

**Draft**  
**Guidance on the**  
**Transferability Authority**



**U.S. Department of Education**

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## INTRODUCTION

### **1. What is transferability?**

Transferability is a new flexibility authority that permits State educational agencies (SEAs) and local educational agencies (LEAs) to transfer a portion of the funding that they receive under certain Federal programs to their allocations under other programs so that they can address more effectively their unique needs.

### **2. Why is transferability important?**

Transferability provides SEAs and LEAs with unprecedented flexibility in targeting Federal resources to meet the needs of all children. It can be a powerful tool in assisting States and districts in pursuing their own strategies for raising student achievement. It facilitates the development and implementation of integrated approaches for addressing local educational needs and priorities.

### **3. Does transferability provide SEAs and LEAs with additional Federal funding?**

No. Transferability does not affect the overall amount of funds that an SEA or LEA receives, but provides them with greater flexibility in using certain Federal funds.

### **4. What is the legislative authority for transferability?**

Transferability is authorized under subpart 2 of Part A of Title VI of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001. (A copy of the transferability legislation is attached to this guidance as Appendix A.)

### **5. What agencies may transfer funds under the transferability authority?**

As a general rule, the transferability authority is available to SEAs and LEAs. However, LEAs that have been identified for improvement under section 1116(c) of the ESEA have more limited transferability authority, and LEAs that have been identified for corrective action under section 1116(c) may not transfer funds. (See Section II-A of this guidance.)

This guidance discusses separately transfers by SEAs and by LEAs. (See Sections I and II, respectively.)

**6. Are the outlying areas and the Bureau of Indian Affairs (BIA) eligible to exercise transferability authority?**

No. The statute does not provide authority for the outlying areas and the BIA to transfer funds.

**7. What rules and requirements apply to funds that an SEA or LEA transfers from one program to another?**

Funds that an SEA or LEA transfers are subject to the rules and requirements of the programs to which the funds are transferred.

**I. TRANSFERS BY SEAs**

**I-A. SEA Eligibility for Transferability**

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**I-A-1. May any SEA transfer funds under the transferability authority?**

Yes. Every SEA is authorized to transfer funds under the transferability authority.

**I-A-2. Does an SEA need to obtain the U.S. Department of Education’s approval in order to transfer funds?**

No. The legislation authorizes an SEA to transfer funds without seeking approval. Thus, an SEA does not have to apply for transferability authority – it already has that authority. However, the SEA must notify the Department of its intent to transfer funds at least 30 days before each transfer occurs. (*See* I-C-1.)

**I-B. Funds Affected by SEA Transferability**

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**I-B-1. What funds may an SEA transfer?**

An SEA may transfer up to 50 percent of a fiscal year’s non-administrative funds allocated for State-level activities under each of the following provisions:

- ❑ Section 2113(a)(3) (Improving Teacher Quality State Grants)
- ❑ Section 2412(a)(1) (Educational Technology State Grants)

- ❑ Section 4112(a)(1) (Safe and Drug-Free Schools and Communities Governor’s funds, with the agreement of the Governor)
- ❑ Section 4112(c)(1) (Safe and Drug-Free Schools and Communities SEA funds)
- ❑ Section 4202(c)(3) (21<sup>st</sup> Century Community Learning Centers Grants)
- ❑ Section 5112(b) (State Grants for Innovative Programs)

**I-B-2. Does the 50 percent limitation apply to the non-administrative funds that are available under *each* of the programs to which the transferability authority applies, or to the total amount of non-administrative funds that is available under all of these programs?**

The 50 percent limitation applies to the non-administrative funds available under each of the separate programs listed in I-B-1, not to the aggregate amount of non-administrative funds available under all of the programs.

**Example 1 – SEA Transferability Limitation Applies to Each Affected Program**

An SEA has a total of \$2.5 million of FY 2002 State-level, non-administrative funds under the Safe and Drug-Free Schools and Communities program and the Improving Teacher Quality State Grant program – specifically, \$1.5 million under Safe and Drug-Free Schools and \$1 million under Improving Teacher Quality.

The SEA wishes to transfer funds the maximum amount of funds possible from its Improving Teacher Quality allocation to its Title V, Part A allocation (State Grants for Innovative programs). That amount is \$500,000, which is 50% of its State-level, non-administrative funds under its Improving Teacher Quality allocation.

**I-B-3. May an SEA transfer administrative funds under the transferability authority?**

No. The transferability authority applies only to *non-administrative* funds allotted under the provisions listed in I-B-1. However, an SEA may consolidate

administrative funds under the authority in section 9201 of the ESEA and use the consolidated funds for activities described in section 9201(b).

**I-B-4. To which allocations may an SEA transfer funds?**

Up to the 50 percent limitation, an SEA may transfer State-level, non-administrative funds from a program to which the transferability authority applies (*see* I-B-1) to its allocations under one or more of the other programs to which the authority applies, as well as to its allocation under Part A of Title I.

**I-B-5. May an SEA transfer funds *from* its allocation under Part A of Title I to its allocation under other programs?**

No. An SEA may transfer up to 50 percent of the State-level, non-administrative funds allotted under each of the programs listed in I-B-1 to one or more of the other programs listed in I-B-1 and/or *to* its allocation under Part A of Title I, but may not transfer funds from Part A of Title I to other programs.

**I-B-6. May an SEA transfer an amount that is greater than 50 percent of its State-level, non-administrative funds under one of the programs listed in I-B-1 if the transfer is made to its allocation under Part A of Title I?**

No. An SEA may transfer no more than 50 percent of its State-level, non-administrative funds under each of the programs listed in I-B-1, regardless of which programs receive the transferred funds.

**I-C. The SEA Transfer Process**

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**I-C-1. What steps must an SEA take before transferring funds?**

Before transferring funds, an SEA must --

- (1) Conduct consultations in accordance with section 9501 of the ESEA in order to provide for the equitable participation of private school students and staff (*see* I-C-2);
- (2) Determine what funds are to be transferred (subject to the 50 percent limitation) and the programs to which the funds will be transferred on the basis of the State's priorities and after engaging in the consultations referenced in paragraph (1);

- (3) Modify each affected State plan or application to account for the transfer;
- (4) Establish an effective date for the transfer; and
- (5) Notify the U.S. Department of Education of the transfer at least 30 days *before* the effective date of each transfer. (If a transfer results in a significant change in the administration or operation of a State plan or application, the SEA must also submit to the Department, within 30 days after the transfer, a copy of its revised State plan or application. *See I-C-6.*)

**I-C-2. How do requirements relating to the equitable participation of private school students and staff apply to funds that an SEA is considering to transfer?**

Each of the programs covered by the SEA transferability authority is subject to the equitable participation requirements. Thus, before an SEA may transfer any funds, it must engage in timely and meaningful consultation with officials representing the full spectrum of private schools in the State. (See the provision in section 5142(a) regarding equitable participation with respect to instructional or training programs funded by the SEA from Title V, Part A funds that are made available for SEA use. The other programs are subject to the general ESEA equitable participation requirements in Title IX of the ESEA.)

With respect to the transferred funds, private school students and teachers will receive equitable services from the SEA under the programs to which the funds are transferred.

**Example 2 – SEA Consultation with  
Private School Officials**

Taking into consideration the needs of private school students and teachers, prior to making a final decision on whether to transfer funds, the SEA consults with private school officials on which funds it is considering to transfer and the programs to which it would transfer the funds.

An SEA may not transfer funds to a particular program solely to provide services for private school students and/or teachers. Rather, the SEA provides equitable

services to private school students and teachers from the overall funds of a program, including the transferred funds.

**I-C-3. May an SEA transfer funds more than one time during a year?**

Yes. There are no specific statutory limitations on the number of times an SEA may transfer funds during a year. However, each transfer should be made only after the SEA has engaged in thorough and careful planning.

**I-C-4. After transferring funds into a program, may an SEA subsequently transfer funds out of that same program?**

If an SEA transfers funds from one of the programs to which the transferability authority applies to another applicable program (*see* I-B-1), it may subsequently transfer funds out of the receiving program, subject to the 50 percent limitation. (*See* I-C-5, which describes how the 50 percent limitation is calculated.)

An SEA may not transfer funds from its allocation under Part A of Title I to another program. Therefore, if an SEA transfers funds to its allocation under Part A of Title I, it may not subsequently transfer funds from Title I to another program.

**I-C-5. What is the base on which the 50 percent transferability limitation is calculated?**

The 50 percent transferability limitation is calculated on the basis of the total amount of a fiscal year's State-level, non-administrative funds that are available under an applicable program. The base includes both State-level non-administrative funds that were originally available to an SEA for a given fiscal year as well as funds that the SEA transfers into the program.

### **Example 3 – Calculating the SEA Transferability Base**

An SEA has \$100,000 of FY 2002 State-level, non-administrative funds under the Educational Technology State Grant (Ed Tech) program. The SEA transfers \$50,000 of FY 2002 State-level, non-administrative funds from another program to augment its State-level Ed Tech allocation.

The new transferability base for State-level, non-administrative funds under the Ed Tech program is \$150,000. The SEA may transfer up to \$75,000 of this amount.

The SEA transfers \$50,000 from its FY 2002 Ed Tech allocation to its Safe and Drug-Free Schools allocation, and \$25,000 from its Ed Tech allocation to its Improving Teacher Quality allocation.

#### **I-C-6. If an SEA has carryover funds under one of the programs to which the transferability authority applies, may the SEA transfer those funds to another program?**

The amount of carryover funds, if any, that an SEA may transfer depends on the amount of funds, if any, that it transferred during the year preceding the carryover period. As stated above, an SEA may transfer up to 50 percent of a fiscal year's non-administrative funds allotted for State-level activities under the programs listed in I-B-1. Thus, if an SEA transfers an amount less than 50 percent of a program's non-administrative allocation for a given year, it may transfer funds carried over to the succeeding year, but only to the extent that the sum of the amount transferred during the prior year and the amount of carryover funds to be transferred does not exceed 50 percent of the base year's allocation for that program.

**Example 4 --Applicability of the Transferability Provisions to SEA Carryover Funds**

An SEA has \$100,000 of FY 2002 State-level, non-administrative funds under the Educational Technology State Grant (Ed Tech) program. The SEA is eligible to transfer up to \$50,000 of this amount.

The SEA transfers \$40,000 of its FY 2002 Ed Tech funds to its FY 2002 allocation under Part A of Title I. The SEA does not expend all of its remaining FY 2002 Ed Tech funds during the year for which the funds were appropriated, and carries over \$30,000 of FY 2002 Ed Tech funds to the succeeding fiscal year.

In that succeeding year, the SEA may transfer up to \$10,000 of the FY 2002 Ed Tech carryover funds, and transfers this amount to its allocation under Part A of Title I.

**Example 5 – Applicability of the Transferability Provisions to SEA Carryover Funds**

An SEA has \$100,000 of FY 2002 State-level, non-administrative funds under the Educational Technology State Grant (Ed Tech) program. The SEA transfers \$50,000 of its FY 2002 State-level Ed Tech funds to its FY 2002 allocation under Part A of Title I. This is the maximum amount that the SEA may transfer from the Ed Tech program.

The SEA does not expend all of its remaining FY 2002 Ed Tech funds during the year for which the funds were appropriated, and carries over \$30,000 of FY 2002 Ed Tech funds to the succeeding fiscal year.

The SEA may not transfer any of the FY 2002 Ed Tech funds during the carryover period because it has already transferred the maximum amount of funds permitted by the legislation.

**I-C-7. After making a transfer of funds, what information does an SEA have to submit to the U.S. Department of Education?**

If a transfer results in a significant change in the administration or operation of a State plan or application, the SEA must submit to the Department, within 30 days after a transfer, a copy of its revised State plan or application.

**I-C-8. How does an SEA make a transfer?**

The mechanics of a transfer will depend on the nature of the State’s financial reporting system. For example, in transferring funds, an SEA may –

- Move funds from the account(s) of the program(s) from which the funds are being transferred into the account(s) of the program(s) to which the funds are being transferred.
- Establish a new, separate account for transferred funds.
- Keep the “transferred funds” in their original account(s), but maintain documentation that shows how “transferred funds” in the original account(s) have been reclassified. In other words, in transferring funds, an SEA does not actually have to move funds from one account to another so long as it maintains adequate documentation to account for the transfer.

Regardless of the method that the SEA uses to transfer funds, the SEA must maintain records demonstrating how a program’s overall funds (including transferred funds) were spent. However, the SEA does not have to account separately for the expenditure of the funds that were transferred into a program and the allocation to which the transferred funds were added.

### **Example 6 – Fund Accountability**

An SEA has \$100,000 of State-level, non-administrative funds under the Education Technology State Grant (Ed Tech) program. The SEA transfers \$40,000 of State-level, non-administrative funds from its Safe and Drug-Free Schools allocation to its Ed Tech allocation, resulting in \$140,000 of State-level, non-administrative Ed Tech funds.

The SEA's Ed Tech records would reflect that \$40,000 was added to its Ed Tech allocation. The SEA must maintain documentation demonstrating how \$140,000 of Ed Tech funds was spent, but does not have to account separately for the expenditure of the \$40,000 of funds that was transferred into the Ed Tech program and the \$100,000 of funds that represented the original Ed Tech base.

In its Safe and Drug-Free Schools account, the SEA would reflect that \$40,000 of funds from its Safe and Drug-Free School allocation was transferred to another program (i.e., Ed Tech).

#### **I-C-9. Once it is notified of an SEA's intent to transfer funds, will the U.S. Department of Education actually transfer funds from one account to another in the Department's accounting system?**

No. The Department of Education will not transfer any funds among accounts. Rather, the SEA must maintain documentation of the amounts transferred from and into a program.

#### **I-C-10. What are an SEA's responsibilities for funds that it transfers?**

In addition to following the steps outlined in I-C-1 through I-C-8, an SEA must –

- ❑ Spend the transferred funds in accordance with the requirements of the receiving program (*see* I-D-1);
- ❑ Maintain records that will permit the U.S. Department of Education to carry out normal monitoring, evaluation, and auditing activities; and

- Produce reports that the Department may request to reflect transfers (*see* I-C-11).

**I-C-11. How does an SEA account for transfers in reports that it submits to the Department?**

The Department is in the process of developing separate guidance for SEAs on consolidated performance reports for formula grant programs, and intends to include in that guidance information on an SEA’s implementation of transferability and other flexibility authorities. The SEA will be required to report expenditures at the CFDA level.

**I-C-12. How will auditors be informed of SEA transferability authority?**

The Department is amending the Compliance Supplement (which auditors use when performing audits of Federal programs under the Single Audit Act) to include information on the SEA and LEA transferability authorities.

**I-D. Effects of an SEA Transfer**

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**I-D-1. What rules and requirements govern funds that an SEA transfers from one program to another?**

When an SEA transfers State-level, non-administrative funds from one program to another, the transferred funds become State-level, non-administrative funds of the program to which they are transferred. The transferred funds are subject to the rules and requirements of the programs to which the funds are transferred.

**I-D-2. What effect does an SEA’s transfer of funds have on its future allocations under the programs covered by the transferability authority?**

An SEA’s transfer of funds does not affect its future grant allocations under the programs covered by the transferability authority. Transferred funds are not taken into consideration when the Department allocates funds in subsequent years, and transferability has no effect on statutory hold harmless provisions governing grant allocations.

**Example 7 – Transferability Does Not  
Affect Future SEA Allocations**

An SEA transfers \$1 million of State-level, non-administrative funds from its Ed Tech allocation to its allocation under Part A of Title I to support State-level Title I activities. The transfer has no effect on the amount of Title I, Part A funds (or the Ed Tech funds) that the State receives in future years.

**I-D-3. Does a transfer extend the period of availability of the affected funds?**

No. All of the programs to which the transferability authority applies are forward-funded and transferred funds retain the identity of the fiscal year for which the funds were appropriated. Thus, transferability does not affect the period in which an SEA may obligate funds.

While an SEA may make a transfer during either the fiscal year for which the funds were appropriated or during the carryover period, the SEA may not extend the period of availability of funds by transferring funds from one program to another.

**Example 8 – Period of Availability Unaffected  
By Transferability**

An SEA is awarded FY 2002 funds under the Education Technology State Grant (Ed Tech) program. These funds are available for obligation through September 30, 2004. The SEA transfers a portion of its FY 2002 State-level, non-administrative Ed Tech funds to its FY 2002 Safe and Drug-Free Schools allocation, which is also available through September 30, 2004. The transfer does not affect the period of fund availability – FY 2002 funds that are transferred from one program to another remain FY 2002 funds.

The SEA may *not* transfer funds from its FY 2002 Ed Tech allocation to its FY 2003 Safe and Drug-Free Schools allocation.

## **II. TRANSFERS BY LEAs**

### **II-A. LEA Eligibility for Transferability**

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#### **II-A-1. May any LEA transfer funds under the transferability authority?**

Any LEA, except an LEA that has been identified for corrective action under section 1116(c)(10), may transfer funds under the transferability authority. However, the transferability authority of an LEA that has been identified for improvement under section 1116(c)(3) of the ESEA is limited. (See II-A-2 through II-A-4.)

#### **II-A-2. May an LEA that has been identified for improvement under section 1116(c)(3) of the ESEA transfer funds?**

Yes. However, an LEA that has been identified for improvement may transfer no more than 30 percent of the funds allocated to it for a given fiscal year under each of the programs listed in II-B-1, and all of the transferred funds must be used for LEA improvement activities consistent with section 1116(c) of the ESEA. (See II-B-3.)

#### **II-A-3. Once an LEA has been identified for improvement, do the limitations on transferability apply immediately?**

Yes. Once an LEA has been identified for improvement, any subsequent transfers of funds must be consistent with the 30 percent limitation, and all transferred funds must be used for LEA improvement activities consistent with section 1116(c).

#### **II-A-4. May an LEA that has been identified for corrective action under section 1116(c)(10) transfer funds?**

No. An LEA that has been identified for corrective action may not transfer funds from one program to another.

#### **II-A-5. Once an LEA has been identified for corrective action, does it immediately lose its authority to transfer funds?**

Yes. An LEA that has been identified for corrective action may not transfer any funds during the period that it is in corrective action status.

**II-A-6. Does an LEA need to obtain the approval of either the U.S. Department of Education or its SEA before it may transfer funds?**

No. The legislation authorizes an eligible LEA to transfer funds without seeking approval from either its SEA or the U.S. Department of Education. Thus, an LEA does not have to apply for transferability authority – it already has that authority. However, the LEA must notify its SEA of its intent to transfer funds at least 30 days before each transfer occurs. (See II-C-1.)

**II-B. Funds Affected by LEA Transferability**

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**II-B-1. What funds may an LEA transfer?**

In general, an LEA may transfer up to 50 percent of each fiscal year's funds that it receives *by formula* under the following provisions:

- ❑ Section 2121 (Improving Teacher Quality State Grants)
- ❑ Section 2412(a)(2)(A) (Educational Technology State Grants)
- ❑ Section 4112(b)(1) (Safe and Drug-Free Schools and Communities)
- ❑ Section 5112(a) (State Grants for Innovative Programs)

An LEA that has been identified for improvement under section 1116(c)(3) may transfer up to 30 percent of each fiscal year's funds that it receives *by formula* under the provisions listed above.

An LEA that has been identified for corrective action under 1116(c)(10) may not transfer any funds.

**II-B-2. Does the 50 percent transferability limitation (and the 30 percent limitation for LEAs that have been identified for improvement) apply to the formula grant funds that an LEA receives under *each* of the programs to which the transferability authority applies, or to the total amount of formula grant funds that an LEA receives under all of these programs?**

The 50 percent transferability limitation (and the 30 percent limitation for LEAs that have been identified for improvement) applies to the formula grant funds that an LEA receives under each of the separate programs listed in II-B-1, not to the aggregate amount of formula grant funds that the LEA receives under all of the programs.

**Example 9 – LEA Transferability Limitation  
Applies to Each Affected Program**

An LEA receives a total of \$550,000 of formula grant funds under the Educational Technology State Grant (Ed Tech) program and the Improving Teacher Quality State Grant program – specifically, \$250,000 under Ed Tech and \$300,000 under Improving Teach Quality.

The LEA wishes to transfer the maximum amount of funds from its Improving Teacher Quality allocation to its Title V, Part A allocation. That amount is \$150,000, which is 50% of its Improving Teacher Quality allocation.

**II-B-3. To which allocations may an LEA transfer funds?**

Up to the 50 percent limitation, an LEA (except an LEA identified for improvement or corrective action under section 1116(c)) may transfer funds from a program to which the transferability authority applies (*see* II-B-1) to its allocations under one or more of the other programs to which the authority applies, as well as to its allocation under Part A of Title I.

An LEA identified for improvement is subject to a 30 percent limitation, and the transferred funds must be used for LEA improvement activities consistent with section 1116(c) of the ESEA. The funds do not have to be transferred to the LEA's allocation under Part A of Title I.

**II-B-4. May an LEA transfer funds *from* its allocation under Part A of Title I to its allocation under other programs?**

No. An LEA may *not* transfer funds from Part A of Title I to its allocations under other programs.

**II-B-5. May an LEA transfer an amount that is greater than 50 percent of its formula grant allocation under one of the programs listed in II-B-1 if the transfer is made to its allocation under Part A of Title I?**

No. An LEA may transfer no more than 50 percent of its formula grant allocation under each of the programs listed in II-B-1, regardless of which programs receive

the transferred funds. (If the LEA has been identified for improvement under section 1116(c), the limitation is 30 percent.)

## **II-C. The LEA Transfer Process**

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### **II-C-1. What steps must an LEA take before transferring funds?**

Before transferring funds, an LEA must --

- (1) Conduct consultations in accordance with section 9501 of the ESEA in order to provide for the equitable participation of private school students and staff (*see* II-C-2);
- (2) Determine what funds are to be transferred (subject to the applicable percentage limitation) and the programs to which the funds will be transferred on the basis of the LEA's priorities and after engaging in the consultations referenced in paragraph (1);
- (3) Modify each affected LEA plan or application to account for the transfer;
- (4) Establish an effective date for the transfer; and
- (5) Notify its SEA of the transfer at least 30 days *before* the effective date of the transfer. (If a transfer results in a significant change in the administration or operation of a local plan or application, the LEA must also submit to its SEA, within 30 days after the transfer, a copy of its revised local plan or application. *See* II-C-7.)

### **II-C-2. How do requirements relating to the equitable participation of private school students and staff apply to funds that an LEA is considering to transfer?**

Each of the programs covered by the LEA transferability authority is subject to the equitable participation requirements. Thus, before an LEA may transfer any funds, it must engage in timely and meaningful consultation with private school officials.

With respect to the transferred funds, private school students and teachers will receive equitable services from the LEA under the programs to which the funds are transferred.



**Example 10 – LEA Consultation with  
Private School Officials**

Taking into consideration the needs of private school students and teachers, prior to making a final decision on whether to transfer funds, the LEA consults with private school officials on which funds it is considering to transfer and the programs to which it would transfer the funds.

An LEA may not transfer funds to a particular program solely to provide services for private school students and/or teachers. Rather, the LEA provides equitable services to private school students and teachers from the overall funds of a program, including the transferred funds.

**II-C-3. May an LEA transfer funds more than one time during a year?**

Yes. There are no specific statutory limitations on the number of times an LEA may transfer funds during a year. However, each transfer should be made only after the LEA has engaged in thorough and careful planning. Furthermore, in transferring funds, an LEA must make sure that it complies with applicable statutory set-asides governing the uses of funds. (See II-D-1 through II-D-3.)

**II-C-4. After transferring funds into a program, may an LEA subsequently transfer funds out of that same program?**

If an LEA transfers funds from one of the programs to which the transferability authority applies to another applicable program (see II-B-1), it may subsequently transfer funds out of the receiving program, subject to the percentage limitation. (See II-C-5, which describes how the percentage limitation is calculated.)

An LEA may not transfer funds from its allocation under Part A of Title I to another program. Thus, if an LEA transfers funds to its allocation under Part A of Title I, those funds may not subsequently be transferred to another program.

**II-C-5. What is the base on which the 50 percent and 30 percent transferability limitations are calculated?**

The 50 percent and 30 percent transferability limitations are calculated on the basis of the total amount of an LEA's formula grant funds in a fiscal year that are available under an applicable program. The base includes both formula grant funds that an LEA originally received for a given fiscal year as well as to the funds that the LEA transfers into the program.

### **Example 11 – Calculating the LEA Transferability Base**

An LEA has \$10,000 of formula grant funds under the Educational Technology State Grant (Ed Tech) program. The LEA transfers \$5,000 of funds from its Improving Teacher Quality State Grant allocation to augment its Ed Tech formula grant allocation.

The transferability base for the Ed Tech formula grant program is now \$15,000. The LEA may transfer up to \$7,500 of this amount (assuming that the LEA has not been identified for improvement or corrective action).

The SEA transfers \$5,000 of Ed Tech funds to its allocation under Part A of Title I and \$2,500 of Ed Tech funds to its allocation under Safe and Drug-Free Schools.

### **II-C-6. If an LEA has carryover funds under one of the programs to which the transferability authority applies, may the LEA transfer those funds to another program?**

The amount of carryover funds, if any, that an LEA may transfer depends on the amount of funds, if any, that it transferred during the year preceding the carryover period. As stated above, an LEA may generally transfer up to 50 percent of a fiscal year's formula grant funds under the programs listed in II-B-1. (The limitation is 30 percent for an LEA that has been identified for improvement under section 1116(c).)

Thus, if an LEA transfers an amount less than 50 percent of a program's formula grant allocation in a given year, it may transfer funds carried over to the succeeding year, but only to the extent that the sum of the amount transferred during the prior year and the amount of carryover funds to be transferred does not exceed 50 percent of the base year's allocation for that program.

### **Example 12 – Applicability of the Transferability Provisions to LEA Carryover Funds**

An LEA receives \$100,000 of FY 2002 formula grant funds under the Educational Technology State Grant (Ed Tech)

program. The LEA is eligible to transfer up to \$50,000 of this amount.

The LEA transfers \$40,000 of its Ed Tech allocation to its FY 2002 allocation under Part A of Title I. The LEA does not expend all of its remaining Ed Tech funds during the year for which the funds were appropriated, and carries over \$30,000 of FY 2002 Ed Tech funds to the succeeding fiscal year.

In that succeeding year, the LEA may transfer up to \$10,000 of the Ed Tech carryover funds, and transfers this amount to its allocation under the Improving Teacher Quality State Grant program.

### **Example 13 – Applicability of the Transferability Provisions to LEA Carryover Funds**

An LEA receives \$100,000 of FY 2002 formula grant funds under the Educational Technology State Grant (Ed Tech) program. The LEA transfers \$50,000 of that allocation to its FY 2002 allocation under Part A of Title I. This is the maximum amount that the LEA may transfer from the Ed Tech program.

The LEA does not expend all of its remaining Ed Tech funds during the year for which the funds were appropriated, and carries over \$30,000 of FY 2002 Ed Tech funds to the succeeding fiscal year.

The LEA may not transfer any of the FY 2002 Ed Tech funds during the carryover period because it has already transferred the maximum amount authorized.

#### **II-C-7. After making a transfer of funds, what information does an LEA have to submit to its SEA?**

If a transfer results in a significant change in the administration or operation of a local plan or application, the LEA must submit to its SEA, within 30 days after the transfer, a copy of its revised local plan or application.

## **II-C-8. How does an LEA make a transfer?**

The mechanics of a transfer will depend on the nature of the State and local financial reporting systems. For example, in transferring funds, an LEA may –

- Move funds from the account(s) of the program(s) from which the funds are being transferred into the account(s) of the program(s) to which the funds are being transferred.
- Establish a new, separate account for transferred funds.
- Keep the “transferred funds” in their original account(s), but maintain documentation that shows how “transferred funds” in the original account(s) have been reclassified. In other words, in transferring funds, an LEA does not actually have to move funds from one account to another so long as it maintains adequate documentation to account for the transfer.

Regardless of the method that the LEA uses to transfer funds, the LEA must maintain records demonstrating how a program’s overall funds (including transferred funds) were spent. However, the LEA does not have to account separately for the expenditure of the funds that were transferred into a program and the allocation to which the transferred funds were added.

#### **Example 14 – Fund Accountability**

An LEA has \$100,000 of formula grant funds under the Education Technology State Grant (Ed Tech) program. The LEA transfers \$40,000 from its Safe and Drug-Free Schools allocation to its Ed Tech allocation, resulting in \$140,000 of Ed Tech formula grant funds.

The LEA's Ed Tech records would reflect that \$40,000 was added to its Ed Tech allocation. The LEA must maintain documentation demonstrating how \$140,000 of Ed Tech funds was spent, but does not have to account separately for the expenditure of the \$40,000 of funds that was transferred into the Ed Tech program and the \$100,000 of funds that represented the original Ed Tech base.

In its Safe and Drug-Free Schools account, the LEA would reflect that \$40,000 of funds from its Safe and Drug-Free School allocation was transferred to another program (i.e., Ed Tech).

#### **II-C-9. Once it is notified of an LEA's intent to transfer funds, must the SEA actually transfer funds from one account to another in the State's financial reporting system?**

Whether an SEA actually makes a transfer of funds from one account to another to reflect transfers that an LEA makes will depend on the nature of the State and local financial reporting systems. In any event, the SEA and LEA must maintain documentation that identifies, at the CFDA level, funds that an LEA transfers.

#### **II-C-10. What are an LEA's responsibilities for funds that it transfers?**

In addition to following the steps outlined in II-C-1 through II-C-8, an LEA must –

- Spend the transferred funds in accordance with the requirements of the receiving program, including the statutory set-aside limitations (*see* II-D-1 through II-D-3);

- ❑ Maintain records of any transfers that will permit the U.S. Department of Education and the SEA to carry out normal monitoring, evaluation, and auditing activities; and
- ❑ Produce reports determined by the State to be adequate for financial and program reporting (*see* II-C-11).

**II-C-11. How does an LEA account for transferred funds in reports that it submits to its SEA?**

Each SEA will determine the nature of the performance and financial reports that its LEAs must submit in order to account for transferred funds.

The Department is in the process of developing separate guidance for SEAs on consolidated performance reports for formula grant programs, and intends to include in that guidance information on an SEA's implementation of transferability and other flexibility authorities. This guidance will assist SEAs in developing performance reporting guidance for their LEAs.

**II-C-12. What are an SEA's responsibilities regarding funds that are transferred by an LEA?**

To facilitate transfers by its LEAs, an SEA must –

- ❑ Provide for the orderly and accountable disbursement of funds;
- ❑ Allow LEAs discretion in transferring funds among accounts (subject to the statutory limitations on transferability) so that they can take full advantage of the flexibility offered by the legislation;
- ❑ Ensure that LEAs use transferred funds in accordance with the requirements of the receiving program; and
- ❑ Carry out their monitoring, evaluation, and reporting responsibilities in a manner that recognizes the outcomes of funds transferred among programs.

**II-C-13. How will auditors be informed of LEA transferability authority?**

The Department is amending the Compliance Supplement (which auditors use when performing audits of Federal programs under the Single Audit Act) to include information on the SEA and LEA transferability authorities.

## II-D. Effects of an LEA Transfer

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### II-D-1. What rules and requirements govern funds that an LEA transfers from one program to another?

When an LEA transfers funds from one program to another, the transferred funds become funds of the program to which they are transferred. The transferred funds are subject to the rules and requirements of the programs to which the funds are transferred. Thus, for example, statutory provisions that establish specific set-asides governing the uses of funds apply to funds that an LEA transfers under the transferability authority. (See II-D-2 and II-D-3.)

### II-D-2. Do the statutory provisions that establish specific set-asides governing the uses of program funds apply to transferred funds?

Yes. Transferred funds are subject to the requirements of the program to which they are transferred. In transferring funds, an LEA should be particularly careful about complying with statutory set-asides because the transfer may affect set-aside limitations in both the program(s) from which the LEA transfers funds and the program(s) to which the LEA transfers funds.

**Example 15 – Effect of LEA  
Set-Aside Requirements in the Program  
To Which Funds Are Transferred**

An LEA receives a \$200,000 formula grant allocation under the Educational Technology State Grant (Ed Tech) program and a \$300,000 allocation under Improving Teacher Quality program. The LEA transfers \$40,000 of its Improving Teacher Quality funds to its Ed Tech allocation. The LEA's Ed Tech allocation is now \$240,000 (the \$200,000 original base and the \$40,000 that was transferred into the program).

Under the Ed Tech program, an LEA must spend at least 25 percent of its Ed Tech funds on professional development (subject to a statutory exception if certain conditions are met). After the transfer, the total amount of Ed Tech funds that the LEA would be required to spend on professional development is \$60,000 – 25% of the adjusted \$240,000 Ed Tech transferability base.

**Example 16—Effect of LEA Set-Aside  
Requirements in the Program  
From Which Funds Are Transferred**

An LEA receives a \$200,000 formula grant allocation under the Educational Technology State Grant (Ed Tech) program and a \$300,000 allocation under Part A of Title V. The LEA transfers \$40,000 of its Ed Tech funds to its Title V, Part A allocation. The LEA's Ed Tech allocation is now \$160,000 (the \$200,000 original base less the \$40,000 that was transferred to Title V).

Under the Ed Tech program, an LEA must spend at least 25 percent of its Ed Tech funds on professional development (subject to a statutory exception if certain conditions are met). After the transfer, the total amount of Ed Tech funds that the LEA would be required to spend on professional development is \$40,000 – 25% of the adjusted \$160,000 Ed Tech transferability base.

**II-D-3. Which programs affected by LEA transferability have set-aside limitations?**

Attachment B to this guidance identifies statutory provisions that establish specific set-asides governing the uses of funds for the programs affected by the transferability provisions.

As indicated in Attachment B, there are LEA set-asides in Part A of Title I; Part D of Title II (the Ed Tech program); and Part A of Title IV (Safe and Drug-Free Schools and Communities). (As noted in II-B-3 and II-B-4, under the transferability provisions, funds may be added to, but not removed from, an LEA's allocation under Part A of Title I.)<sup>1</sup>

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<sup>1</sup> There are not similar State set-asides that apply to the funds that an SEA transfers under its transferability authority.

**II-D-4. How are funds that an LEA transfers into Part A of Title I affected by the LEA set-aside provisions?**

Part A of Title I has several statutory set-asides governing an LEA’s use of funds. For example, there are set-asides prescribing the percentages of Title I funds that an LEA must spend on transportation or supplemental services, parent involvement, professional development, and other activities. An LEA must apply the Title I set-aside provisions to funds that it transfers to its Title I allocation.

**II-D-5. What effect does an LEA’s transfer of funds have on its future formula allocations under the programs covered by the transferability authority?**

An LEA’s transfer of funds does not affect its future grant allocations under the programs covered by the transferability authority. Transferred funds are not taken into consideration when the State allocates formula grant funds in subsequent years, and transferability has no effect on statutory hold harmless provisions governing grant allocations.

However, in awarding Ed Tech competitive grant funds, an SEA may consider an LEA’s previous transfer of Ed Tech formula grant funds to other programs as evidence of a lack of need for Ed Tech competitive grant funds.

**Example 17 – Transferability Does Not Affect Future LEA Formula Grant Allocations**

An LEA transfers \$100,000 from its Safe and Drug-Free Schools allocation to its allocation under Part A of Title I. The transfer has no effect on the amount of Title I, Part A funds (or Safe and Drug-Free Schools funds) that the LEA will receive in future years.

**II-D-6. Does a transfer alter the period of availability of the affected funds?**

No. Transferred funds retain the identity of the fiscal year for which the funds were appropriated. Thus, transferability does not affect the period in which an LEA may obligate funds.

While an LEA may make a transfer during either the fiscal year for which the funds were appropriated or during the carryover period, the LEA may not extend

the period of availability of funds by transferring funds from one program to another.

**Example 18 – Period of Availability Unaffected  
By Transferability**

An LEA is awarded a FY 2002 formula grant allocation under the Education Technology State Grant (Ed Tech) program. These funds are available for obligation through September 30, 2004. The LEA transfers a portion of its FY 2002 Ed Tech formula grant allocation to its FY 2002 Safe and Drug-Free Schools allocation, which is also available through September 30, 2004. The transfer does not affect the period of fund availability – FY 2002 funds that are transferred from one program to another remain FY 2002 funds.

The LEA may *not* transfer funds from its FY 2002 Ed Tech allocation to its FY 2003 Safe and Drug-Free Schools allocation.

## APPENDIX A – TRANSFERABILITY STATUTE

### **Title VI, Part A of the Elementary and Secondary Education Act**

#### **Subpart 2- Funding Transferability for State and Local Educational Agencies**

##### **SEC. 6121. SHORT TITLE.**

This subpart may be cited as the 'State and Local Transferability Act'.

##### **SEC. 6122. PURPOSE.**

The purpose of this subpart is to allow States and local educational agencies the flexibility —

- (1) to target Federal funds to Federal programs that most effectively address the unique needs of States and localities; and
- (2) to transfer Federal funds allocated to other activities to allocations for certain activities authorized under title I.

##### **SEC. 6123. TRANSFERABILITY OF FUNDS.**

###### **(a) TRANSFERS BY STATES-**

(1) **IN GENERAL-** In accordance with this subpart, a State may transfer not more than 50 percent of the nonadministrative State funds (including funds transferred under paragraph (2)) allotted to the State for use for State-level activities under the following provisions for a fiscal year to one or more of the State's allotments for such fiscal year under any other of such provisions:

- (A) Section 2113(a)(3).
- (B) Section 2412(a)(1).
- (C) Subsections (a)(1) (with the agreement of the Governor) and (c)(1) of section 4112 and section 4202(c)(3).
- (D) Section 5112(b).

(2) **ADDITIONAL FUNDS FOR TITLE I-** In accordance with this subpart and subject to the 50 percent limitation described in paragraph (1), a State may transfer any funds allotted to the State under a provision listed in paragraph (1) to its allotment under title I.

###### **(b) TRANSFERS BY LOCAL EDUCATIONAL AGENCIES-**

###### **(1) AUTHORITY TO TRANSFER FUNDS-**

(A) **IN GENERAL-** In accordance with this subpart, a local educational agency (except a local educational agency identified for improvement under section 1116(c) or subject to corrective action under section 1116(c)(9)) may transfer not more than 50 percent of the funds allocated to it (including funds transferred under subparagraph (C)) under each of the provisions listed in paragraph (2) for a fiscal year to one or more of its allocations for such fiscal year under any other provision listed in paragraph (2).

(B) **AGENCIES IDENTIFIED FOR IMPROVEMENT-** In accordance with this subpart, a local educational agency identified for improvement under section 1116(c) may transfer not more than 30 percent of the funds allocated to it (including funds transferred under subparagraph (C)) under each of the provisions listed in paragraph (2) for a fiscal year —

- (i) to its allocation for school improvement for such fiscal year under section 1003; or
- (ii) to any other allocation for such fiscal year if such transferred funds are used only for local educational agency improvement activities consistent with section 1116(c).

(C) ADDITIONAL FUNDS FOR TITLE I- In accordance with this subpart and subject to the percentage limitation described in subparagraph (A) or (B), as applicable, a local educational agency may transfer funds allocated to such agency under any of the provisions listed in paragraph (2) for a fiscal year to its allocation for part A of title I for that fiscal year.

(2) APPLICABLE PROVISIONS- A local educational agency may transfer funds under subparagraph (A), (B), or (C) of paragraph (1) from allocations made under each of the following provisions:

- (A) Section 2121.
- (B) Section 2412(a)(2)(A).
- (C) Section 4112(b)(1).
- (D) Section 5112(a).

(c) NO TRANSFER OF TITLE I FUNDS- A State or a local educational agency may not transfer under this subpart to any other program any funds allotted or allocated to it for part A of title I.

(d) MODIFICATION OF PLANS AND APPLICATIONS; NOTIFICATION-

(1) STATE TRANSFERS- Each State that makes a transfer of funds under this section shall —

- (A) modify, to account for such transfer, each State plan, or application submitted by the State, to which such funds relate;
- (B) not later than 30 days after the date of such transfer, submit a copy of such modified plan or application to the Secretary; and
- (C) not later than 30 days before the effective date of such transfer, notify the Secretary of such transfer.

(2) LOCAL TRANSFERS- Each local educational agency that makes a transfer of funds under this section shall —

- (A) modify, to account for such transfer, each local plan, or application submitted by the agency, to which such funds relate;
- (B) not later than 30 days after the date of such transfer, submit a copy of such modified plan or application to the State; and
- (C) not later than 30 days before the effective date of such transfer, notify the State of such transfer.

(e) APPLICABLE RULES-

(1) IN GENERAL- Except as otherwise provided in this subpart, funds transferred under this section are subject to each of the rules and requirements applicable to the funds under the provision to which the transferred funds are transferred.

(2) CONSULTATION- Each State educational agency or local educational agency that transfers funds under this section shall conduct consultations in accordance with section 9501, if such transfer transfers funds from a program that provides for the participation of students, teachers, or other educational personnel, from private schools.

**APPENDIX B – EXAMPLES OF STATUTORY SET-ASIDE PROVISIONS  
AFFECTING TRANSFERRED FUNDS**

**Title I, Part A**

- Transportation and supplemental services (ESEA § 1116(b)(10))
  - 5 percent for transportation
  - 5 percent for supplemental services
  - remaining 10 percent for transportation, supplemental services, or both
- Professional development for LEAs identified for improvement (ESEA § 1116(c)(7)(A)(iii))
  - at least 10 percent
- Family literacy and parenting skills (ESEA § 1118(a)(3)(A))
  - at least 1 percent, with exception
- Professional development (ESEA § 1119(l))
  - 5 to 10 percent of FY 2002 and 2003
  - at least 5 percent in subsequent years
- Carryover limitation (ESEA § 1127)
  - 15 percent
- 125 percent rule (ESEA § 1113(c)(2))
  - per-pupil school minimum, except if LEA only serves schools at 35 percent poverty or greater (with additional exception).

**Title II, Part D (Ed Tech)**

- Professional development (ESEA § 2416(a))
  - 25 percent of award

**Title IV, Part A (Safe and Drug-Free Schools and Communities)**

- LEA cap on administrative funds (ESEA § 4114(a)(2))
  - 2 percent of award

- Carryover limitation (ESEA § 4114(a)(3)(B))
  - 25 percent of award
- Security cap (ESEA § 4115(c))
  - Maximum of 40 percent of LEA's allocation
  - Maximum of 20 percent for nonpersonnel costs