

Guidance on the Transferability Authority

This document is the Final Guidance on the Transferability Authority - August 2004. The Draft Guidance on Transferability Authority was previously published on October 4, 2002. A *Summary of Major Changes* is included in this document.

Compared to the Draft Guidance, the enclosed Final Guidance provides considerably more information to both State Educational Agency (SEA) and Local Educational Agency (LEA) grantees on the operation of the transferability authority. Since the Draft Guidance was published, the Department has had the opportunity to better understand grantees' use of the authority and to understand how some of the complexities of the authority affect their educational approaches.

The audience for this important flexibility authority includes State and local program staff as well as financial staff. In order to improve understanding for both sets of staff, the number of examples of financial calculations has been expanded and placed in Appendix C. While basic policies for the authority remain intact, greater detail and clarification have been added in several sections, including those concerning notification processes and fund availability by fiscal year.

LEAs are not required to report their use of the transferability authority to the Department. However, the consolidated report provides the Department with data on the incidence of LEA use of transferability and the educational flexibilities it is providing.



U.S. Department of Education

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SUMMARY OF MAJOR CHANGES

This Guidance on the Transferability Authority updates the Draft Guidance on the Transferability Authority of October 4, 2002. It clarifies certain existing policies and re-formats many examples within the text to a side-by-side format in shaded text boxes. It also adds Appendix C, which displays 13 pages of detailed spreadsheet examples.

In particular, the Guidance--

- Simplifies financial examples in the body of the Guidance by placing a written description of a transfer scenario on the left side of a text box with a corresponding financial calculation on the right. (*See Examples 2, 3, 7 8, 9, 10, and 11.*)
- Clarifies that a State, in its notification to the U.S. Department of Education, must establish an effective date for transferring funds and must specify the fiscal year of the funds to be transferred. (*See I-C-1 and II-C-1.*)
- Specifies the office within the U.S. Department of Education to which a State must send a transfer notice and requires a State to identify a point of contact for the transfer process. (*See I-C-1.*)
- Clarifies that a State must re-notify the U.S. Department of Education if it decides not to transfer funds after sending a notification of a future transfer. The State also must re-notify if it alters elements of the transfer, such as the level of funds transferred or the programs to, and from, which funds are to be transferred. (*See I-C-5 and II-C-5.*)
- Clarifies that the transferability authority does not affect maintenance-of-effort requirements since maintenance-of-effort calculations are made on the basis of non-Federal funds. (*See I-D-4 and II-D-5.*)
- Clarifies that funds cannot be transferred across fiscal years. (*See I-D-5 and II-D-6.*)
- Shows how to calculate the amounts available for transfer when an LEA is placed in improvement status. (*See Example 7.*)

- Clarifies that the State, in its responsibility for administering the LEA transfer authority, must ensure program integrity and ensure that funds are used responsibly. (*See* II-C-14.)
- Clarifies that a State may not restrict an LEA’s use of the transferability authority. (*See* II-C-15.)
- Provides detailed examples for calculating amounts permitted for transfer (in Excel format Appendix C). Examples include calculation of multiple transfers, treatment of carryover funds that may be transferred (with and without statutory limitations), interaction of transfers and set-asides, and transfers for LEAs identified for improvement status—both prior to, and during, the school year.

INTRODUCTION

1. What is transferability?

Transferability is a flexibility authority that permits State educational agencies (SEAs) and local educational agencies (LEAs) to transfer a portion of the funding they receive by formula under certain Federal programs to their allocations under other programs so 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 an SEA or LEA receives, but provides them with greater flexibility in using certain Federal funds.

4. What is the statutory 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

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 law 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

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) (21st Century Community Learning Centers Grants)
- ❑ Section 5112(b) (State Grants for Innovative Programs)

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

The 50 percent limitation applies to 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 Separately to Each Affected Program

An SEA reserves \$1.5 million in State-level non-administrative funds under the Safe and Drug-Free Schools program, \$1 million under the Improving Teacher Quality program, and \$500,000 under the State Grants for Innovative Programs, for a total of \$3 million.

The SEA wishes to transfer the maximum amount of funds possible from its Improving Teacher Quality program allocation to its State Grants for Innovative Programs allocation. The maximum amount the SEA may transfer to State Grants for Innovative Programs from its allocation under the Improving Teacher Quality program is \$500,000 or 50 percent of that allocation.

This transfer does not affect the SEA’s authority to transfer funds from the \$1.5 million available under the Safe and Drug-Free Schools program 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 fund 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. Subject to the 50 percent limitation, an SEA also may transfer funds 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 eligible programs?

No. An SEA may not transfer funds *from* Part A of Title I to the programs listed in I-B-1. It 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* its allocation under Part A of Title I, but it may not transfer funds from Part A of Title I to any other program.

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

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-3);
- (2) Determine the program(s) from which funds are to be transferred and to which funds will be transferred;
- (3) Determine the amount, and Federal fiscal year, of funds to be transferred (subject to the 50 percent or 30 percent limitation);
- (4) Establish the effective date for the transfer;
- (5) As appropriate, modify each affected State plan or application to reflect the transfer (*See* 34 CFR 76.140(b)); and
- (6) Notify the U.S. Department of Education of the transfer at least 30 days *before* the effective date of each transfer. (If an SEA modifies a State plan as a result of a transfer (*See* 34 CFR 76.140(b)), the SEA must submit to the Department, within 30 days after the transfer, a copy of its revised State plan. Notification of the transfer should be sent to the Director of School Support and Technology Programs, Room 3E121, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington D.C. 20202.)

I-C-2. What information must an SEA include in its transferability notification to the U.S. Department of Education?

An SEA must notify the U.S. Department of Education of:

- (1) The program(s) from which funds are to be transferred;
- (2) The amount, and Federal fiscal year, of funds to be transferred (subject to the 50 percent limitation);
- (3) The program(s) to which the funds will be transferred;
- (4) The effective date for the transfer; and
- (5) A point of contact for the transferability authority.

I-C-3. How do requirements relating to equitable participation of private school students and staff apply to funds that an SEA is considering to transfer?

Each program covered by the SEA transferability authority is subject to equitable participation requirements. Before an SEA may transfer 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) of the ESEA regarding equitable participation with respect to instructional or training programs funded by the SEA from Title V, Part A funds. The other programs listed in II-B-1 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 must receive equitable services from the SEA based on the total amount of funds available to each program after a transfer.

I-C-4. May an SEA transfer only those funds that are to be used for services to private school students and/or staff?

No. An SEA may *not* transfer funds to a particular program solely to provide services for private school students and /or teachers. Rather, an SEA, after consulting with representatives of private schools, must provide equitable services to private school students and teachers based on the rules and regulations of each program and the total amount of funds available to each program after a transfer. (See 6123(e)(2) of the ESEA.)

I-C-5. If an SEA notifies ED that it intends to transfer funds, must the SEA notify ED if it subsequently changes its plans to transfer those funds?

Yes. If an SEA has notified ED it intends to transfer funds, but then does not do so, it must promptly notify ED it will not transfer funds.

A new 30-day notification period begins if an SEA alters its original notification in any of the following ways:

- (1) Amounts to be transferred among programs have changed;
- (2) Programs involved in the transfer have changed; or
- (3) The effective date of the transfer has changed.

I-C-6. Is there a limit on the number of times an SEA may transfer funds into, or from, an individual program during a fiscal year?

No. There are no statutory limitations on the number of times an SEA may transfer funds into, or from, an individual program during a fiscal year. However, each transfer should be made only after the SEA has engaged in thorough and careful planning.

I-C-7. After transferring funds into a program, is an SEA limited in any way in transferring funds out of that same program?

Yes. An SEA may transfer no more than 50 percent of the program funding base. (See I-C-8, which describes how the 50 percent limitation is calculated.)

An SEA may not transfer funds from Part A of Title I to another program. If an SEA transfers funds to Part A of Title I, it subsequently may not transfer those funds from Title I to another program.

I-C-8. What is the funding base on which the 50 percent transferability limitation is calculated?

The 50 percent transferability limitation is calculated on the basis of the fiscal year's State-level, non-administrative funds available under a program listed in I-B-1. If funds have been transferred into a program, the 50 percent (or 30 percent) transferability limitation applies to the sum of the of State-level, non-administrative funds that were originally available to the SEA for a given fiscal year and any funds the SEA transfers into the program.

Example 2 – Calculating the Amount Available for Transfer

An SEA has \$100,000 of FY 2004 State-level, non-administrative funds under the Ed Tech program. The SEA may transfer up to 50 percent of that amount, or \$50,000 ($\$100,000 \times .5 = \$50,000$).

<i>Ed Tech State-level, non-administrative funds...</i>	\$100,000
<i>50 percent transfer limitation.....</i>	<u>.5</u>
<i>Maximum available for transfer.....</i>	<u>50,000</u>

The SEA has \$100,000 of FY 2004 State-level, non-administrative funds under the Ed Tech program. The SEA transfers \$40,000 into the Ed Tech program. The sum of the original Ed Tech program State-level, non-administrative funds and funds transferred into the program equals \$140,000. The SEA may transfer up to 50 percent of that amount, or \$70,000 ($\$140,000 \times .5 = \$70,000$).

<i>Ed Tech State-level.....</i>	
<i>non-administrative funds..</i>	\$100,000
<i>Transfer in.....</i>	<u>+40,000</u>
<i>Total Ed Tech State-level non-administrative funds..</i>	140,000
<i>50 percent transfer limitation.....</i>	<u>.5</u>
<i>Maximum available for transfer.....</i>	<u>70,000</u>

The SEA has \$100,000 of FY 2004 State-level, non-administrative funds under the Ed Tech program. The SEA may transfer up to 50 percent of this amount, or \$50,000 ($\$100,000 \times .5 = \$50,000$).

<i>Ed Tech State-level non-administrative funds..</i>	\$100,000
<i>50 percent transfer limitation.....</i>	<u>.5</u>
<i>Maximum available for transfer.....</i>	50,000

The SEA transfers \$30,000 from the program, leaving \$70,000 of State-level, non-administrative funds. Since the SEA has transferred \$30,000 of the \$50,000 available for transfer, \$20,000 remains available for additional transfers.

<i>Transfer out.....</i>	<u>-30,000</u>
<i>Funds remaining available for transfer.....</i>	<u>20,000</u>

I-C-9. How much may an SEA transfer from a program when there are multiple transfers?

Multiple transfers do not affect the method of determining the maximum amount available for transfer under the transferability authority. An SEA may transfer up to 50 percent of the sum of a fiscal year's State-level, non-administrative funds that were originally available to the SEA under an applicable program and any funds the SEA transfers into the program. (See Examples A through D in Appendix C for additional calculations displaying the amount that may be transferred in cases of multiple transfers.)

I-C-10. 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, an SEA may transfer depends on the amount of funds, if any, 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 State-level, non-administrative funds available under the programs listed in I-B-1. If an SEA transfers less than 50 percent of a fiscal year's non-administrative funds available to a program, it may transfer funds carried over to the succeeding year.

The amount of a fiscal year's carryover funds that may be transferred, when added to amounts already transferred from those fiscal year funds, may not exceed the 50 percent limitation. (See Examples E through G in Appendix C for additional calculations displaying the amount of carryover funds that may be transferred and Examples H and I addressing the use of carryover funds that may be transferred.)

**Example 3 --Applicability of Transferability Provisions
to SEA Carryover Funds**

<p>An SEA has \$100,000 of FY 2004 State-level, non-administrative funds under the Ed Tech program. The SEA is eligible to transfer up to 50 percent, or \$50,000, of this amount.</p> <p>The SEA transfers \$40,000 of its FY 2004 Ed Tech funds, leaving \$10,000 available for additional transfers.</p> <p>The SEA chooses to carry forward \$30,000 to the next fiscal year. In the succeeding year --FY 2005-- the SEA may transfer up to \$10,000 of the FY 2004 Ed Tech carryover funds.</p>	<table> <tr> <td><i>Program funds.....</i></td> <td align="right">\$100,000</td> </tr> <tr> <td><i>50% transfer limitation.....</i></td> <td align="right"><u>.5</u></td> </tr> <tr> <td><i>Maximum available for transfer.....</i></td> <td align="right">50,000</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td><i>Transfer out.....</i></td> <td align="right"><u>-40,000</u></td> </tr> <tr> <td><i>Funds remaining available for transfer....</i></td> <td align="right"><u>10,000</u></td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td><i>Total carryover.....</i></td> <td align="right">30,000</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td><i>Amount of carryover available for transfer....</i></td> <td align="right"><u>10,000</u></td> </tr> </table>	<i>Program funds.....</i>	\$100,000	<i>50% transfer limitation.....</i>	<u>.5</u>	<i>Maximum available for transfer.....</i>	50,000	 		<i>Transfer out.....</i>	<u>-40,000</u>	<i>Funds remaining available for transfer....</i>	<u>10,000</u>	 		<i>Total carryover.....</i>	30,000	 		<i>Amount of carryover available for transfer....</i>	<u>10,000</u>
<i>Program funds.....</i>	\$100,000																				
<i>50% transfer limitation.....</i>	<u>.5</u>																				
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<i>Transfer out.....</i>	<u>-40,000</u>																				
<i>Funds remaining available for transfer....</i>	<u>10,000</u>																				
<i>Total carryover.....</i>	30,000																				
<i>Amount of carryover available for transfer....</i>	<u>10,000</u>																				

I-C-11. After transferring funds, what information must an SEA submit to the U.S. Department of Education?

If an SEA modifies a State plan as a result of a transfer (*See* 34 CFR 76.140(b)), State plan or application, the SEA must submit to the Department, within 30 days after a transfer, a copy of its revised State plan.

I-C-12. How does an SEA make a transfer?

The mechanics of a transfer will depend on the nature of the State’s financial reporting systems and requirements. The SEA has discretion in the method it uses to make a transfer. 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 the SEA uses to transfer funds, the SEA must maintain records demonstrating how a program's total funds (including transferred funds) were spent. The SEA is not required to demonstrate separately how the two sources of funds were spent on program activities.

Example 4 – Fund Accountability

An SEA has \$100,000 of State-level, non-administrative funds under the 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, for a total of \$140,000 of State-level, non-administrative Ed Tech funds (\$100,000 allocation + \$40,000 transfer = \$140,000).

The SEA's Ed Tech records will reflect that \$40,000 was added to its allocation from the Safe and Drug-Free Schools program. The SEA must maintain documentation showing how \$140,000 of Ed Tech funds were spent, but is not required to demonstrate separately how the two sources of funds were spent on Ed Tech activities.

In its Safe and Drug-Free Schools account, the SEA would maintain documentation that \$40,000 was transferred to the Ed Tech program and would demonstrate how the reduced level of available funding was expended.

I-C-13. 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 financial system?

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

I-C-14. What are an SEA’s responsibilities for funds it transfers?

In addition to following the steps outlined above, an SEA must –

- (1) Spend transferred funds in accordance with requirements of the receiving program (*see* I-D-1);
- (2) Maintain records that will permit the U.S. Department of Education to carry out normal monitoring, evaluation, and auditing activities; and
- (3) Produce reports on transfers the Department may request. The SEA also may be requested to provide information from evaluation studies on program activities conducted by the SEA.

I-C-15. How does an SEA account for transfers in reports it submits to the Department?

An SEA must file program reports and financial reports for Federal grant programs, including programs subject to the transferability authority. The Department has developed guidance for SEAs on consolidated program performance reports. The Department has included information on implementation of transferability and other flexibility authorities in that guidance.

An SEA also must report on program finances by including them in its financial statements and in the Schedule of Expenditures of Federal Awards. The OMB Circular A-133 Compliance Supplement encourages the use of footnotes regarding amounts transferred among programs when completing the Schedule of Expenditures of Federal Awards.

I-C-16. How will auditors be informed of SEA transferability authority?

The Department’s Compliance Supplement, which auditors use when performing audits of Federal programs under the Single Audit Act, provides guidance to auditors on the SEA and LEA transferability authorities. (*See* www.whitehouse.gov/omb/circulars/a133_compliance/04/04toc.html for the A-133 Compliance Supplement.)

I-D. Effects of an SEA Transfer

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

When an SEA transfers funds, the transferred funds become funds of the program to which they are transferred and are subject to all the rules and requirements of the program to which the funds are transferred.

I-D-2. Can State-level, non-administrative funds that an SEA transfers into Title I be used for administrative purposes?

Additional guidance for this question will be provided.

I-D-3. 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.

I-D-4. Does the transferability authority affect maintenance-of-effort calculations?

Maintenance-of-effort levels are calculated on the basis of non-Federal funds only. Transferring Federal funds among programs will not affect the maintenance-of-effort calculation.

I-D-5. May an SEA transfer funds from an account for one fiscal year to an account for a different fiscal year?

No. Funds may not be transferred from an account for one fiscal year to an account for another fiscal year. Allocated funds retain the identity of the fiscal year for which they were appropriated. For example, when FY 2004 funds are transferred from one program to another, they remain FY 2004 funds. (*See* last page of Appendix C for a calendar of the Federal fiscal year.)

I-D-6. Does a transfer extend the period of availability of the affected funds?

No. Transferability does not extend the period during which an SEA may obligate funds because transferred funds retain the identity of the fiscal year for which the funds were appropriated. Funds may be transferred only to an allocation of the same fiscal year. (See last page of Appendix C for a calendar of the period of availability.)

**Example 6 – Period of Availability Unaffected
By Transferability**

An SEA is awarded FY 2004 State-level, non-administrative funds under the Ed Tech program. These funds are available for obligation through September 30, 2006.

The SEA transfers a portion of its FY 2004 Ed Tech funds to its FY 2004 Safe and Drug-Free Schools allocation, which is also available through September 30, 2006. The transfer does not affect the period of fund availability for either programs. FY 2004 funds transferred from one program to another remain FY 2004 funds.

II. TRANSFERS BY LEAs

II-A. LEA Eligibility for Transferability

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

Any LEA, except an LEA identified for improvement or corrective action under section 1116(c) of the ESEA, may transfer up to 50 percent of the funds allocated to it for a given fiscal year under each of the programs listed in II-B-1. The transferability authority of an LEA identified for improvement under section 1116(c)(3) is limited. (See II-A-2 through II-A-5.)

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

Yes. However, an LEA 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. If an LEA has been identified for improvement and wants to transfer funds, funds must be transferred either to its allocation for improvement activities under section 1003 or to one of the programs listed in II-B-1 for LEA improvement activities consistent with section 1116(c). (See II-B-4.)

Example 7 – Calculating the Amount Available When an LEA is Placed in Improvement Status

An LEA has \$100,000 of FY 2004 formula funds under the Ed Tech program. The LEA has been identified for improvement and may transfer up to 30 percent of that amount, or \$30,000 (\$100,000 x .3 = \$30,000).

All of the transferred funds must be used for LEA improvement activities consistent with Section 1116(c) of the ESEA.

<i>Ed Tech allocation.....</i>	\$100,000
<i>30 percent transfer</i>	
<i>limitation.....</i>	.3
<i>Maximum available</i>	
<i>for transfer.....</i>	30,000

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 fund transfers must be consistent with the 30 percent limitation, and all transferred funds must be used for improvement activities as described in II-A-2. (See Examples J through L in Appendix C displaying additional calculations of funds available for transfer under improvement status.)

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

No. An LEA identified for corrective action may not transfer funds.

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

Yes. An LEA identified for corrective action may not transfer any funds during the period 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 statute authorizes an eligible LEA to transfer funds without seeking approval from either its SEA or the U.S. Department of Education. 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

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 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 identified for improvement under section 1116(c)(3) may transfer up to 30 percent of each fiscal year's funds it receives *by formula* under the provisions listed above. (Example 7 shows how to calculate the amount available for transfer if an LEA is identified for improvement. *See* Examples J through L in Appendix C for additional examples.)

An LEA 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 identified for improvement) apply to formula grant funds an LEA receives under *each* of the programs to which the transferability authority applies, or to the total amount of formula grant funds an LEA receives under all of these programs?

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

**Example 8 – LEA Transferability Limitation
Applies to Each Affected Program**

An LEA has \$250,000 of formula funds under the Ed Tech program and \$300,000 under the Improving Teacher Quality program, for a total of \$550,000.

The LEA wishes to transfer the maximum amount of funds from its Improving Teacher Quality allocation. It may transfer no more than \$150,000, which is 50% of that allocation (\$300,000 x .5 = \$150,000)

Separately, it may transfer up to \$125,000 of its Ed Tech allocation to any eligible program (\$250,000 x .5 = \$125,000).

<i>Improving Teacher Quality</i>	
<i>Allocation.....</i>	<i>\$300,000</i>
<i>50% transfer limitation.....</i>	<i>_____ .5</i>
<i>Maximum available</i>	
<i>for transfer.....</i>	<i><u>150,000</u></i>
<i>ED Tech allocation.....</i>	<i>\$250,000</i>
<i>50% transfer limitation.....</i>	<i>_____ .5</i>
<i>Maximum available</i>	
<i>for transfer.....</i>	<i><u>125,000</u></i>

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

An LEA may transfer up to 50 percent of its allocation from, and to, each of the programs to which the transferability authority applies (*see* II-B-1). It may transfer funds into, but not from, its allocation under Part A of Title I.

An LEA identified for improvement may transfer up to 30 percent of its allocation from, and to, each of the programs to which the transferability authority applies (*see* II-B-1). The transferred funds must be used for LEA improvement activities consistent with section 1116(c) of the ESEA. An LEA identified for improvement may also transfer funds into its allocation under Section 1003, if applicable. An LEA identified for corrective action under section 1116(c) may not transfer funds.

II-B-4. May an LEA identified for improvement transfer funds only to its allocation under Part A of Title I?

No. An LEA identified for improvement may transfer funds to other applicable programs, but the funds must be used to conduct improvement activities.

II-B-5. 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. It may only transfer funds *into* Part A of Title I.

II-B-6. 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, including Part A of Title I, 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

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* I-C-3);
- (2) Determine the program(s) from which funds are to be transferred and to which funds will be transferred;
- (3) Determine the amount, and Federal fiscal year, of funds to be transferred by fiscal year (subject to the 50 percent or 30 percent limitation);
- (4) Establish the effective date for the transfer;
- (5) As appropriate, modify each affected local plan or application to reflect the transfer; and
- (6) Notify its SEA of the transfer at least 30 days before the effective date of the transfer. (If an LEA modifies a local plan as a result of a transfer, the LEA also must submit to its SEA, within 30 days after the transfer, a copy of its revised local plan.)

II-C-2. What information must an LEA include in its notification to the SEA?

An LEA must notify its SEA of:

- (1) The program(s) from which funds are to be transferred and to which funds will be transferred;
- (2) The amount, and Federal fiscal year, of funds to be transferred;
- (3) The program(s) to which the funds will be transferred; and
- (4) The effective date for the transfer.

II-C-3. How do requirements relating to the equitable participation of private school students and staff apply to funds an LEA is considering to transfer?

Each program covered by the LEA transferability authority is subject to equitable participation requirements. Before an LEA may transfer funds, it must engage in timely and meaningful consultation with private school officials representing the full spectrum of private schools in the district. (See the provision in section 5142(a) of the ESEA regarding equitable participation with respect to instructional or training programs funded by the LEA from Title V, Part A funds. The other programs listed in I-B-1 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 LEA under the programs to which, and from which, the funds are transferred, based on the total amount of funds available to each program after the transfer.

II-C-4. May an LEA transfer only those funds that are to be used for services to private school students and/or staff?

No. An LEA may *not* transfer funds to a particular program solely to provide services for private school students and /or teachers. Rather, an LEA, after consulting with representatives of private schools, must provide equitable services to private school students and teachers based on the rules and regulations of each program and the total amount of funds available to each program, including funds that have been transferred into or from the program. (See 6123(e)(2) of the ESEA.)

II-C-5. If an LEA notifies the SEA that it intends to transfer funds, must the LEA notify the SEA if it subsequently changes its plans to transfer those funds?

Yes. If an LEA has notified its SEA it intends to transfer funds, but then does not do so, it must promptly notify its SEA that it will not transfer funds.

A new 30-day notification period begins if an LEA alters its original notification in any of the following ways:

- (1) Amounts to be transferred among programs have changed;
- (2) Programs involved in the transfer have changed; or
- (3) The effective date of the transfer has changed.

II-C-6. Is there a limit on the number of times an LEA may transfer funds into, or from, an individual program during a fiscal year?

No. There are no statutory limitations on the number of times an LEA may transfer funds into, or from, an individual program during a fiscal year. However, each transfer should be made only after the LEA has engaged in thorough and careful planning. (*See* II-D-1 through II-D-3.)

II-C-7. After transferring funds into a program, is an LEA limited in any way in transferring funds from the same program?

Yes. An LEA may transfer no more than 50 percent of the funding base. (*See* II-C-8, which describes how the 50 percent limitation is calculated.) An LEA may not transfer funds from its allocation under Part A of Title I to another program.

II-C-8. What is the funding base on which the 50 percent transferability limitation is calculated?

The 50 percent transferability limitation is calculated on the basis of the fiscal year's funds available under a program listed in II-B-1. If funds have been transferred into a program listed in II-B-1, the 50 percent transferability limitation applies to the sum of the fiscal year's original allocation and any funds the LEA transfers into the program.

Example 9 – Calculating the Amount Available for Transfer

An LEA has \$10,000 of formula grant funds under the Ed Tech program. The LEA transfers \$5,000 to the Ed Tech program, increasing the amount of its Ed Tech funds available to \$15,000.

The LEA may transfer up to \$7,500 of the \$15,000 funds available ($\$10,000 + \$5,000 = \$15,000 \times .5 = \$7,500$).

<i>Ed Tech allocation.....</i>	\$10,000
<i>Transfer in.....</i>	+ <u>5,000</u>
<i>Program funds available..</i>	<u>15,000</u>

<i>50% transfer limitation...</i>	_____ .5
<i>Maximum available for transfer.....</i>	<u>7,500</u>

II-C-9. 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. An LEA may transfer carryover funds from an eligible program to an eligible program to the extent it has not exceeded the 50 percent transferability limitation.

If an LEA transfers less than 50 percent of a program’s funding base for a given fiscal year, it may transfer funds carried forward to the succeeding fiscal 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 do not exceed 50 percent of the

fiscal year’s funding base for that program. (See Examples E through G in Appendix C for additional calculations of the amount of carryover funds that may be transferred and Examples H and I addressing the use of carryover funds that have been transferred.)

Example 10 – Applicability of the Transferability Provisions to LEA Carryover Funds

An LEA has \$100,000 of FY 2004 formula grant funds under the Ed Tech program. The LEA may transfer up to \$50,000 of this amount ($\$100,000 \times .5 = \$50,000$).

The LEA transfers \$40,000 of its Ed Tech allocation, leaving \$10,000 available for additional transfers.

The LEA expends \$30,000 of the \$60,000 remaining available for program activities ($\$100,000 - \$40,000 \text{ transferred} = \$60,000$) and carries over \$30,000 to FY 2005.

In the succeeding FY 2005, which is the carryover period, the LEA may transfer up to \$10,000 of the FY 2004 carryover funds.

<i>Ed Tech funds.....</i>	<i>\$100,000</i>
<i>50% transfer limitation.....</i>	<u><i>.5</i></u>
<i>Maximum available for transfer.....</i>	<i>50,000</i>
 <i>Transfer out.....</i>	 <u><i>-40,000</i></u>
<i>Funds available for transfer.....</i>	<u><u><i>10,000</i></u></u>
 <i>Total carryover.....</i>	 <i>30,000</i>
 <i>Amount of carryover available for transfer.....</i>	 <u><u><i>10,000</i></u></u>

Example 11 – Carryover Spending and Limitation on Transfers

An LEA has \$50,000 in FY 2004 funds under State Grants for Innovative Programs, with authority to transfer 50 percent, or \$25,000. The LEA transfers \$20,000 during the year and spends \$20,000, leaving \$10,000 in carryover funds at the end of the year. Of that \$10,000 in carryover, \$5,000 is available for transfer.

In the subsequent carryover year, the LEA spends \$10,000 of State Grants for Innovative Programs carryover funds. Of the \$10,000 carryover, none remains for transfer. The LEA has lost its ability to transfer the \$5,000 originally available for transfer from carryover funds.

<i>State Grants allocation.....</i>	\$50,000
<i>50% transfer limitation.....</i>	<u>.5</u>
<i>Maximum available</i>	
<i>for transfer.....</i>	25,000
<i>Transfer out.....</i>	<u>-20,000</u>
<i>Funds available for</i>	
<i>transfer.....</i>	<u>\$5,000</u>
<i>Funds carried over</i>	\$10,000
<i>Carry over funds expended.....</i>	-10,000
<i>Funds available for</i>	
<i>transfer.....</i>	<u>\$ 0</u>

II-C-10. How does an LEA make a transfer?

The mechanics of a transfer will depend on the nature of State and local financial reporting systems and requirements. States and localities have discretion in using a method most suitable to their needs. 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(s) for transferred funds.
- ❑ Retain 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 the LEA uses to transfer funds, the LEA must maintain records demonstrating how a program's total 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.

II-C-11. Once it is notified of an LEA's intent to transfer funds, must the SEA transfer funds from one account to another in the State's financial system?

Whether an SEA transfers funds from one account to another to reflect an LEA's transfer depends on State and local budgeting and financial reporting systems. The SEA is not required to transfer funds on behalf of the LEA.

The SEA and LEA must maintain documentation that identifies, at the CFDA level, funds an LEA transfers.

II-C-12. 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-5, an LEA must:

- (1) Spend transferred funds in accordance with requirements of the receiving program, including statutory set-asides. (*See* II-D-1 through II-D-3).
- (2) Maintain records of transfers that will permit the U.S. Department of Education and the SEA to carry out normal monitoring, evaluation, and auditing activities.
- (3) Produce reports determined by the State to be adequate for financial and program reporting.

II-C-13. 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 its LEAs must submit in order to account for transferred funds.

The Department has developed guidance for SEAs on consolidated program performance reports. The guidance includes information on implementation of transferability and other flexibility authorities that will assist SEAs in developing program performance reporting for their LEAs.

An LEA must report on program finances by including them in its financial statements and in the Schedule of Expenditures of Federal Awards. For purposes of completing the Schedule of Expenditures of Federal Awards, the Department's Compliance Supplement encourages the use of footnotes showing amounts transferred among programs. (See II-C-18.)

II-C-14 What are an SEA's responsibilities regarding funds transferred by an LEA?

To facilitate transfers by its LEAs, an SEA must:

- Provide for the orderly and accountable disbursement of funds to the LEA;
- Allow LEAs discretion in transferring funds among accounts so they can take full advantage of the flexibility offered by the statute;
- Ensure that LEAs do not exceed statutory limitations on transfers;
- Safeguard program integrity and ensure that funds are used responsibly and 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-15 May a State restrict an LEA's use of the transferability authority beyond those limitations in the statute?

No. The transferability authority does not authorize a State to limit an LEA's use of the transferability authority for any reason. For example, a State may not:

- Limit the amount of funds transferred (up to the statutory limit);
- Limit the percentage of funds transferred (up to the statutory limit);
- Limit the number of transfers during the period of availability;
- Specify a definition of fiscal year that differs from the Federal fiscal year; nor
- Require budgetary or financial reporting systems incompatible between the SEA and the LEA.

II-C-16 How will auditors be informed of LEA transferability authority?

The Department's section of OMB's Compliance Supplement, which auditors use when performing audits of Federal programs under the Single Audit Act, provides guidance to auditors on the SEA and LEA transferability authorities. (*See* www.whitehouse.gov/omb/circulars/a133_compliance/03/03toc.html for the A-133 Compliance Supplement.)

II-D. Effects of an LEA Transfer

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

Transferred funds become funds of the program to which they are transferred and are subject to all the rules and requirements of the programs to which the funds are transferred. For example, statutory provisions that establish specific set-asides governing the uses of funds apply to funds an LEA transfers under the transferability authority. In transferring funds, an LEA should recognize that a transfer could affect set-aside amounts in both the program(s) from which the LEA transfers funds and the program(s) to which the LEA transfers funds. (*See* II-D-3. Also see Example M in Appendix C displaying the effect of set-aside requirements for the transfer of funds.)

II-D-2. 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 Appendix 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 through II-B-5, under transferability provisions, funds may be added to, but not removed from, an LEA's allocation under Part A of Title I.)

II-D-3. 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 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 it transfers to its Title I allocation.

II-D-4. 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 12 – 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-5. Does the transferability authority affect maintenance-of-effort calculations?

Maintenance-of-effort levels are calculated on the basis of non-Federal funds only. Transferring Federal funds among programs will not affect the maintenance-of-effort calculation.

II-D-6. May an LEA transfer funds from an account for one fiscal year to an account for a different fiscal year?

No. Funds may not be transferred from an account for one fiscal year to an account for another fiscal year. Allocated funds retain the identity of the fiscal year for which they were appropriated. For example, when FY 2004 funds are transferred from one program to another, they remain FY 2004 funds. (*See* last page of Appendix C for a calendar of the Federal fiscal year.)

II-D-7. Does a fund transfer extend the period of availability of the affected funds?

No. Transferability does not extend the period during which an SEA may obligate funds because transferred funds retain the identity of the fiscal year for which the funds were appropriated. Funds may be transferred only to an allocation of the same fiscal year. (*See* last page of Appendix C for a calendar of the period of availability.)

APPENDIX A – TRANSFERABILITY STATUTE

**Example 13 -- Period of Availability Unaffected
By Transferability**

An LEA is awarded a FY 2004 formula grant allocation under the Ed Tech program. These funds are available for obligation through September 30, 2006.

The LEA transfers a portion of its FY 2004 Ed Tech allocation to its FY 2004 Safe and Drug-Free Schools allocation, which is also available through September 30, 2006. The transfer does not affect the period of fund availability for either program. FY 2004 funds transferred from one program to another remain FY 2004 funds and are available through September 30, 2006.

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

As stated in the Guidance on the Transferability Authority, transferred funds are subject to all of the rules and requirements of the program to which the funds are transferred, including any statutory set-asides. (See I-D-1, II-D-1, II-D-2, and II-D-3.)

Title I, Part A

- Transportation and supplemental services (ESEA § 1116(b)(10)) if an LEA has schools covered by the choice and supplemental services requirements
 - 5 percent for choice-related transportation
 - 5 percent for choice-related supplemental services
 - 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 for small LEAs

- 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 non-personnel costs

