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This guidance has been formally rescinded by the Department and remains available on the web for historical purposes only.

Fiscal Year 2008 Guidance for Title V, Part A of the Elementary and Secondary Education Act of 1965, as Reauthorized by the No Child Left Behind Act of 2001 (State Grants for Innovative Programs)

The Office of Elementary and Secondary Education issues this guidance to provide States with information that addresses the impact that the lack of FY 2008 funding under Title V, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), has on various ESEA flexibility provisions and particular requirements under the program.

This fiscal year 2008 Guidance for Title V, Part A of the ESEA represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

This guidance supplements the Department's guidance, entitled "Guidance for Title V, Part A of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind (NCLB) Act (State Grants for Innovative Programs) issued in August 2002.

If you are interested in commenting on this guidance, please email us your comments at [DRS: Comments on all other OESE significant guidance documents go to oes@ed.gov]; or write to us at the following address:

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1. *Does the lack of fiscal year (FY) 2008 funding for Title V, Part A affect a State's or district's ability to transfer FY 2008 funds from other programs into Title V, Part A?*

No. Subject to the limitations in section 6123(a) of the ESEA, State educational agencies (SEAs) continue to have the authority through September 30, 2009, to transfer into Title V, Part A non-administrative funds allocated for State-level activities under the following programs:

- Improving Teacher Quality State grants;
- Educational Technology State grants;
- Safe and Drug-Free Schools and Communities Governor's funds, with the agreement of the Governor;
- Safe and Drug-Free Schools and Communities State Educational Agency funds; and

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- 21st Century Community Learning Centers grants.

Subject to the 50 percent statutory limitation, a State may also transfer these funds to its allocation under Part A of Title I, or to one or more of the other programs covered by the transferability authority. As always, a State may *not* transfer any funds *from* Part A of Title I.

Similarly, subject to the limitations in section 6123(b) of the ESEA, as amended by the NCLB, a district may, if it so chooses, transfer FY 2008 funds that it receives by formula under the following programs to Title V, Part A:

- Improving Teacher Quality State grants
- Educational Technology State grants
- Safe and Drug-Free Schools and Communities grants

A district may also transfer applicable funds *to* its allocation under Part A of Title I, or to one or more of the programs covered by the transferability authority. A district may *not* transfer any funds *from* Part A of Title I.

Districts that have been identified for improvement may transfer only up to 30 percent of the applicable funds, and districts identified for corrective action are precluded from transferring any funds.

The Department encourages State or district officials who are contemplating transferring funds to review the transferability requirements outlined at www.ed.gov/programs/transferability.

2. *Does the lack of FY 2008 funding for Title V, Part A affect a district's ability to use funds it receives under the Small, Rural School Achievement (SRSA) program to support activities authorized under Part A of Title V?*

No. Under section 6212 of the ESEA, districts that receive a grant under the SRSA program may continue to use their SRSA funds to carry out local activities authorized under Part A of Title V as well as under certain other programs identified in the SRSA.

The Department encourages district officials who receive SRSA funding to review the program requirements outlined at www.ed.gov/programs/reapsrsa.

3. *Does the lack of FY 2008 funding for Title V, Part A affect an eligible district's ability to exercise the authority under the Rural Education Achievement Program flexibility*

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(i.e., commonly known as the REAP-Flex authority) to support activities authorized under Part A of Title V?

No. Districts that are eligible for SRSA funding may continue to exercise REAP-Flex authority to use any funds that they receive under the Improving Teacher Quality, Educational Technology, and Safe and Drug-Free Communities grant programs to carry out local activities authorized under Part A of Title V as well as activities authorized under the other programs identified in section 6211 of the ESEA.

The Department encourages district officials who are contemplating using the REAP-Flex authority to review the applicable requirements outlined at www.ed.gov/programs/reapsrsa.

4. *If an LEA has Title V, Part A carryover funds from FY 2007, is it required to provide equitable services under Part A of Title V for the benefit of private school students?*

In general, to the extent that an LEA did not expend all of the Title V, Part A funds generated by private school students on services for such students during the 2007-08 school year, the LEA must still provide equitable services for the benefit of private school students with FY 2007 carryover funds. The lack of an FY 2008 Title V, Part A appropriation does not in any way affect the obligation of the LEA to provide equitable services with FY 2007 carryover funds. The obligation is the same as it would have been had Congress appropriated FY 2008 funds for Title V, Part A. (See section 5142 of the ESEA and section 421(b)(2) of the General Education Provisions Act (GEPA).)

5. *If an LEA transfers FY 2008 funds from other programs into Title V, Part A, is the LEA required to provide equitable services under Part A of Title V for the benefit of private school students?*

Yes, an LEA must provide equitable services under Part A of Title V for the benefit of private school students if it transfers FY 2008 funds from other programs into Title V, Part A. (See sections 5142 and 6123(e)(1) of the ESEA.)

Further, as in any use of the transferability authority, before the LEA may transfer funds, it must engage in timely and meaningful consultation with private school officials.

6. *If LEAs are still operating Title V, Part A programs because they have FY 2007 carryover funds or because they have transferred FY 2008 funds into Title V, Part A, SEAs will still have a responsibility to administer the program, including making allocations and monitoring the LEAs. Given the absence of a Title V, Part A 2008*

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appropriation and the ability to transfer only non-administrative funds into Title V, Part A, what funds may SEAs use to administer Title V, Part A through September 30, 2009?

Depending upon their circumstances, SEAs may have one of the following options regarding funds that they may use to administer Title V, Part A:

- If an SEA has FY 2007 State administrative carryover funds, it may use those funds to administer Title V, Part A through September 30, 2009.
- If an SEA included FY 2007 Title V, Part A State administrative funds in a consolidated administrative pool and has carryover funds remaining in the pool, it may use that FY 2007 consolidated administrative pool to administer Title V, Part A (together with the other programs whose funds were included in the pool) through September 30, 2009.

7. *May an SEA consolidate State administrative funds for FY 2008 and administer the Title V, Part A program with those funds?*

No. Under section 9201(b)(1) of the ESEA, a program's funds must be included in a consolidated administrative pool in order for the consolidated funds to be used to administer that program. Because there is no appropriation for Title V, Part A for FY 2008, an SEA will have no FY 2008 Title V, Part A State administrative funds to include in an FY 2008 consolidated administrative pool. Therefore, an SEA may not use the pool to administer Title V, Part A unless it receives a waiver of the use of funds requirement in section 9201(b)(1) of the ESEA under the waiver authority in section 9401 of the ESEA.

8. *May an SEA use the unused administrative funds authority in section 9201(e) of the ESEA for purposes of Title V, Part A?*

The answer depends on which fiscal year's funds are involved. Under the unused administrative funds authority, if an SEA does not use all of its consolidated administrative funds for State administration, it may use the funds for one or more of the programs included in the consolidation. Because there is no appropriation for Title V, Part A for FY 2008, an SEA will have no FY 2008 Title V, Part A State administrative funds to include in an FY 2008 consolidated administrative pool. Therefore, in the event of any unused consolidated administrative funds from FY 2008, it may not use those funds for purposes of Title V, Part A. However, if an SEA consolidated State administrative funds during FY 2007, including Title V, Part A funds, and it has carryover funds remaining in the FY 2007 consolidated administrative pool, it may use funds from that pool for purposes of the Title V, Part

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A program in accordance with section 9201(e) of the ESEA through September 30, 2009.

9. *What options are available in the event that an SEA or LEA has a very small amount of FY 2007 LEA carryover funds, which might not efficiently support services in the LEA and could be difficult for SEAs to administer?*

The following options are available in the case of small amounts of FY 2007 LEA carryover funds:

- In accordance with section C-3 of the Title V, Part A non-regulatory guidance, LEAs with particularly small amounts of FY 2007 carryover funds may “return” those funds to the SEA, and the SEA may distribute the funds to one or more LEAs. If so, the SEA must have an objective basis for the selection of LEAs to receive the funds and must publicly disseminate that information before the redistribution of funds.
- An LEA with a very small amount of FY 2007 Title V, Part A carryover funds may decide to transfer other FY 2008 funds into Title V, Part A, thus providing additional funds for the implementation of a Title V, Part A program.
- An LEA with a very small amount of FY 2007 Title V, Part A carryover funds may decide to transfer funds out of Title V, Part A and into another program authorized to receive transferred funds.