eligible no later than 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.

3. 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); Title III, Part A (84.365); Title II, Part A (84.367); and Title IV, Part A (84.424).

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

Note: As stated earlier, 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 and 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.

Compliance Requirements As grantees, SEAs/LEAs are responsible for overseeing and monitoring subrecipients, including charter schools with relationships with Charter Management Organizations (CMOs). The SEA/LEA must: (1) evaluate each subrecipient’s risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining appropriate subrecipient monitoring (2 CFR section 200.331(b)); and (2) monitor the activities of the subrecipient

as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved (2 CFR section 200.331(d)).

Charter schools with relationships with CMOs that receive federal grant funds must comply with statutes authorizing the applicable grant program, regulations, the terms and conditions of their grant awards, and relevant department-issued guidance. Additionally, under Title 2 of the Code of Federal Regulations Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance), nonfederal entities that receive federal grants: (1) must establish and maintain effective internal controls over those funds and (2) should have internal controls that comply with the US Government Accountability Office (GAO) “Standards for Internal Control in the Federal Government” (Green Book), issued in November 1999 and updated in September 2014, or the “Internal Control – Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in 1992 and updated in May 2013. The Green Book and the COSO Internal Control – Integrated Framework (COSO framework) provide specific requirements for assessing and reporting on controls in the federal government.

Additional requirements applicable to nonfederal entities receiving federal funds include: (1) the Code of Federal Regulations (CFR) requirements regarding conflicts of interest, (2) guidance regarding related-party transactions in generally accepted accounting principles, and (3) the GAO Green Book and COSO framework guidance regarding segregation of duties applicable to charter schools with relationships with CMOs.

Audit Objectives (SEA/LEA, depending on which entity is responsible for the oversight and monitoring of charter schools with relationships with CMOs)

Determine whether the SEA/LEA is fulfilling its oversight and monitoring responsibilities with respect to charter schools with relationships with CMOs and whether the SEA/LEA has effective internal controls to mitigate identified risks.

Suggested Audit Procedures (SEA/LEA, depending on which entity is responsible for oversight and monitoring of charter schools with relationships with CMOs)

- a. Determine if the entity has subrecipient monitoring policies and procedures that include a review of charter schools with relationships with CMOs, including procedures to assess the risk posed by conflicts of interest, related party transactions, and insufficient segregation of duties.
- b. Determine whether the entity’s subrecipient monitoring policies and procedures with regard to charter schools with relationships with CMOs have been implemented.
- c. Review documentation of subrecipient monitoring of charter schools with relationships with CMOs, including review of monitoring reports and follow-up activities to track the correction of identified noncompliance, such as completion of corrective action plans.

- d. Determine whether the entity has internal controls designed to provide reasonable assurance that charter schools with relationships with CMOs have effective controls to mitigate financial risks, provide for accountability over federal funds, and mitigate performance risks.

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 (84.424).

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

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 (84.424).

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 (84.424).

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.

4. *Prima Facie Case Requirement for Audit Findings*

Section 452(a)(2) of the General Education Provisions Act (20 USC 1234a(a)(2)) requires that ED officials establish a prima facie case when they seek recoveries of unallowable costs charged to ED programs. When the preliminary ED decision to seek recovery is based on an audit under 2 CFR Part 200, Subpart F, upon request, auditors will need to provide ED program officials audit documentation. For this purpose, audit documentation (part of which is the auditor's working papers) includes information the auditor is required to report and document that is not already included in the reporting package.

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