

EXCERPT from
ESEA Flexibility
Frequently Asked Questions
Revised August 3, 2012

TRANSFERABILITY OF FUNDS

B-19. How does this flexibility affect the ability of SEAs and LEAs to transfer funds from one eligible program to another?

ESEA section 6123(a) authorizes an SEA to transfer up to 50 percent of the non-administrative funds available for State-level activities in a given fiscal year under the following (currently operating) programs:

- Improving Teacher Quality State Grants (ESEA section 2113(a)(3))
- Educational Technology State Grants (ESEA 2412(a)(1))
- 21st Century Community Learning Centers (21st CCLC) (ESEA section 5112(b))

An SEA may transfer these funds into its allocations under one or more of the listed programs or into its allocation under Title I, Part A of the ESEA.

Similarly, ESEA section 6123(b) authorizes an LEA that is not identified for improvement or corrective action to transfer up to 50 percent of the funds it receives in a given fiscal year under the following (currently operating) programs:

- Improving Teacher Quality State Grants (ESEA section 2121)
- Educational Technology State Grants (ESEA 2412(a)(2)(A))

An LEA may transfer funds into its allocations under one or more of these programs or into its allocation under Title I, Part A of the ESEA. An LEA that is identified for improvement may transfer only up to 30 percent of its funds under an eligible program and must use those funds for improvement activities consistent with ESEA section 1116(c) or transfer the funds into ESEA section 1003 for improvement activities. An LEA that is identified for corrective action may not transfer any funds.

Under this flexibility, an SEA may transfer up to 100 percent of its non-administrative funds from one or more of the three programs identified above to the other identified programs and to Title I, Part A in order to implement more effectively the principles of this flexibility and improve student achievement. Similarly, an LEA may transfer program funds from one of the two programs identified above to the other identified program and to Title I, Part A. This authority would apply to all LEAs notwithstanding the limitations on such transfers and the restrictions on the use of the transferred funds in ESEA section 6123(b)(1). To the extent that an SEA or LEA transfers funds into a single program, such as Title I, Part A, it gains considerable flexibility with respect to the use

of its funds as well as flexibility for reporting and accounting for the time and effort of staff whose salaries would then be supported from only one Federal source.

Under ESEA section 6123(a), an SEA may not transfer State administrative funds under the listed programs. To obtain flexibility with respect to the use of its administrative funds, however, an SEA still has the authority to consolidate funds for State administration if the SEA can demonstrate that the majority of its resources are derived from non-Federal sources as authorized by ESEA section 9201. This, too, reduces an SEA's burden to track its uses of funds to the specific program contributing those funds and to account for the time and effort of staff whose salaries would be then supported from the consolidated administrative funds pool.

B-20. Does this flexibility permit an SEA or LEA to transfer funds out of Title I, Part A or out of programs not covered under ESEA section 6123?

No. Under this flexibility, the Secretary will not waive ESEA section 6123(c), which prohibits an SEA or LEA from transferring funds out of Title I, Part A of the ESEA. Additionally, this flexibility does not permit an SEA or LEA to transfer funds out of programs not covered under ESEA section 6123, such as funds for specific populations of underserved students.

B-21. In transferring funds, must an SEA or LEA comply with the notice requirements in ESEA section 6123(d)?

No. Under ESEA section 6123(d), an SEA must notify the Department and an LEA must notify its SEA, not later than 30 days before the effective date of each transfer, of the program(s) from which funds are to be transferred; the amount and Federal fiscal year of the funds to be transferred; the program(s) to which the funds will be transferred; and the effective date for the transfer. These notice requirements do not apply under this flexibility for an SEA or an LEA. However, an SEA and an LEA must keep records to document each transfer.

B-22. What are the responsibilities of an SEA or LEA for the provision of equitable services to private school children and teachers with respect to funds being transferred?

Each program covered by the transferability authority is subject to equitable participation requirements, which may not be waived (see ESEA section 9401(c)(5)). Before an SEA or LEA may transfer funds, it must engage in timely and meaningful consultation with appropriate private school officials (ESEA sections 6123(e)(2) and 9501). With respect to the transferred funds, the SEA or LEA must provide private school students and teachers equitable services under the program(s) to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer.

B-22a. Are there any limitations on an LEA's ability to transfer 100 percent of its Title II, Part A Improving Teacher Quality State Grant funds into another authorized program?

Yes. ESEA section 9501(b)(3)(B) requires an LEA to provide, at a minimum, equitable services to private school teachers based on an amount of the LEA's overall allocation under Title II, Part A that is not less than the aggregate amount of FY 2001 funds that the LEA used for professional development under the former Eisenhower Professional Development program and Class-Size

Reduction program. Because the Department may not waive requirements related to the equitable participation of private school students and teachers (see ESEA section 9401(c)(5)), even if an LEA wishes to transfer most or all of its Title II, Part A funds into another authorized program, the law requires the LEA to reserve an amount of Title II, Part A funds for equitable services provided under that program for private school teachers and other educational personnel that is calculated on the assumption that the LEA is reserving for professional development under Title II, Part A at least as much as it did for FY 2001 under the two predecessor programs.

Assume, for example, that an LEA reserved a total of \$30,000 in FY 2001 funds under the Eisenhower Professional Development program and the Class-Size Reduction program for professional development. In order to provide equitable services in a subsequent school year consistent with ESEA section 9501(b)(3)(B), the LEA would need to assume that it would spend at least \$30,000 under Title II, Part A for professional development, including the amount of this \$30,000 that it would use to provide equitable services to private school teachers and other educational personnel. The amount available for equitable services would be proportionate to the participating private school children compared to the total number of public and participating private school children in the LEA based on the most current enrollment data. For example, if there are 100 children enrolled in participating private schools and 900 children enrolled in public schools in an LEA in the 2012–2013 school year, the LEA would need to spend at least \$3,000 ($\$30,000 \div 1000 \times 100 = \$3,000$) to provide equitable services in the form of professional development to private school teachers and other educational personnel. This requirement applies even if the LEA is in a State that receives ESEA flexibility and wishes to transfer 100 percent of its Title II, Part A funds to another authorized program. In this case, the LEA could transfer all but \$3,000 of Title II, Part A funds to the other program, but would need to make the \$3,000 of Title II, Part A funds available for equitable services in the form of professional development to private school teachers and other educational personnel. (Added May 7, 2012)