



**OVERVIEW OF PROPOSED TITLE I
REGULATIONS:
SUPPLEMENT NOT SUPPLANT**

SEPTEMBER 2016

EVERY STUDENT SUCCEEDS ACT

TRANSITION AND IMPLEMENTATION

- ESSA provides time and authority for the U.S. Department of Education (ED) to work with our State and local partners to ensure an **orderly transition** from NCLB and ESEA flexibility.
- ED is in the process of issuing regulations, guidance, and technical assistance to support States and districts in high-quality implementation of the law by 2017-2018.
- ED will continue to provide guidance to **States and districts** over the coming weeks and months to support the transition.



EVERY STUDENT SUCCEEDS ACT

TRANSITION AND IMPLEMENTATION, CONTINUED

- Funds awarded under State formula grant programs in the 2016-2017 school year will be administered in accordance with NCLB.
- ED is receiving input from a variety of stakeholders to help support high-quality transition to, and implementation of, the new law.
- Transition FAQ's and additional resources are available on our ESSA webpage at www.ed.gov/ESSA.



STAKEHOLDER INPUT

SUPPLEMENT NOT SUPPLANT UNDER TITLE I, PART A

■ **Extensive Stakeholder Input:**

- Request for information and two public meetings (DC & CA).
- Over 200 meetings held across the country and hundreds of public comments considered.

■ **Negotiated Rulemaking:**

- The Negotiated Rulemaking Committee, including representatives of Federal, State and local administrators, Tribal leaders, parents and students, teachers, principals, other school leaders, paraprofessionals, and the civil rights and business communities, did not come to consensus but provided invaluable feedback and input.

■ **Notice of Proposed Rulemaking (NPRM):**

- Comment period closes on **November 7, 2016.**



NOTICE OF PROPOSED RULEMAKING

- Preamble

- Executive Summary, including purpose of the regulatory action
- Summary of the Major Provisions of the Regulatory Action
- Costs and Benefits
- Background, including description of public participation
- Significant Proposed Regulations
 - Statute
 - Proposed Regulations
 - Reasons for Regulating
- Regulatory Impact Analysis

- Proposed Regulations

- NPRM available at:

<https://www.federalregister.gov/articles/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant>



TITLE I, PART A

SUPPLEMENT

NOT SUPPLANT

REQUIREMENTS IN SECTION
1118(b) of the ESEA

- The supplement not supplant provision was added to Title I in 1970 after documentation of egregious misuses of Title I funds.
- The proposal will help ensure that Title I funds are additive and do not take the place of state and local funds in low-income schools.
- In the vast majority of districts – more than 90 percent – Title I schools already receive at least as much state and local funding per student as their non-Title I schools.
- However, in approximately 1,500 districts there are more than 5,000 Title I schools receiving substantially less state and local funding than their non-Title I peers *within the same district*. Title I funds spent in these schools are often, in effect, being used to make up some or all of that shortfall, instead of providing additional resources.

SUPPLEMENT NOT SUPPLANT IN TITLE I, PART A

- ESSA changed the requirement in Title I, Part A of the ESEA, which prompted the need for the proposed regulations.
- **ESEA Section 1118(b)(2) Compliance –**
 - “[A] local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under [Title I, Part A] ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under [Title I, Part A].”
- Proposed regulations clarify ways LEAs can meet this requirement
- Supplement not supplant requirements in other ESEA programs (e.g. Title III, Migrant, Title IV) are not impacted.



STRUCTURE OF THE PROPOSED REGULATIONS

- § 200.72 (a): General requirements

- § 200.72 (b): Compliance
 - (1) Annual demonstration
 - 4 approaches from which a district may choose*
 - (2) Flexibilities
 - (3) Transition timeline
 - (4) Rules of construction

§ 200.72(a): IN GENERAL

- Reiterates statutory requirement that an SEA and LEA must use Title I, Part A funds only to supplement, and not to supplant, State and local funds.
- Clarifies that, to comply with this requirement, a district is **not** required to:
 - **Identify that any individual cost or service supported with Title I, Part A funds is supplemental; or**
 - Provide services with Title I, Part A funds using a particular instructional method or in a particular instructional setting.

Note: Prior to passage of the ESSA, under Department guidance, most compliance determinations were made by identifying whether each individual cost or service supported with Title I, Part A funds was supplemental (e.g., whether it was previously paid for using State and local funds, supported for non-Title I students using State and local funds, or required by law).



§ 200.72(b)(1): COMPLIANCE

- Requires that **each year**, an LEA receiving Title I, Part A funds must--
 - Publish its methodology for allocating State and local funds; and
 - Demonstrate to the SEA, at such a time and in such a form as the SEA requires, that the methodology ensures that each Title I school receives all of the State and local funds it would otherwise receive if it were not a Title I school.
- Outlines **four approaches** each LEA may choose from in making this demonstration to the SEA.
 - Three “options” and a “special rule.”



§ 200.72(b)(1)(ii): COMPLIANCE (CONTINUED)

- Each LEA must distribute almost all State and local funds in a way that meets one of the following tests:
 - (A) Distribution of State and local funds based on student characteristics.
 - (B) Distribution of State and local funds based on personnel and non-personnel resources
 - (C) Distribution of State and local funds based on an SEA-established compliance test
 - (D) Special Rule



§ 200.72(b)(1)(ii)(A): STUDENT CHARACTERISTICS

- (A) Distribution of State and local funds based on student characteristics.** A districtwide per-pupil formula based on the characteristics of students in each school, such that
1. Students living in poverty, English learners, students with disabilities, and other such subgroups an LEA determines are associated with educational disadvantage, generate additional funding for their school; and
 2. Each Title I school receives for its use all of the funds to which it is entitled under the formula.

Note: This is often referred to as “weighted student funding.”



§ 200.72(b)(1)(ii)(B): PERSONNEL AND NON-PERSONNEL RESOURCES

(B) Distribution of State and local funds based on personnel and non-personnel resources. A districtwide personnel and non-personnel resource formula such that each Title I school receives for its use an amount of actual State and local funds at least equivalent to the **sum** of:

1. The average districtwide salary for each category of school personnel (e.g., teachers, principals, librarians, school counselors), multiplied by the number of those personnel in each category assigned by the formula to the school; and
2. The average districtwide per-pupil expenditure for non-personnel resources, multiplied by the number of students in the school.



§ 200.72(b)(1)(ii)(C): SEA-ESTABLISHED COMPLIANCE TEST

- (C) Distribution of State and local funds based on an SEA-established compliance test .** A methodology applied consistently districtwide that meets a funds-based compliance test established by the SEA that is as rigorous as options (A) or (B) and has been approved through a Federal peer review process. To be "as rigorous" as the approaches in Options A or B, an SEA-determined test would need to result in substantially similar amounts of State and local funds for Title I schools in the district as would the use of the approaches in A or B.

Note: An SEA is not required to establish a compliance test; nor is an LEA required to use such a test if the SEA establishes it. The LEA may choose among all approaches available under the proposed regulations.



§ 200.72(b)(1)(iii): SPECIAL RULE

Special Rule. Distribution based on any methodology that results in the district spending an amount of State and local funds per pupil in each Title I school that is equal to or greater than the average amount of State and local funds spent per pupil in non-Title I schools, as reported under Section 1111(h)(1)(C)(x) of the ESEA.

- **De minimis annual variation.** An LEA may comply with the special rule in a specific year if the amount of State and local funds spent per pupil in each Title I school is no more than 5 percent less than the average amount spent per pupil in non-Title I schools.
- **Schools with fewer than 100 students.** An LEA may exclude from its special rule calculations any school that enrolls fewer than 100 students.
- **Demonstrating Compliance.** An LEA may comply with the special rule if one or more non-Title I schools receives additional funding to serve a proportion of students with disabilities, English learners, or students from low income families and these additional expenditures disproportionately affect the amount of State and local funds allocated per pupil, on average, to non-Title I schools in the LEA or in a particular grade span within the LEA, and absent such school or schools, the district would be in compliance.



§ 200.72(b)(2): FLEXIBILITIES

- Grade-span compliance. An LEA may demonstrate compliance on a districtwide or grade-span basis (e.g., elementary, middle, high school)
- Single school LEA. An LEA is not required to meet the compliance requirements if it has a single school or in any grade span in which it has a single school.
- State/local funds meeting the intent and purpose of Title I. An LEA may exclude supplemental State or local funds expended for programs that meet the intent and purposes of Title I, Part A.
 - For example: a State-funded program provides additional services only for students most at risk of not meeting State academic standards.
- Districtwide activities. If an LEA spends State or local funds for districtwide activities, the LEA may exclude those funds, so long as each Title I school receives a share of those activities equal to or greater than the share it would otherwise receive if it were not a Title I school.
 - May include, e.g., districtwide administrative costs, summer school or preschool, personnel providing services such as curriculum development or data analysis.
 - May not include personnel or non-personnel resources associated with an individual school.

Note: flexibilities apply to all four approaches for demonstrating compliance.



§ 200.72(b)(3): TIMELINE

- By **December 10, 2017** an LEA must either:
 - Demonstrate to the SEA that it has a methodology for allocating State and local funds to schools that meets the proposed regulations that it will use no later than the **2018-2019** school year; or
 - Submit a plan to the SEA for how it will fully implement a methodology that meets the proposed regulations beginning no later than the **2019-2020** school year.
- **Transition.** Prior to either the 2018-2019 or 2019-2020 school year (as applicable), an LEA may comply with the Title I, Part A supplement not supplant requirement using either:
 - The method of compliance it would use to comply with the proposed regulations; or
 - The method of compliance it used for complying with the applicable Title I supplement not supplant requirement in effect on December 9, 2015.



§ 200.72(b)(4): RULES OF CONSTRUCTION

- Nothing in the proposed regulation shall be construed to require the forced or involuntary transfer of any school personnel.
- Nothing in the proposed shall be construed to require equalized spending per pupil for a State, LEA, or school.
 - Equalized spending per pupil means equal expenditures per pupil as reported under section 1111(h)(1)(C)(x) of the ESEA.
- Nothing in the proposed regulation requires an LEA to adopt a specific methodology to allocate State and local funds to comply with the supplement not supplant requirement.
- Nothing in the proposed regulation shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to school or LEA employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employers and their employees.



NEXT STEPS

- Submit official comments through the Federal Register notice available at the following link by **November 7th, 2016**:

<https://www.federalregister.gov/articles/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant>

- Main ESSA Web Page: www.ED.gov/ESSA.
- ESSA Resources, including link to the Notice, Fact Sheet, and other ESSA resources:
<http://www2.ed.gov/policy/elsec/leg/essa/index.html>.
- Email Inbox: ESSA.Questions@ed.gov.
- This webinar will be repeated on September 14 from 3:00 pm to 4:00 pm EDT.



