SUPPLEMENT NOT SUPPLANT UNDER TITLE I, PART A OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT

Non-Regulatory
Informational Document

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Dear Educator,

I am writing to provide you the Department's final non-regulatory guidance regarding the new supplement not supplant requirement under Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA). The purpose of Title I is to "provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps." To realize this purpose, there has been a longstanding requirement that Title I funds must supplement, and not supplant, State and local funds spent on children participating in Title I programs.

In the past, demonstrating compliance with the supplement not supplant requirement was considered difficult and burdensome by some school districts. It led some observers to conclude that efforts to comply hindered effective spending on the students most in need. This is antithetical to the purpose of the Title I program.

To address this concern, Congress changed the way a school district demonstrates compliance with the Title I supplement not supplant requirement when it reauthorized the ESEA in 2015. Specifically, it eliminated the cost-by-cost analysis that the ESEA previously required and replaced it with a new test intended to simplify the compliance process, to reduce burden, and, most importantly, to prioritize effective spending.

Now, in order to comply, a school district need only show that its methodology to allocate State and local resources to schools does not consider a school's Title I status—for example, by using a weighted student funding formula. For many school districts, this requirement can be met using the school district's current methodology for allocating State and local resources.

This change will help foster more effective spending across all funding sources. No longer should any school district feel pressure to use Title I funds on only those items or services that seem "extra" in an effort to reduce audit risk. Instead, every school district can effectively use its Title I funds as part of a comprehensive system of support that spans multiple funding sources in order to help the students most in need.

Enclosed is final, non-regulatory guidance to help States and school districts understand both the intent of and ways to comply with the supplement not supplant requirement under Title I. Should you have any questions about the guidance, please contact my staff at OESE.TitleI-A@ed.gov-.

Thank you for all that you do every day on behalf of America's children.

Sincerely,

Frank Brogan
Assistant Secretary for Elementary and Secondary Education

I. *Introduction*

The purpose of Title I of the Elementary and Secondary Education Act of 1965 (ESEA) is to "provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."[1] The U.S. Department of Education (Department) allocates Title I, Part A funds through State educational agencies (SEAs) to local educational agencies (LEAs) to improve the achievement of low-achieving students in schools with high concentrations of students from low-income families.

To ensure that the Federal investment has a meaningful impact on the students the program is designed to serve, Title I, Part A includes a requirement that Title I, Part A funds supplement, and do not supplant, funds available from State and local sources for the education of students participating in Title I, Part A programs. Without this requirement, Federal dollars could simply be used to replace State and local dollars that would otherwise be made available.

While recognizing the importance of the supplement not supplant requirement, Congress indicated that supplement not supplant under the ESEA as amended by the No Child Left Behind Act of 2001 (NCLB) had become more restrictive than its original intent.[2] Similarly, a report jointly published by the American Enterprise Institute and the Center for American Progress in 2012 described the supplement not supplant requirement under NCLB as "burdensome" and giving "strong incentives to perpetuate past spending practices—even hopelessly ineffective ones."[3] The same 2012 report endorsed replacing the NCLB-era compliance tests with a simpler, more objective test[4] based on an examination of a district's allocation methodology and finding it neutral with respect to a school's Title I status.[5] It suggested such a neutrality test "frees local officials to take conscious steps toward using Title I funds to improve student achievement."[6]

Under the ESEA as amended by the Every Student Succeeds Act of 2015 (ESSA), the manner in which an LEA demonstrates compliance with the supplement not supplant requirement changed. The change was described in a report from the Senate Committee on Health, Education, Labor, and Pensions as intended to "provide more flexibility for schools to utilize Title I funds to implement comprehensive and innovative programs. LEAs will be able to demonstrate [supplement not supplant] compliance in a much less burdensome and restrictive way, while still making clear that Federal dollars are supplemental to State and local dollars and not be used to replace them."[7]

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[1] See ESEA section 1001.
[2] U.S. Congress, Senate, Committee on Health, Education, Labor and Pensions (HELP), *Every Child Achieves Act of 2015 Report to Accompany S.1117*, 114th Congress, 2d Session, 2015, S. Rep. 114-231, 31, https://www.congress.gov/114/crpt/srpt231/CRPT-114srpt231.pdf
[3] Raegen Miller, Frederick Hess & Cynthia Brown, "Reauthorization of the Elementary and Secondary Education Act Offers a New Chance to Improve Education", (American Enterprise Institute/Center for American Progress, 2012), 2-3, https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/titleI_recs.pdf
[4] Melissa Junge and Sheara Kravic, "How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I", (American Enterprise Institute/Center for American Progress, 2012), 18-20, http://www.aei.org/wp-content/uploads/2012/03/-how-the-supplementnotsupplant-requirement-can-work-against-the-policy-goals-of-title-i_111823556546.pdf
[5] Miller, Hess & Brown, 3
[6] Ibid, 3
[7] U.S. Congress, Senate, HELP Committee, *Every Child Achieves Act of 2015 Report to Accompany S.1117*, 32

This document addresses the Title I, Part A supplement not supplant requirement in the ESEA as amended by ESSA. It does not address supplement not supplant requirements for other ESEA programs, which are different from the requirements for Title I, Part A.[8] It also does not address other non-ESEA grant programs the Department administers that have a supplement not supplant requirement.

Please note that in March and April 2016, the Department engaged in negotiated rulemaking in order to promulgate regulations regarding the Title I, Part A supplement not supplant requirement. On September 6, 2016, after failure to reach consensus during negotiated rulemaking, the Department published a notice of proposed rulemaking (NPRM) regarding the Title I, Part A supplement not supplant requirement.[9]

The nonpartisan Congressional Research Service (CRS) concluded the Department's proposed regulations put forth during negotiated rulemaking in 2016 "appear[ ] to go beyond what would be required under a plain language reading of the statute"[10] and that a "legal argument could be raised that [the Department] exceeded its statutory authority if it promulgates the proposed [supplement not supplant] rules".[11]

The Department never published final regulations. On July 17, 2018, the Department withdrew its NPRM.[12]

Therefore, the draft regulations are not and were never in effect, do not reflect the policy of the Department, and have no force of law. The guidance in this document supersedes all prior non-regulatory guidance issued by the Department concerning the Title I, Part A supplement not supplant requirement.

The Department has determined that this document is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007; see www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/mo07-07.pdf). Significant guidance is non-binding and does not create or impose new legal requirements. The Department is issuing this document to provide SEAs, LEAs, and schools with information to assist them in meeting their obligations under the ESEA.

The Department provided a 30 day opportunity for the public to comment on a draft of this document and received over 40 comments. We have taken those comments into consideration in revising the draft document. If you are interested in commenting further on this document, please email us your comments at OESE.feedback@ed.gov or write to us at the following address: Office of Elementary and Secondary Education, 400 Maryland Avenue, SW,

[8] See question #20 in the FAQ section for a complete list of other ESEA programs with supplement not supplant requirements.
[9] Office of Elementary and Secondary Education, US Department of Education, Notice of Proposed Rulemaking, *Federal Register* 81, No. 172, (September 6, 2016): 61148, https://www.federalregister.gov/documents/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant
[10] Congressional Research Service Memorandum, *Proposed Regulations on the Supplement, Not Supplant Provision That Applies to the Title I-A Program Authorized by the Elementary and Secondary Education Act*, Jody Feder and Rebecca Skinner, (May 5, 2016), 8, https://edworkforce.house.gov/uploadedfiles/sns_and_negotiated_rulemaking_5-5-16.pdf
[11] Ibid, 9
[12] Office of Elementary and Secondary Education, US Department of Education, Proposed Rule Withdrawal, *Federal Register* 83, No. 137, (July 17, 2018): 33167, https://www.federalregister.gov/documents/2018/07/17/2018-15259/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant-withdrawal

Washington, DC 20202. For further information about the Department's guidance processes, please visit www2.ed.gov/policy/gen/guid/significant-guidance.html.

II. *The Every Student Succeeds Act*

In 2015, ESSA reauthorized the ESEA, including Title I, Part A and its fiscal requirements.

An LEA receiving Title I, Part A funds must continue to use its Title I, Part A funds only to supplement, and not supplant, the funds that would be made available from State and local sources in the absence of such Federal funds. This general supplement not supplant requirement is largely unchanged from NCLB.

However, the manner in which an LEA demonstrates compliance with supplement not supplant is now different. Under ESSA, an LEA's allocation of State and local funds to schools is examined as a whole to ensure that Title I, Part A funds supplement, and do not supplant, State and local funds. An LEA can no longer be required to identify that any individual cost or service supported with Title I, Part A funds is supplemental.

Therefore, an LEA must show that its methodology to allocate State and local funds to schools results in each Title I school receiving all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds.

In other words, an LEA's methodology must be "Title I neutral" in that it allocates State and local funds to schools without regard for Title I status. This demonstrates an LEA did not reduce the State and local funds made available to a Title I school because such a school is also receiving Title I, Part A funds. This is consistent with the purpose of the supplement not supplant requirement.

III. *Supplement not Supplant—In General*

ESEA section 1118(b)(1) requires that an LEA use the Title I, Part A funds it receives from its SEA only to supplement the funds that would, in the absence of Title I, Part A funds, be made available from State and local sources for the education of students participating in a Title I program.

SUPPLEMENT NOT SUPPLANT IN GENERAL

A State educational agency or local educational agency shall use Federal funds received under [Title I, Part A] only to supplement the funds that would, in the absence of such Federal funds, be made available from State and local sources for the education of students participating in programs assisted under [Title I, Part A], and not to supplant such funds.

(ESEA section 1118(b)(1))

ESEA section 1118(b)(1), as amended by ESSA, is largely unchanged from the supplement not supplant requirement in ESEA section 1120A(b), as amended by NCLB. The only change in this requirement from NCLB is the clarification that "non-Federal funds," as used in NCLB, means only public "State and local funds." Accordingly, other non-Federal funds, such as private contributions, fundraising, and parent fees, need not be part of determining compliance with the Title I, Part A supplement not supplant requirement, unless the State or LEA requires that they be included.

Although the general requirement in ESEA section 1118(b)(1) remains largely unchanged, ESEA section 1118(b)(3) contains a new provision that represents a significant change from the NCLB Title I, Part A supplement not supplant requirement,[13] particularly with respect to a targeted assistance school[14] and Title I, Part A funds used at the district level.

[13] See section 1120A(b) of the ESEA, as amended by NCLB.

[14] A "targeted assistance school" is a school in which an LEA uses Title I, Part A funds on allowable activities only for students who are failing, or most at risk of failing, to meet a State's challenging academic standards. See ESEA section 1115 for more information.

SPECIAL RULE

No local educational agency shall be required to—

A. Identify that an individual cost or service supported under [Title I, Part A] is supplemental; or
B. Provide services under [Title I, Part A] through a particular instructional method or in a particular instructional setting in order to demonstrate such agency's compliance with [the supplement not supplant requirement].

(ESEA section 1118(b)(3))

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The provision in ESEA section 1118(b)(3)(A) previously applied[15] only to a schoolwide program school.[16] Under ESSA, this provision now applies to *all* Title I schools, including targeted assistance schools. Likewise, it applies to an LEA with respect to Title I resources not allocated to schools (see *Section VI. Resources Not Allocated to Schools* for further discussion). As a result, consistent with paragraph A in the box above, to demonstrate compliance with the supplement not supplant requirement in any Title I school (including a targeted assistance school) and the LEA as a whole, an LEA cannot be required to use the three presumptions that had traditionally been used to determine whether a specific use of Title I, Part A funds constitutes supplanting.[17]

This provision and the compliance test under ESEA section 1118(b)(2) represent a significant change in how supplanting is determined under Title I, Part A. Because of the new language in ESEA section 1118(b)(3)(A), supplanting is no longer determined based on the specific use of Title I, Part A funds. Rather, as discussed in *Section IV. Demonstrating LEA Compliance* and *Section VI. Resources Not Allocated to Schools*, it is determined by the allocation of State and local resources to schools and whether such resources are allocated without regard to a school's Title I status.

The provision in ESEA section 1118(b)(3)(B), which clarifies that an LEA need not provide Title I, Part A services through a particular instructional method or in a particular instructional setting in order to demonstrate compliance with the supplement not supplant requirement, is not new.[18] This provision clarifies, for example, that an LEA need not pull out students from their regular classroom to provide Title I services in order to demonstrate that the Title I, Part A funds used to provide those services are supplemental to, and do not replace, State or local funds that would otherwise be used to provide the services.

[15] See section 1114(a)(2)(A)(ii) of the ESEA, as amended by NCLB.
[16] A "schoolwide program school" is a school in which Title I, Part A funds may be used to upgrade the educational program for all students in the school. See ESEA section 1114 for more information.
[17] See question #3 in the FAQ section for further discussion.
[18] See section 1120A(b)(2) of the ESEA, as amended by NCLB.

IV. *Demonstrating LEA Compliance*

ESEA section 1118(b)(2) is new in Title I, Part A of the ESEA, as amended by ESSA. It establishes how an LEA demonstrates compliance with the supplement not supplant requirement.

COMPLIANCE

To demonstrate compliance with [the supplement not supplant requirement], a local educational agency shall demonstrate that the methodology used to allocate State and local funds to each school receiving [Title I, Part A funds] ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving [Title I, Part A funds].

(ESEA section 1118(b)(2))

ESEA section 1118(b)(2) examines an LEA's allocation of State and local funds to schools as a whole. The new provision was described by Congress as "allow[ing] … LEAs to comply with supplement, not supplant for Title I, Part A funds if they can document that the manner in which they allocate State and local resources to schools is 'Title I neutral', or that the methodology does not account for the Title I funds that schools will receive."[19]

The basis for section 1118(b)(2) is that an LEA has a methodology (or methodologies) to allocate State and local funds to schools. To demonstrate compliance with the supplement not supplant requirement, an LEA's methodology must result in each Title I school in the LEA receiving all the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds—i.e., the methodology may not take into account a school's Title I status. When an LEA allocates State and local funds to schools through a methodology that is neutral with regard to whether a school receives Title I, Part A funds, it follows that Title I, Part A funds in a Title I school are supplemental to its State and local funds.

An LEA's methodology used to allocate State and local funds to schools may include the allocation of State and local dollars and/or the allocation of resources backed by State and local funds, such as the allocation of full-time teacher positions. The following examples are designed to show possible methodologies by which an LEA may comply with the Title I, Part A supplement not supplant requirement.[20]

Please note that these are only examples of a methodology that an LEA might use; an LEA may choose to use a methodology (or multiple methodologies) that do not follow one of these examples.

[19] U.S. Congress, Senate, HELP Committee, *Every Child Achieves Act of 2015 Report to Accompany S.1117*, 32
[20] Examples #1 and #2 are from the Department's *Supporting School Reform by Leveraging Federal Funds in a Schoolwide Program* guidance (July 30, 2015) https://www2.ed.gov/policy/elsec/guid/eseatitleiswguidance.pdf.

Example #1: Allocation of State and Local Funds Based on Student Characteristics (Weighted Student Funding)

Assume:

a. Base allocation per student = $7,000
b. Additional allocation per student from a low-income family = $250
c. Additional allocation per English learner = $500
d. Additional allocation per student with a disability = $1,500
e. Additional allocation per preschool student = $8,500

This example allocates State and local funds to schools based on a standard formula through which an LEA allocates dollar amounts based on objective student characteristics. Under this example, in a school of 400 students, including 200 students from low-income families, 100 English learners, 50 children with disabilities,[21] and 20 preschool students, the LEA would allocate to the school $3,145,000 in State and local funds based on the following calculations:

Category	Calculation	Result
Allocation per student	400 students x $7,000	$2,800,000
Allocation per student from low- income family	200 students from low-income families x $250	$50,000
Allocation per English learner	100 English learners x $500	$50,000
Allocation per student with a disability	50 children with a disability x $1,500	$75,000
Allocation per preschool student	20 preschool students x $8,500	$170,000
Total		$3,145,000

To meet the Title I, Part A supplement not supplant requirement, an LEA would use this methodology to allocate State and local funds to each school, without regard for whether a school receives Title I, Part A funds.

[21] ESEA section 8101(4) defines the term "child with a disability" as "[having] the same meaning given that term in section 602 of the Individuals with Disabilities Education Act.

Example #2: Allocation of State and Local Funds Based on Staffing and Supplies

Assume:

a. 1 principal/school ($120,000)
b. 1 librarian/school ($65,000)
c. 2 guidance counselors/school ($65,000/guidance counselor)
d. 1 teacher per 20 students ($65,000/teacher)
e. $825/student for instructional materials and supplies (including technology)

This example allocates State and local funds to schools based on estimated average costs. In a school of 400 students, the LEA would allocate to the school $1,945,000 in State and local funds based on the following calculations:

Category	Calculation	Result
1 principal	1 principal x $120,000	$120,000
1 librarian	1 librarian x $65,000	$65,000
2 guidance counselors	2 guidance counselors x $65,000	$130,000
20 teachers	20 teachers x $65,000	$1,300,000
Materials and supplies	400 students x $825	$330,000
Total		$1,945,000

To meet the Title I, Part A supplement not supplant requirement, an LEA would use this methodology to allocate State and local funds to each school, without regard for whether a school receives Title I, Part A funds.

V. *Frequently Asked Questions*

1. Must an LEA develop a new methodology for allocating State and local funds to schools to comply with supplement not supplant?

No. There is no expectation that an LEA must develop a new or necessarily different methodology, as long as any existing methodology is neutral with respect to a school's Title I status.

2. What does it mean for an LEA's allocation methodology to be "Title I neutral"?

An allocation methodology that is "Title I neutral" is shorthand to describe an allocation methodology that allocates State and local funds to schools without regard for a school's Title I status (i.e., neutrally). A Title I neutral methodology ensures that State and local funds to a Title I school are not reduced based on the school receiving Title I, Part A funds because the methodology for allocating State and local funds to schools does not consider Title I status.

3. How does a "Title I neutral" methodology ensure that a Title I school receives all the State and local resources it would otherwise receive were it not a Title I school?

A Title I neutral methodology, or an allocation methodology that does not consider Title I status, by definition does not reduce the State and local funds to a Title I school because it does not use Title I status when allocating State and local funds. When using such a methodology, it follows that a Title I school received all the State and local funds it would otherwise receive were it not a Title I school, as nothing in the allocation methodology for State and local funds accounts for Title status. Likewise, a Title I neutral methodology does not use a proxy for Title I status such as a school's number or percentage of students in poverty or vague terms such as "educational need" that would result in a Title I school's receiving fewer State or local funds than it would receive if it were a non-Title I school.

4. May an LEA be required to apply the three presumptions to determine whether supplanting has occurred?[22]

No. ESEA section 1118(b)(3)(A) states that no LEA shall be required to identify that an individual cost or service is supplemental. This provision rules out requiring an LEA to use the three presumptions to comply with the supplement not supplant requirement, which were based on an analysis of individual costs.

[22]Under NCLB, to support LEAs in complying with the supplement not supplant requirement in a targeted assistance school, the Department applied three presumptions to determine whether Title I, Part A funds had been used to supplant State or local funds:

(1) Was the activity supported with Title I, Part A funds required by State or local law?

(2) Was the activity supported with Title I, Part A funds supported in a prior year with State or local funds?

(3) Was the activity supported with Title I, Part A funds in a Title I school supported with State or local funds in a non-Title I school?

If the answer to any of these questions was "yes," there arose a presumption that the Title I, Part A funds supplanted State or local funds that, in the absence of the Title I, Part A funds, would have been used for the activity. This presumption could be rebutted by an LEA.

5. What State and local funds are subject to the Title I supplement not supplant requirement?

ESEA section 1118(b)(1) requires that Title I, Part A funds supplement the funds that would, in the absence of the Title I, Part A funds, be made available from State and local sources for the education of students participating in Title I programs. Accordingly, the supplement not supplant requirement applies to *all* State and local funds that an LEA uses for the education of students.[23]

Please note, however, that the new compliance demonstration in ESEA section 1118(b)(2) focuses only on the State and local funds each school is allocated from its LEA. Because many LEAs do not allocate all State and local funds to schools, there may naturally be some State and local funds that are not subject to the compliance demonstration.

For State and local funds that an LEA does *not* allocate to schools, ESEA section 1118(b)(1) requires that the LEA conduct activities supported by such funds in a manner that does not take into account a school's Title I status.

6. Does an LEA have discretion as to which State and local funds it allocates to schools?

Yes. An LEA retains the discretion to determine which State and local funds it allocates to schools and which it does not. An LEA does not normally allocate *all* of its State and local funds to schools. Rather, an LEA by both necessity and choice retains some State and local funds at the district level.

Regarding questions #4 and #5, please see *Section VI. Resources Not Allocated to Schools* for further discussion.

7. May a school's Title I status ever be taken into account in the methodology to allocate State and local funds to schools?

Yes, there are two instances in which a school's Title I status may be considered in the methodology to allocate State and local funds to schools.

- An LEA could, at its choosing, allocate *more* State and local funds to a Title I school on the basis of its being a Title I school. An LEA's methodology for allocating State and local funds must ensure a Title I school is allocated "all of the State and local funds it would otherwise receive were it not receiving [Title I, Part A funds]."[24] This scenario presumes the LEA allocates to a Title I school all the State and local funds it would otherwise receive were it not a Title I school (based on its Title I neutral allocation methodology) and then allocates *more* State and local funds based on a school's Title I status. Because there is no reduction in State and local funding based on a school's Title I status (in fact the Title I school is receiving more State and local funding based on its Title I status), this is consistent with the supplement not supplant requirement.

[23] With one exception: an LEA may exclude supplemental State and local funds for activities that meet the intent and purposes of Title I, Part A, pursuant to ESEA section 1118(d). Please see *Section VII. Excluding Supplemental State and Local Funds from a Determination of Supplanting* for further discussion.
[24] See ESEA section 1118(b)(2).

- An LEA may exclude from a supplanting determination the supplemental State and local funds for programs that meet the intent and purposes of Title I, Part A, pursuant to ESEA section 1118(d). This allows an LEA to take a school's Title I status into account if allocating to schools supplemental State and local funds for programs that meet the intent and purposes of Title I, Part A, as permitted by the exclusion. Please see *Section VII. Excluding Supplemental State and Local Funds from a Determination of Supplanting* for further discussion.

8. May an LEA use a combination of methodologies for allocating State and local funds to schools?

Yes. An LEA may use a combination of methodologies to allocate State and local funds to schools. For example, an LEA might use a different methodology for allocating State and local funds to high schools than it uses to allocate such funds to elementary schools.

9. Does an LEA have flexibility when developing its methodology for allocating State and local funds to schools?

Yes, although many LEAs are likely to use an existing allocation methodology for purposes of demonstrating compliance (as long as its existing methodology is neutral with regard to a school's Title I status).

However, when developing a methodology (or methodologies), an LEA does have significant flexibility in its design, as long as the methodology is neutral with regard a school's Title I status. In developing a methodology, LEAs may (but are not required to) consider:

a. Whether to use a single districtwide methodology or a variable methodology/multiple methodologies based on grade band or school type;
b. How the methodology may vary or scale based on student enrollment size; or
c. How the methodology may account for schools in need of additional funds to serve high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support.

10. May the Department prescribe the specific methodology an LEA must use to allocate State and local funds to each Title I school?

No. ESEA section 1118(b)(4) prohibits the Department from prescribing the specific methodology an LEA uses to allocate State and local funds to Title I schools.

11. Must an LEA's methodology result in equal per-pupil spending between Title I schools and non-Title I schools?

No. ESEA section 1605 prohibits the Department from mandating equalized spending per pupil for a State, LEA, or school. This prohibition accounts for the many different factors that affect the allocation of resources to schools, including schools enrolling higher concentrations of students with disabilities, schools with smaller student enrollment, and schools offering specialized programming, any or all of which may result in higher per-pupil spending.

12. May an LEA use its actual per-pupil expenditures data to demonstrate compliance with supplement not supplant?

No. Although the two concepts—the methodology to allocate State and local funds to schools and the reporting of actual per-pupil expenditures for each school—are related, they are distinguishable and serve different purposes. For each school's report card, an LEA must include the actual per-pupil expenditures of Federal, State, and local funds, disaggregated by source of funds, for the preceding fiscal year.[25] Including this data on report cards will enhance transparency and provide valuable information to educators, parents, and others regarding the use of resources. However, actual per pupil expenditures data represents a retrospective analysis of how much was *spent* by each school.

The compliance demonstration for the supplement not supplant requirement is based on the methodology by which State and local funds are allocated to schools. It is designed to ensure Federal funds are not supplanting State and local funds at the point in which State and local funds are allocated to schools.

Since actual per-pupil expenditure data is not a methodology by which State and local funds are allocated to schools, it therefore cannot be a methodology for an LEA to demonstrate compliance with supplement not supplant.

13. Must an LEA use the same methodology for charter and non-charter schools within the LEA?

No. An LEA may, at its choosing, allocate State and local funds to charter schools within the LEA using a separate methodology from that through which it allocates State and local funds to non-charter schools, consistent with any/all applicable State charter school laws. For example, some LEAs allocate State and local funds to charter schools to cover facility costs but do not allocate such funds to traditional public schools, which, at the LEA's discretion, could be reason for a different methodology for the allocation of State and local resources to charter schools. Should an LEA choose to use more than one methodology, each must be neutral with respect to Title I schools.

14. Must an LEA adjust its allocation of State and local resources to account for changes during the school year that might result in the LEA's non-compliance?

No. ESEA section 1118(b)(2) contemplates an annual allocation of State and local funds to demonstrate compliance with the supplement not supplant requirement in section 1118(b)(1). Accordingly, an LEA makes this demonstration at only one point during the year and is not required to continuously demonstrate compliance throughout the school year.

15. Will last-minute changes before the start of school affect compliance of an LEA's methodology with the supplement not supplant requirement?

No. As long as the methodology for allocating State and local funds is neutral with respect to Title I school status, last-minute changes in resource allocation that often occur prior to the

[25] See ESEA section 1111(h)(1)(C)(x) and ESEA section 1111(h)(2)(C)

beginning of the school year should not affect an LEA's compliance with the supplement not supplant requirement. For example, were an employee to transfer or resign prior to the beginning of the school year, an LEA may replace that employee without risking non-compliance as long as the school's Title I status is not a factor in the determination regarding the allocation of resources. Were an LEA to *not* allocate a resource *because* a school is a Title I school, the LEA would be out of compliance with ESEA section 1118(b)(2).

16. Must an LEA allocate State and local funds for activities required by Federal, State, or local law to Title I schools?

Yes. Where State or local law requires that all schools comply, and to the extent that an LEA allocates State and local funds for activities required by Federal, State, or local law through its allocation methodology to schools, then a Title I school must be allocated State and local funds for the activity required by State or local law, similar to any non-Title I school.

See Example #3 under *Section VII. Excluding Supplemental State and Local Funds from a Determination of Supplanting*, however, for an exception to this general principle.

17. Must a Title I school receive the State and local funds necessary to provide services required by law for children with disabilities and English learners?

Yes. ESEA sections 1118(b)(1)-(2) and 1114(a)(2)(B) require that a Title I school receive the State and local funds necessary to provide services required by law for children with disabilities and English learners. Examples of services required by law for children with disabilities and English learners include services in an individualized education program (IEP) necessary for a child with disabilities to receive a free appropriate public education (FAPE); services for English learners required by Lau v. Nichols 414 U.S. 563 (1974)[26] and the administration of a screener to determine whether a student is English proficient as required under Title VI of the Civil Rights Act of 1964.

18. Must an LEA post on its website its methodology for allocating State and local funds to schools?

There is no Federal requirement that an LEA post its methodology on its website. However, an SEA, as part of carrying out its responsibilities under ESEA section 8304(a)(3), may require an LEA to post its methodology. Moreover, posting the methodology will be useful to the LEA's stakeholders, particularly parents and families.

19. Must an LEA maintain documentation to demonstrate that the LEA allocated State and local funds to schools in accordance with its methodology?

Yes. Under ESEA section 8306(a)(6)(B) and 34 C.F.R. §§ 76.730-76.731, an LEA must keep records to show compliance with program requirements and facilitate an effective audit. Accordingly, an LEA must maintain documentation necessary to demonstrate that its methodology results in each Title I school in the LEA receiving all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds and provide this information upon

[26] See more here: https://www2.ed.gov/about/offices/list/ocr/ell/lau.html

request to the SEA, auditors, and other authorized individuals. Examples of documentation include the LEA's methodology and calculations the LEA performed to implement its methodology.

20. When must an LEA demonstrate compliance with the supplement not supplant requirement?

ESEA section 1118(b)(5) requires an LEA to meet the compliance requirement under section 1118(b)(2) not later than two years after the date of enactment of the ESSA— i.e., December 10, 2017.

Because an LEA cannot reasonably allocate State and local funds under a new methodology in the middle of a school year, the Department used its transition authority under ESSA section 4(b) to delay the use of the new compliance provision until the beginning of the 2018−2019 school year.

21. Do the supplement not supplant requirements described in this document apply to other ESEA programs with a supplement not supplant requirement?

No. Other ESEA programs that have a supplement not supplant requirement are not affected by the new language in ESEA section 1118(b). Those programs include:

a. Title I, Part C (section 1304(c)(2));
b. Title I, Part D (section 1415(b));
c. Title II, Part A (section 2301);
d. Title II, Part B, Subpart 1 (section 2212(g));
e. Title III, Part A (section 3115(g));
f. Title IV, Part A, Subpart 1 (section 4110);
g. Title IV, Part B (section 4204(a)(2)(B));
h. Title IV, Part C (section 4304(k)(3)(C));
i. Title IV, Part F, Subpart 2 (section 4625(i));
j. Title IV, Part F, Subpart 4 (section 4642(b)(2));
k. Title V, Part B (section 5232);
l. Title VI, Part A, Subpart 1 (section 6114(c)(1));
m. Title VI, Part A, Subpart 3 (section 6132(f)); and
n. Title VII, Subsection (b) (section 7007(b)(5)(A)(iii)).

22. Do the supplement not supplant requirements in ESEA section 1118(b) apply to Title I, Parts C and D?

As this document discusses, ESEA section 1118(b) contains the supplement not supplant requirements for Title I, Part A. ESEA section 1304(c)(2) requires that a migrant education program or project under Title I, Part C be "carried out in a manner consistent with the objectives of" ESEA section 1118(b). Likewise, ESEA section 1415(a)(2)(C) requires that a State agency program for children who are neglected, delinquent, or at risk under Title I, Part D, Subpart 1 be "carried out in a manner consistent with section 1118." As funds under Parts C and D do not flow directly to schools, the specific requirements pertaining to the methodology, special rule, prohibition, and timelines that are described in ESEA section 1118(b)(2)-(5) do not apply to funds under Parts C and D. However, the general prohibition against using Federal funds to supplant State and local funds in ESEA section 1118(b)(1) still applies. Therefore, programs under Parts C and D are still required to provide services that supplement, and do not supplant, those provided

with State and local funds consistent with how the requirement was implemented prior to the ESSA.

23. May the Secretary of Education waive the Title I, Part A supplement not supplant requirement?

No. ESEA section 8401(c)(4) specifically prohibits the Secretary of Education from waiving any supplement not supplant requirement.

24. Must an SEA approve an LEA's methodology for allocating State and local funds to schools?

No. However, the ESEA requires an SEA to monitor its LEAs to ensure compliance with the requirements of the ESEA (see ESEA section 8304(a)(1), (3)(B)), which would include that an LEA has a compliant methodology for allocating State and local funds, among other requirements. Therefore, an SEA may request to review an LEA's methodology as part of its monitoring process.

25. How does an LEA treat Impact Aid funds and other Federal funds intended to replace local tax revenue in implementing ESEA section 1118(b)(2)?

ESEA section 1118(b)(2) only applies to an LEA's allocation of State and local funds to schools. Therefore, an LEA is not required to allocate Federal Impact Aid funds or other Federal funds intended to replace local tax revenue[27] in the same manner as its State and local funds. Please note that nothing in ESEA section 1118(b)(2) affects an LEA's receipt of Impact Aid or other such Federal funds or the statutory or regulatory requirements governing their use.

26. Are there LEAs that, in whole or in part, do not need to have a methodology to comply with ESEA section 1118(b)(2)?

Yes. An LEA need not have a methodology to comply with ESEA section 1118(b)(2) if it has—

a. One school;
b. Only Title I schools; or
c. A grade span that contains only: a single school, non-Title I schools, or Title I schools (i.e., no methodology is required for this grade span).

Although such an LEA need not have a methodology to comply with ESEA section 1118(b)(2), it does not relieve the LEA of its requirement under ESEA section 1118(b)(1) and elsewhere to operate consistent with all Federal, State and local requirements and to provide free public education, including for schools and grade spans meeting the conditions described above.

[27] Examples include impact aid for military-connected school districts operated by the Department of Defense Education Activity's educational partnership and "payments in lieu of taxes" from the Department of the Interior to local governments that help offset losses in property taxes due to non-taxable Federal lands within their boundaries.

27. If an educational service agency (ESA) receives Title I, Part A funds as an LEA to provide Title I services to a group of regular LEAs, must the ESA comply with the supplement not supplant requirement?

Yes. The ESEA requires an ESA, as a recipient of Title I, Part A funds (i.e., receives a Title I, Part A grant), to comply with all applicable requirements, including the supplement not supplant requirement. This may pose unique issues if the regular LEAs that an ESA services control the allocation of State and local funds to their schools. In such a case, the ESA will need to cooperate with the LEAs that it serves and that control the allocation of State and local funds to ensure that each Title I school receives all the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds, recognizing that schools within an ESA may receive different per-pupil amounts depending on the allocation methodology of the LEA in which they are located. If an ESA is not a recipient of Title I, Part A funds, but instead enters into an agreement with one or more LEAs to provide services, the ESA would not need to meet the supplement not supplant requirement; rather, the requirement would apply to each individual LEA.

28. Must Title I, Part A funds be used only for allowable activities given that no LEA may be required to demonstrate that individual costs are supplemental?

Yes. The ESEA requires an LEA to use Title I, Part A funds only for allowable costs, even if the LEA complies with the supplement not supplant requirement. The type of Title I program determines whether a cost is allowable:

- In a schoolwide program, Title I funds may be used to upgrade the entire educational program in the school and benefit all students, provided the cost is consistent with the school's comprehensive needs assessment and included in the school's comprehensive schoolwide plan (see ESEA section 1114(a)(1)).
- In a targeted assistance program and with respect to funds for district-level activities, the ESEA requires Title I, Part A funds to be used only to serve students who are failing, or most at risk of failing, to meet the State's challenging academic standards (see ESEA section 1115(a)).

To be allowable, a cost also must comply with the Cost Principles in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, Subpart E (e.g., costs must be "necessary and reasonable" for proper and efficient administration of the Title I program under 2 C.F.R. § 200.403). Although an LEA need not identify that particular costs supported with Title I, Part A funds are supplemental, it still must use its Title I, Part A funds only for allowable costs.

29. Does the compliance test in ESEA section 1118(b)(2) apply to school improvement funds an LEA receives under section 1003?

Yes. ESEA section 1003(e)(2) requires an LEA to assure that each school the LEA serves with section 1003 school improvement funds will receive all of the State and local funds it would have received in the absence of the section 1003 funds. Under section 1118(b)(2), each LEA must allocate State and local funds to each Title I school through a methodology that ensures the school receives all of the State and local funds it would otherwise receive if it were not receiving

Title I funds—i.e., in a Title I-neutral manner. Assuming an LEA allocates State and local funds through its methodology first, any school—whether Title I or non-Title I—that receives section 1003 funds would already have received, through the LEA's methodology, all the State and local funds it would have received absent the 1003 funds. Thus, the LEA would be complying with both ESEA sections 1118(b)(2) and 1003(e)(2).

30. Does meeting the comparability requirement in ESEA section 1118(c) satisfy an LEA's responsibility to have a methodology to demonstrate compliance with the supplement not supplant requirement in section 1118(b)(2)?

Not necessarily. Whether meeting comparability would suffice to demonstrate compliance with the supplement not supplant requirement under ESEA section 1118(b)(2) depends on how an LEA calculates comparability. For example, if an LEA uses a pupil-teacher ratio to calculate comparability, that approach would likely not be sufficient to comply with the supplement not supplant requirement under section 1118(b)(2). A pupil-teacher ratio used for purposes of comparability is unlikely to represent all of the State and local funds that an LEA allocates to its schools; therefore, it is insufficient to satisfy the supplement not supplant requirement, which contemplates a test of all State and local resources allocated to schools through its methodology. However, if an LEA demonstrates comparability on the basis of a weighted-student-funding system through which it allocates State and local funds through a formula to each school—Title I and non-Title I—based on characteristics of students, the LEA's comparability approach would likely also meet the requirements of section 1118(b)(2).

VI. *Resources Not Allocated to Schools*

An LEA does not normally allocate all its State and local funds to schools through its methodology. Rather, an LEA by both necessity and choice retains some State and local funds at the district level for use on personnel and non-personnel services that benefit multiple schools or all schools. The activities supported by State and local funds that an LEA does *not* allocate to schools through its methodology are called "districtwide activities" for purposes of this discussion.

A districtwide activity may provide benefits to all schools within an LEA, either directly or indirectly. For example, such activities may include districtwide academic programs, such as summer school or after-school programs; and specialized personnel providing districtwide services, such as instructional coaches and speech therapists. Similarly, a districtwide activity may include activities that benefit a set of schools, rather than a single school. For example, personnel, such as substitute teachers or social workers, may serve multiple schools, often on an as-needed basis. Given the difficulty or inability to accurately forecast or apportion such activities to the school level, an LEA may choose not to allocate to schools the State and local funds supporting these activities.

As previously noted, ESEA section 1118(b)(2) requires an LEA to demonstrate compliance with the supplement not supplant requirement by having a methodology that ensures that its allocation of State and local funds to schools is Title I neutral so that Title I, Part A funds used in Title I schools are supplemental. There is no similar compliance test for State and local funds reserved for districtwide activities. However, because the general supplement not supplant requirement in ESEA section 1118(b)(1) applies to *all* State and local funds, an LEA must conduct districtwide activities supported by such funds in a manner that does not take into account a school's Title I status (e.g., by implementing a policy of conducting districtwide activities in a Title I-neutral manner).

For example, an LEA may choose not to allocate to schools the State and local funds to support a social worker. Instead, the LEA reserves the State and local funds for a social worker at the district level. The LEA deploys the social worker to different schools throughout the school year on an as-needed basis that does not take into account a school's Title I status. Although the State and local funding for such a social worker is not allocated to a school, and therefore is not subject to the compliance test, access to or assignment of the social worker must be Title I neutral in order to comply with the general supplement not supplant requirement in ESEA section 1118(b)(1), which applies to all State and local funds. As long as a school's Title I status is not taken into account when an LEA makes its determinations about use of, access to, or assignment of such districtwide resources, the LEA would be in compliance with ESEA section 1118(b)(1).

In addition, to the extent that an LEA retains State and local funds to implement activities that are required by Federal, State or local law, the LEA must use those funds in a manner that does not take into account a school's Title I status.

VII. *Excluding Supplemental State and Local Funds from a Determination of Supplanting*

Under ESEA section 1118(d), an SEA or LEA may exclude from a supplanting determination the *supplemental* State and local funds for programs that meet the intent and purposes of Title I, Part A. Therefore, at the LEA's discretion, a school's Title I status may be taken into account when expending *supplemental* State and local funds as permitted by the exclusion. In other words, it is not required that the allocation or use of *supplemental* State and local funds be Title I-neutral.

EXCLUSION OF SUPPLEMENTAL STATE AND LOCAL FUNDS

For the purpose of complying with [the Title I, Part A supplement not supplant requirement and Title I, Part A comparability requirement], a State educational agency or local educational agency may exclude supplemental State or local funds expended in any school attendance area or school for programs that meet the intent and purposes of [Title I, Part A].

(ESEA section 1118(d))

Supplemental State or Local Funds

There is no statutory definition of "supplemental State or local funds." Rather, whether State or local funds that may be subject to the exclusion provision are supplemental will likely depend on the purpose of the specific funds. One indication that funds are supplemental is that they are appropriated for a specific purpose over and above what an LEA needs to provide free public elementary and secondary education—e.g., funds to provide full-day kindergarten not required by State law; funds to provide preschool programs not required by State law, either for all students or only at-risk students; funds to provide interventions in comprehensive support and improvement schools. This may be particularly true of supplemental State funds that are often appropriated for a specific purpose. Supplemental local funds might be funds an LEA earmarks for a specific purpose and does not allocate through its methodology under ESEA section 1118(b)(2) because they likely do not go to all schools; rather, they might go to a subset of schools—i.e., those with specific needs the funds are designed to address such as comprehensive support and improvement schools.

Being supplemental State or local funds would not be sufficient to qualify for the exclusion. The funds must also be used for activities that meet the intent and purposes of Title I, Part A, as described below.

Meeting the Intent and Purposes of Title I, Part A

The Title I regulations at 34 C.F.R. § 200.79 define when a program supported with supplemental State or local funds meets the intent and purposes of Title I, Part A.

A program meets the intent and purposes of Title I, Part A if the program either—

1. Is implemented in a school in which the percentage of children from low-income families is at least 40 percent and is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging academic achievement standards that all students are expected to meet; and
2. Is designed to meet the educational needs of all students in the school, particularly those who are failing, or most at risk of failing, to meet the State's challenging academic achievement standards; and
3. Uses the State's assessment system to review the effectiveness of the program;

OR

1. Serves only students who are failing, or most at risk of failing, to meet the State's challenging academic achievement standards; and
2. Provides supplementary services designed to meet the special educational needs of participating students to support their achievement toward meeting the State's student academic achievement standards; and
3. Uses the State's assessment system to review the effectiveness of the program.

(34 C.F.R. § 200.79(b))

Thus, a program meets the intent and purposes of Title I, Part A if it would be an allowable use of Title I, Part A funds were it implemented in a Title I schoolwide program or targeted assistance school.

Please note that since not all children with disabilities or English learners are failing, or most at risk of failing, to meet the State's challenging academic standards, as required for Title I students by ESEA section 1115(c), it is unlikely costs for services required by law for these students would meet the intent and purposes of Title I, Part A and therefore be subject to the exclusion provision.

However, being supplemental State or local funds alone is not sufficient to qualify for the exclusion. The supplemental State or local funds must also be used for programs that meet the intent and purposes of Title I, Part A in order to qualify for the exclusion.

For an LEA that elects to use the exclusion, it must identify whether State and local funds expended on a particular program are supplemental, and whether the program meets the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b).

Example #1

Assume:

a. Through its methodology, an LEA allocates to only non-Title I schools State and local funding to support after-school tutoring for any student who scores below proficient on the State's mathematics assessment.
b. In its Title I schools, the LEA uses Title I, Part A funds to support after-school tutoring for any student who scores below proficient on the State's mathematics assessment.

This example would not violate the supplement not supplant requirement. Although the LEA is taking into account Title I status when allocating State and local funds through its methodology by only allocating to its non-Title I schools the State and local funds for the tutoring program, tutoring is a supplemental program and it benefits students who, by virtue of being non-proficient in mathematics, are failing to meet the State's mathematics standards. Therefore, the State and local funds supporting tutoring qualify for the exclusion because the program is supplemental and meets the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b).

Example #2

Assume:

a. An SEA has adopted an "A-F" school grading system and identifies all "F" schools as comprehensive support and improvement schools.
b. An LEA has both Title I and non-Title I "F" schools.
c. Through its methodology, an LEA allocates State and local funding to support appropriate interventions to only non-Title I "F" schools.
d. In its Title I "F" schools, the LEA uses Title I, Part A funds to support the same or similar interventions as in the non-Title I "F" schools.

This example would not violate the supplement not supplant requirement. Although the LEA is taking into account Title I status when allocating State and local funds through its methodology by only allocating to non-Title I "F" schools the State and local funds to support appropriate interventions, the interventions are supplemental and are designed to meet the needs of students who are failing, or most at risk of failing, to meet State academic achievement standards. Therefore, the State and local funds supporting interventions in "F" schools qualify for the exclusion because they are supplemental and meet the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b).

Example #3

Assume:

a. A State law requires all third-grade students to meet the State's proficient achievement standard in reading/language arts in order to be promoted to fourth grade. The State does not provide funds to meet this mandate.

b. The State law requires that any student who is not proficient at the start of third grade must be provided 90 minutes of supplemental services designed to improve his/her reading proficiency.

c. An LEA uses Title I, Part A funds to provide the requisite reading services in a Title I school and, through its methodology, allocates supplemental local funds only to non-Title I schools to provide the requisite reading services.

This example would not violate the supplement not supplant requirement. Although the LEA is taking into account Title I status when allocating local funds through its methodology by only allocating to non-Title I schools the local funds to provide supplemental reading services to meet State law, the supplemental reading services are designed to meet the needs of third-grade students who are failing, or most at risk of failing, to meet State academic achievement standards in reading. Therefore, the local funds supporting reading services qualify for the exclusion because the program is supplemental and meets the intent and purposes of Title I, Part A pursuant to 34 C.F.R. § 200.79(b), even though the services are required by State law.[28]

[28] This example is distinguishable from question # 15 in the FAQ section because the legally required services are supplemental and targeted only on at-risk students—i.e., those for whom Title I is intended—rather than all students.