

Title III State Director Training Modules:
Module 3: The Use of Title III Funds



Title III State Director Training Modules

Module 3: The Use of *Title III* Funds



State Support Network
Partnering for School Improvement

**If you have not yet completed
Module 2: Foundations of *Title III*,
please complete Module 2
before moving on to this
module (Module 3).**

Module 3: Overview

This module provides key information on allocation and distribution of funding and fiscal management *Title III*.

This module will take approximately 90 minutes to complete.

Module 3: Topics Covered in This Module

1. State Educational Agency (SEA) Allocation and Distribution of *Title III* Funds
2. SEA Administration and Monitoring of *Title III* Funds
3. *Title III* Fiscal Management
4. Local Educational Agency (LEA) Fiscal Responsibilities
5. Module Quiz and Certification

Module 3: Objectives

By the time you finish this module, you will be able to do the following:

- Describe how the SEA distributes and allocates *Title III* funds.
- List the areas that the SEA monitors in LEA *Title III* use of funding.
- Name the three criteria for SEA and LEA use of federal funds and provide examples of each.

Topic 1: SEA Allocation and Distribution of Title III Funds

The SEA receives Title III funding from the U.S. Department of Education. The funds are for the following:

Programs supporting English Learners (ELs)



Programs supporting Immigrant Children and Youth



The SEA must follow a specific process for allocating and distributing Title III funds, which we will cover in more detail in the following sections:

- *SEA Responsibilities Concerning Title III Subgrants*
- *SEA Title III Allocations: LEAs and State Activities*

Topic 1: SEA Allocation and Distribution of *Title III* Funds **SEA *Title III* Subgrant - Responsibilities**

As a Title III State Director, when allocating and distributing Title III subgrant funds, it is your responsibility to do the following:

- *Ensure that all LEA applications and expenditures meet Title III requirements.*
- *Ensure that the portion of the funds allocated to your State by the U.S. Department of Education (ED) is used properly.*
- *Distribute and allocate the funds for (a) State use, (b) EL subgrants, and (c) Immigrant Children and Youth subgrants.*



Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Title III Subgrants: How Many and How?

How are EL subgrants awarded?

The SEA must follow the formula outlined in the ESEA when awarding EL subgrants.

(ESEA § 3111 (a) and (c) and 3114(a-c))

ESEA § 3111(a). IN GENERAL.

In the case of each State educational agency having a plan approved by the Secretary for a fiscal year under section 3113, the Secretary shall make a grant for the year to the agency for the purposes specified in subsection (b). The grant shall consist of the allotment determined for the State educational agency under subsection (c).

ESEA § 3111(c). RESERVATIONS AND ALLOTMENTS.

(1) RESERVATIONS.—From the amount appropriated under section 3001 for each fiscal year, the Secretary shall reserve—

(A) 0.5 percent or \$5,000,000 of such amount, whichever is greater, for payments to eligible entities that are defined under section 3112(a) for activities, approved by the Secretary, consistent with this subpart;

(B) 0.5 percent of such amount for payments to outlying areas, to be allotted in accordance with their respective needs for assistance under this subpart, as determined by the Secretary, for activities, approved by the Secretary, consistent with this subpart; and

(C) 6.5 percent of such amount for national activities under sections 3131 and 3202, except that not more than \$2,000,000 of such amount may be reserved for the National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs described in section 3202.

(2) STATE ALLOTMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), from the amount appropriated under section 3001 for each fiscal year that remains after making the reservations under

paragraph (1), the Secretary shall allot to each State educational agency having a plan approved under section 3113(c)—

(i) an amount that bears the same relationship to 80 percent of the remainder as the number of English learners in the State bears to the number of English learners in all States, as determined in accordance with paragraph (3)(A); and

(ii) an amount that bears the same relationship to 20 percent of the remainder as the number of immigrant children and youth in the State bears to the number of such children and youth in all States, as determined in accordance with paragraph (3)(B).

(B) MINIMUM ALLOTMENTS.—No State educational agency shall receive an allotment under this paragraph that is less than \$500,000.

(C) REALLOTMENT.—If any State educational agency described in subparagraph (A) does not submit a plan to the Secretary for a fiscal year, or submits a plan (or any amendment to a plan) that the Secretary, after reasonable notice and opportunity for a hearing, determines does not satisfy the requirements of this subpart, the Secretary—

(i) shall endeavor to make the State's allotment available on a competitive basis to specially qualified agencies within the State to satisfy the requirements of section 3115 (and any additional requirements that the Secretary may impose), consistent with the purposes of such section, and to carry out required and authorized activities under such section; and

(ii) shall reallocate any portion of such allotment remaining after the application of clause (i) to the remaining State educational agencies in accordance with subparagraph (A).

(D) SPECIAL RULE FOR PUERTO RICO.—The total amount allotted to Puerto Rico for any fiscal year under subparagraph (A) shall not exceed 0.5 percent of the total amount allotted to all States for that fiscal year.

(3) USE OF DATA FOR DETERMINATIONS.—In making State allotments under paragraph (2) for each fiscal year, the Secretary shall—

(A) determine the number of English learners in a State and in all States, using the most accurate, up-to-date data, which shall be—

(i) data available from the American Community Survey conducted by the Department of Commerce, which may be multiyear estimates;

(ii) the number of students being assessed for English language proficiency, based on the State's English language proficiency assessment under section 1111(b)(2)(G), which may be multiyear estimates; or

(iii) a combination of data available under clauses (i) and (ii); and

(B) determine the number of immigrant children and youth in the State and in all States based only on data available from the American Community Survey conducted by the Department of Commerce, which may be multiyear estimates.

ESEA § 3114(a-c). SUBGRANTS TO ELIGIBLE ENTITIES.

(a) IN GENERAL.—After making the reservation required under subsection (d)(1), each State educational agency receiving a grant under section 3111(c)(2) shall award subgrants for a fiscal year by allocating in a timely manner to each eligible entity in the State having a plan approved under section 3116 an amount that bears the same relationship to the amount received under the grant and remaining after making such reservation as the population of English learners in schools served by the eligible entity bears to the population of English learners in schools served by all eligible entities in the State.

(b) LIMITATION.—A State educational agency shall not award a subgrant from an allocation made under subsection (a) if the amount of such subgrant would be less than \$10,000.

(c) REALLOCATION.—Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.

Topic 1: SEA Allocation and Distribution of Title III Funds

**SEA Title III Subgrants: How Many and How?,
cont'd.**

How are the grants awarded?

- For LEA subgrants, the SEA follows the statutory formula based on the relative number of EL students in eligible LEAs.
(ESEA § 3114(a))
- The SEA determines whether to award EL subgrants by formula.
(ESEA § 3114(d))
(Non-Regulatory Guidance: English Learners and Title III § A-16)
(Non-Regulatory Guidance: English Learners and Title III § G-2)
- The SEA cannot award a subgrant if the amount of the subgrant would be less than \$10,000.
(ESEA § 3114(b))
- If the SEA determines that a part of a subgrant will not be used within the fiscal year for the purpose in which it was made, the SEA reallocates that part of the subgrant to other eligible entities able to carry out its original purpose.
(ESEA § 3114(c))

ESEA § 3114(a-d). SUBGRANTS TO ELIGIBLE ENTITIES.

(a) IN GENERAL.—After making the reservation required under subsection (d)(1), each State educational agency receiving a grant under section 3111(c)(2) shall award subgrants for a fiscal year by allocating in a timely manner to each eligible entity in the State having a plan approved under section 3116 an amount that bears the same relationship to the amount received under the grant and remaining after making such reservation as the population of English learners in schools served by the eligible entity bears to the population of English learners in schools served by all eligible entities in the State.

(b) LIMITATION.—A State educational agency shall not award a subgrant from an allocation made under subsection (a) if the amount of such subgrant would be less than \$10,000.

(c) REALLOCATION.—Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.

(d) REQUIRED RESERVATION.—A State educational agency receiving a grant under this subpart for a fiscal year—

(1) shall reserve not more than 15 percent of the agency's allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities; and

(2) in awarding subgrants under paragraph (1)—

(A) shall equally consider eligible entities that satisfy the requirement of such paragraph but have limited or no experience in serving immigrant children and youth; and

(B) shall consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

Non-Regulatory Guidance: English Learners and *Title III* § A-16

A-16. What requirements pertain to the formula that States must use to award *Title III* immigrant subgrants?

A State must reserve not more than 15 percent of the State *Title III* allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (ESEA Section 3114(d)). Prior to the ESSA, States had to compare the percentage or number of immigrant students in the preceding fiscal year to the average of the prior two fiscal years in order to determine which LEAs had a significant increase in the number or percentage of immigrant children and youth. Under that prior law, some States and LEAs raised concerns that the comparison data did not reflect the most recent changes in immigration patterns. The Department recognizes, however, that a State may not have current year data at the time it would generally award the immigrant subgrants. In that instance, the State may decide to award immigrant subgrants using estimates based on the prior year's data, and adjust those subgrant awards as necessary once the current year's data become available.

As under the previous law, each State will continue to determine what constitutes a "significant increase" and may change that definition from year to year without requesting approval from the Department.

Non-Regulatory Guidance: English Learners and *Title III* § G-2

G-2. How must a State allocate funds reserved under ESEA Section 3114(d) – the required reservation for immigrant children and youth (immigrant subgrant)? How might a State allocate immigrant subgrant funds in a manner that increases the potential impact of these funds?

A State must reserve at least enough funds to make one subgrant to an eligible LEA to serve immigrant students that is of sufficient size and scope to carry out a program that is effective in meeting the purposes of *Title III*. (ESEA Section 3114(d)). Each State must award these funds to one or more LEAs that have experienced a significant increase in the percentage or number of immigrant children and youth, as compared to the two preceding fiscal years. (ESEA Section 3114(d)(1)). While a State may choose whether to use an increase in the percentage or number of immigrant children and youth in awarding funds to LEAs, we encourage States to consider both increases in the percentage and in the number of immigrant children and youth in order to ensure an equitable allocation of funds across LEAs of various sizes. A State may define the "significant increase" criteria used to determine eligibility of LEAs for this subgrant (see question A-16). If a State's definition is not sufficient to allow at least one LEA to meet the definition and permit at least one immigrant subgrant to be made, the State may change its definition. Defining "significant increase" may provide a State the opportunity to award an immigrant subgrant to an LEA that, while it has experienced a significant increase in immigrant students, still does not have enough EL students to qualify for the minimum formula subgrant award of \$10,000. (ESEA Section 3114(b)).

In order to ensure that immigrant subgrant awards are used for meaningful activities that improve outcomes for immigrant children and youth, we encourage States to provide awards of an adequate size (i.e., making fewer, larger awards) so that each LEA can use these funds for a high-quality program. In awarding these subgrants, a State must equally consider LEAs that have limited or no experience in serving immigrant children and youth. States must also consider the quality of the local plans that the LEAs submit under Section 3116. (ESEA Section 3114(d)). In order to make at least one immigrant subgrant, a State has discretion with respect to:

1. The size and scope of the award;
2. Whether to make such awards on a discretionary or formula basis;
3. Whether to make awards multi-year or for a single year; and
4. The definition of “significant increase.”

Topic 1: SEA Allocation and Distribution of Title III Funds

**SEA Title III Subgrants: How Many and How?,
cont'd.**

How are immigrant children and youth subgrants awarded?

- In most cases, the State should award at least one immigrant children and youth subgrant each year.
- In cases in which there is evidence of a decline in the immigrant population (based on current FY data compared to average of past 2 previous years), a State may choose to only award EL subgrant(s).

How are the grants awarded?

- The SEA determines whether to award immigrant children and youth subgrants using a formula or on a competitive basis.
- For immigrant children and youth subgrants, the methods for awarding subgrants must support funding the LEAs that have a "significant increase" in the immigrant population (with "significant increase" defined by the SEA).

(ESEA § 3114(d))

(Non-Regulatory Guidance: English Learners and Title III § A-16, G-2)

ESEA § 3114(d). REQUIRED RESERVATION.

A State educational agency receiving a grant under this subpart for a fiscal year—

(1) shall reserve not more than 15 percent of the agency's allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities; and

(2) in awarding subgrants under paragraph (1)—

(A) shall equally consider eligible entities that satisfy the requirement of such paragraph but have limited or no experience in serving immigrant children and youth; and

(B) shall consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

Non-Regulatory Guidance: English Learners and Title III § A-16

A-16. What requirements pertain to the formula that States must use to award Title III immigrant subgrants?

A State must reserve not more than 15 percent of the State Title III allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (ESEA Section 3114(d)). Prior to the ESSA, States had to compare the percentage or number of immigrant students in the preceding fiscal year to the average of the prior two fiscal years in order to determine which LEAs had a

significant increase in the number or percentage of immigrant children and youth. Under that prior law, some States and LEAs raised concerns that the comparison data did not reflect the most recent changes in immigration patterns. The Department recognizes, however, that a State may not have current year data at the time it would generally award the immigrant subgrants. In that instance, the State may decide to award immigrant subgrants using estimates based on the prior year's data, and adjust those subgrant awards as necessary once the current year's data become available.

As under the previous law, each State will continue to determine what constitutes a "significant increase" and may change that definition from year to year without requesting approval from the Department.

Non-Regulatory Guidance: English Learners and *Title III* § G-2

G-2. How must a State allocate funds reserved under ESEA Section 3114(d) – the required reservation for immigrant children and youth (immigrant subgrant)? How might a State allocate immigrant subgrant funds in a manner that increases the potential impact of these funds?

A State must reserve at least enough funds to make one subgrant to an eligible LEA to serve immigrant students that is of sufficient size and scope to carry out a program that is effective in meeting the purposes of *Title III*. (ESEA Section 3114(d)). Each State must award these funds to one or more LEAs that have experienced a significant increase in the percentage or number of immigrant children and youth, as compared to the two preceding fiscal years. (ESEA Section 3114(d)(1)). While a State may choose whether to use an increase in the percentage or number of immigrant children and youth in awarding funds to LEAs, we encourage States to consider both increases in the percentage and in the number of immigrant children and youth in order to ensure an equitable allocation of funds across LEAs of various sizes. A State may define the "significant increase" criteria used to determine eligibility of LEAs for this subgrant (see question A-16). If a State's definition is not sufficient to allow at least one LEA to meet the definition and permit at least one immigrant subgrant to be made, the State may change its definition. Defining "significant increase" may provide a State the opportunity to award an immigrant subgrant to an LEA that, while it has experienced a significant increase in immigrant students, still does not have enough EL students to qualify for the minimum formula subgrant award of \$10,000. (ESEA Section 3114(b)).

In order to ensure that immigrant subgrant awards are used for meaningful activities that improve outcomes for immigrant children and youth, we encourage States to provide awards of an adequate size (i.e., making fewer, larger awards) so that each LEA can use these funds for a high-quality program. In awarding these subgrants, a State must equally consider LEAs that have limited or no experience in serving immigrant children and youth. States must also consider the quality of the local plans that the LEAs submit under Section 3116. (ESEA Section 3114(d)). In order to make at least one immigrant subgrant, a State has discretion with respect to:

1. The size and scope of the award;
2. Whether to make such awards on a discretionary or formula basis;
3. Whether to make awards multi-year or for a single year; and
4. The definition of "significant increase."

Topic 1: SEA Allocation and Distribution of Title III Funds

SEA Title III Subgrants: To Whom and for How Long?

SEAs must award subgrants to LEAs and other eligible entities in the State.
(ESEA § 3114 and 3115))

The length of the grant award period is determined by the SEA and within the parameters described in the General Education Provision Act (GEPA) § 421.

Typically, each Title III subgrant is available for 27 months.

ESEA § 3114. SUBGRANTS TO ELIGIBLE ENTITIES.

(a) IN GENERAL.—After making the reservation required under subsection (d)(1), each State educational agency receiving a grant under section 3111(c)(2) shall award subgrants for a fiscal year by allocating in a timely manner to each eligible entity in the State having a plan approved under section 3116 an amount that bears the same relationship to the amount received under the grant and remaining after making such reservation as the population of English learners in schools served by the eligible entity bears to the population of English learners in schools served by all eligible entities in the State.

(b) LIMITATION.—A State educational agency shall not award a subgrant from an allocation made under subsection (a) if the amount of such subgrant would be less than \$10,000.

(c) REALLOCATION.—Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.

(d) REQUIRED RESERVATION.—A State educational agency receiving a grant under this subpart for a fiscal year—

(1) shall reserve not more than 15 percent of the agency's allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities; and

(2) in awarding subgrants under paragraph (1)—

(A) shall equally consider eligible entities that satisfy the requirement of such paragraph but have limited or no experience in serving immigrant children and youth; and

(B) shall consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

ESEA § 3115. SUBGRANTS TO ELIGIBLE ENTITIES.

(a) **PURPOSES OF SUBGRANTS.**—A State educational agency may make a subgrant to an eligible entity from funds received by the agency under this subpart only if the entity agrees to expend the funds to improve the education of English learners by assisting the children to learn English and meet the challenging State academic standards. In carrying out activities with such funds, the eligible entity shall use effective approaches and methodologies for teaching English learners and immigrant children and youth for the following purposes:

(1) Developing and implementing new language instruction educational programs and academic content instructional programs for English learners and immigrant children and youth, including early childhood education programs, elementary school programs, and secondary school programs.

(2) Carrying out highly focused, innovative, locally designed activities to expand or enhance existing language instruction educational programs and academic content instructional programs for English learners and immigrant children and youth.

(3) Implementing, within an individual school, schoolwide programs for restructuring, reforming, and upgrading all relevant programs, activities, and operations relating to language instruction educational programs and academic content instruction for English learners and immigrant children and youth.

(4) Implementing, within the entire jurisdiction of a local educational agency, agency wide programs for restructuring, reforming, and upgrading all relevant programs, activities, and operations relating to language instruction educational programs and academic content instruction for English learners and immigrant children and youth.

(b) **DIRECT ADMINISTRATIVE EXPENSES.**—Each eligible entity receiving funds under section 3114(a) for a fiscal year may use not more than 2 percent of such funds for the cost of administering this subpart.

(c) **REQUIRED SUBGRANTEE ACTIVITIES.**—An eligible entity receiving funds under section 3114(a) shall use the funds—

(1) to increase the English language proficiency of English learners by providing effective language instruction educational programs that meet the needs of English learners and demonstrate success in increasing—

- English language proficiency; and
- student academic achievement;

(2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is—

(A) designed to improve the instruction and assessment of English learners;

(B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for English learners;

(C) effective in increasing children's English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers' performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher's supervisor based on an assessment of the needs of the teacher, the supervisor, the students of the teacher, and any local educational agency employing the teacher, as appropriate; and

(3) to provide and implement other effective activities and strategies that enhance or supplement language instruction educational programs for English learners, which—

(A) shall include parent, family, and community engagement activities; and

(B) may include strategies that serve to coordinate and align related programs.

(d) AUTHORIZED SUBGRANTEE ACTIVITIES.—Subject to subsection (c), an eligible entity receiving funds under section 3114(a) may use the funds to achieve any of the purposes described in subsection (a) by undertaking 1 or more of the following activities:

- Upgrading program objectives and effective instructional strategies.

(2) Improving the instructional program for English learners by identifying, acquiring, and upgrading curricula, instructional materials, educational software, and assessment procedures.

(3) Providing to English learners—

(A) tutorials and academic or career and technical education; and

(B) intensified instruction, which may include materials in a language that the student can understand, interpreters, and translators.

(4) Developing and implementing effective preschool, elementary school, or secondary school language instruction educational programs that are coordinated with other relevant programs and services.

(5) Improving the English language proficiency and academic achievement of English learners.

(6) Providing community participation programs, family literacy services, and parent and family outreach and training activities to English learners and their families—

(A) to improve the English language skills of English learners; and

(B) to assist parents and families in helping their children to improve their academic achievement and becoming active participants in the education of their children.

(7) Improving the instruction of English learners, which may include English learners with a disability, by providing for—

(A) the acquisition or development of educational technology or instructional materials;

(B) access to, and participation in, electronic networks for materials, training, and communication; and

(C) incorporation of the resources described in subparagraphs (A) and (B) into curricula and programs, such as those funded under this subpart.

(8) Offering early college high school or dual or concurrent enrollment programs or courses designed to help English learners achieve success in postsecondary education.

(9) Carrying out other activities that are consistent with the purposes of this section.

(e) ACTIVITIES BY AGENCIES EXPERIENCING SUBSTANTIAL INCREASES IN IMMIGRANT CHILDREN AND YOUTH.—

(1) IN GENERAL.—An eligible entity receiving funds under section 3114(d)(1) shall use the funds to pay for activities that provide enhanced instructional opportunities for immigrant children and youth, which may include—

- family literacy, parent and family outreach, and training activities designed to assist parents and families to become active participants in the education of their children;

(B) recruitment of, and support for, personnel, including teachers and paraprofessionals who have been specifically trained, or are being trained, to provide services to immigrant children and youth;

(C) provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;

(D) identification, development, and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with awarded funds;

(E) basic instructional services that are directly attributable to the presence of immigrant children and youth in the local educational agency involved, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services;

(F) other instructional services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education; and

(G) activities, coordinated with community-based organizations, institutions of higher education, private sector entities, or other entities with expertise in working with immigrants, to assist parents and families of immigrant children and youth by offering comprehensive community services.

(2) DURATION OF SUBGRANTS.—The duration of a subgrant made by a State educational agency under section 3114(d)(1) shall be determined by the agency in its discretion.

(f) SELECTION OF METHOD OF INSTRUCTION.—

(1) IN GENERAL.—To receive a subgrant from a State educational agency under this subpart, an eligible entity shall select one or more methods or forms of effective instruction to be used in the programs and activities undertaken by the entity to assist English learners to attain English language proficiency and meet challenging State academic standards.

(2) CONSISTENCY.—The selection described in paragraph (1) shall be consistent with sections 3124 through 3126.

(g) SUPPLEMENT, NOT SUPPLANT.—Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for English learners and

immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

GEPA § 421. Availability of Appropriations on Academic- or School-Year Basis; Additional Period for Obligation of Funds.

Appropriations for applicable programs for any fiscal year may be made available for obligation by the grantee on the basis of an academic or school year differing from such fiscal year, subject to regulations by the Secretary.

In addition, unless specifically prohibited, any funds appropriated for an applicable program that are not obligated and expended by the recipient educational agencies and institutions before the end of the fiscal year shall remain available for obligation and expenditure for one additional fiscal year. Funds so carried over are to be obligated and expended in accordance with program requirements that are in effect for such succeeding fiscal year.

If funds appropriated to carry out any applicable program are not obligated until after the institution of a judicial proceeding for release of such funds, then such released funds shall remain available for obligation and expenditure until the end of the fiscal year that begins after the termination of such judicial proceeding.

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA to LEAs: EL Subgrants – Required Activities

In awarding EL subgrants, SEAs select LEAs that have submitted an approvable plan. These plans must include the statutorily-required elements (ESEA § 3116) and should include the three required activities for LEA subgrants:

1. Providing high-quality language instruction education programs (LIEPs) (ESEA § 3115(c)(1))
2. Providing effective professional development (ESEA § 3115(c)(2))
3. Providing and implementing other effective activities and strategies that enhance or supplement language instruction educational programs for ELs, which (a) include parent, family, and community engagement activities and (b) may include strategies that serve to coordinate and align related programs. (ESEA § 3115(c)(3))

ESEA § 3115(c)(1). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(1) to increase the English language proficiency of English learners by providing effective language instruction educational programs that meet the needs of English learners and demonstrate success in increasing—

- (A) English language proficiency; and
- (B) student academic achievement;

ESEA § 3115(c)(2). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is—

- (A) designed to improve the instruction and assessment of English learners;
- (B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for English learners;
- (C) effective in increasing children’s English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and
- (D) of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers’

performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher's supervisor based on an assessment of the needs of the teacher, the supervisor, the students of the teacher, and any local educational agency employing the teacher, as appropriate; and

ESEA § 3115(c)(3). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(3) to provide and implement other effective activities and strategies that enhance or supplement language instruction educational programs for English learners, which—

(A) shall include parent, family, and community engagement activities; and

(B) may include strategies that serve to coordinate and align related programs.

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA to LEAs: Immigrant Children and Youth Subgrants

In awarding immigrant children and youth subgrants, the SEA must do the following:

- Give equal consideration to entities that have limited or no experience in serving immigrant children and youth.
- Consider the quality of each local plan under ESEA § 3116.
- Ensure that each subgrant is of sufficient size and scope to achieve its intended purpose.
ESEA § 3114(d)(2)
- In addition, the SEA must use an increase in either the percentage or number of immigrant children and youth in determining a "significant increase" in awarding funds.
(ESEA Section 3114(d))(1)
(Non-Regulatory Guidance: English Learners and Title III § A-16, G-2)

SEC. 3116. LOCAL PLANS.

(a) PLAN REQUIRED.—Each eligible entity desiring a subgrant from the State educational agency under section 3114 shall submit a plan to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require.

(b) CONTENTS.—Each plan submitted under subsection (a) shall—

(1) describe the effective programs and activities, including language instruction educational programs, proposed to be developed, implemented, and administered under the subgrant that will help English learners increase their English language proficiency and meet the challenging State academic standards;

(2) describe how the eligible entity will ensure that elementary schools and secondary schools receiving funds under this subpart assist English learners in—

(A) achieving English proficiency based on the State's English language proficiency assessment under section 1111(b)(2)(G), consistent with the State's long-term goals, as described in section 1111(c)(4)(A)(ii); and

(B) meeting the challenging State academic standards;

(3) describe how the eligible entity will promote parent, family, and community engagement in the education of English learners;

(4) contain assurances that—

(A) each local educational agency that is included in the eligible entity is complying with section 1112(e) prior to, and throughout, each school year as of the date of application;

(B) the eligible entity is not in violation of any State law, including State constitutional law, regarding the education of English learners, consistent with sections 3125 and 3126;

(C) the eligible entity consulted with teachers, researchers, school administrators, parents and family members, community members, public or private entities, and institutions of higher education, in developing and implementing such plan; and

(D) the eligible entity will, if applicable, coordinate activities and share relevant data under the plan with local Head Start and Early Head Start agencies, including migrant and seasonal Head Start agencies, and other early childhood education providers.

(c) TEACHER ENGLISH FLUENCY.—Each eligible entity receiving a subgrant under section 3114 shall include in its plan a certification that all teachers in any language instruction educational program for English learners that is, or will be, funded under this part are fluent in English and any other language used for instruction, including having written and oral communications skills.

ESEA § 3114(d)(2). REQUIRED RESERVATION.

A State educational agency receiving a grant under this subpart for a fiscal year—

(2) in awarding subgrants under paragraph (1)—

(A) shall equally consider eligible entities that satisfy the requirement of such paragraph but have limited or no experience in serving immigrant children and youth; and

(B) shall consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

ESEA § 3114(d)(1). REQUIRED RESERVATION.

A State educational agency receiving a grant under this subpart for a fiscal year—

(1) shall reserve not more than 15 percent of the agency's allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities; and

Non-Regulatory Guidance: English Learners and Title III § A-16

A-16. What requirements pertain to the formula that States must use to award Title III immigrant subgrants?

A State must reserve not more than 15 percent of the State Title III allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (ESEA Section 3114(d)). Prior to the ESSA, States had to compare the percentage or number of immigrant students in the preceding fiscal year to the average of the prior two fiscal years in order to determine which LEAs had a significant increase in the number or percentage of immigrant children and youth. Under that prior law, some States and LEAs raised concerns that the comparison data did not reflect the most recent changes in immigration patterns. The Department recognizes, however, that a State may not have current year data at the time it would generally award the immigrant subgrants. In that instance, the State may decide to award immigrant subgrants using estimates based on the prior year's data, and adjust those subgrant awards as necessary once the current year's data become available.

As under the previous law, each State will continue to determine what constitutes a “significant increase” and may change that definition from year to year without requesting approval from the Department.

Non-Regulatory Guidance: English Learners and *Title III* § G-2

G-2. How must a State allocate funds reserved under ESEA Section 3114(d) – the required reservation for immigrant children and youth (immigrant subgrant)? How might a State allocate immigrant subgrant funds in a manner that increases the potential impact of these funds?

A State must reserve at least enough funds to make one subgrant to an eligible LEA to serve immigrant students that is of sufficient size and scope to carry out a program that is effective in meeting the purposes of *Title III*. (ESEA Section 3114(d)). Each State must award these funds to one or more LEAs that have experienced a significant increase in the percentage or number of immigrant children and youth, as compared to the two preceding fiscal years. (ESEA Section 3114(d)(1)). While a State may choose whether to use an increase in the percentage or number of immigrant children and youth in awarding funds to LEAs, we encourage States to consider both increases in the percentage and in the number of immigrant children and youth in order to ensure an equitable allocation of funds across LEAs of various sizes. A State may define the “significant increase” criteria used to determine eligibility of LEAs for this subgrant (see question A-16). If a State’s definition is not sufficient to allow at least one LEA to meet the definition and permit at least one immigrant subgrant to be made, the State may change its definition. Defining “significant increase” may provide a State the opportunity to award an immigrant subgrant to an LEA that, while it has experienced a significant increase in immigrant students, still does not have enough EL students to qualify for the minimum formula subgrant award of \$10,000. (ESEA Section 3114(b)).

In order to ensure that immigrant subgrant awards are used for meaningful activities that improve outcomes for immigrant children and youth, we encourage States to provide awards of an adequate size (i.e., making fewer, larger awards) so that each LEA can use these funds for a high-quality program. In awarding these subgrants, a State must equally consider LEAs that have limited or no experience in serving immigrant children and youth. States must also consider the quality of the local plans that the LEAs submit under Section 3116. (ESEA Section 3114(d)). In order to make at least one immigrant subgrant, a State has discretion with respect to:

1. The size and scope of the award;
2. Whether to make such awards on a discretionary or formula basis;
3. Whether to make awards multi-year or for a single year; and
4. The definition of “significant increase.”

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Title III Allocations

The ESEA has specific allocations for *Title III* subgrants and the State's use of funds. At the State level, the SEA reserves a small percentage of its grant to carry out State-level activities and with the majority of the funds used as subgrants to individual LEAs or to LEA consortia (i.e., a group of LEAs that come together as a "subgrantee" for the purpose of providing services to ELs).

(ESEA § 3111(b)(3))

(ESEA § 3111(c)(2))

The next slide provides an overview of the "Flow of Funds" from the U.S. Department of Education to the SEA to LEAs.



ESEA § 3111(b)(3). DIRECT ADMINISTRATIVE EXPENSES.

From the amount reserved under paragraph (2), a State educational agency may use not more than 50 percent of such amount or \$175,000, whichever is greater, for the planning and direct administrative costs of carrying out paragraphs (1) and (2).

ESEA § 3111(c)(2). STATE ALLOTMENTS.

(A) IN GENERAL.—Except as provided in subparagraph (B), from the amount appropriated under section 3001 for each fiscal year that remains after making the reservations under paragraph (1), the Secretary shall allot to each State educational agency having a plan approved under section 3113(c)— (i) an amount that bears the same relationship to 80 percent of the remainder as the number of English learners in the State bears to the number of English learners in all States, as determined in accordance with paragraph (3)(A); and (ii) an amount that bears the same relationship to 20 percent of the remainder as the number of immigrant children and youth in the State bears to the number of such children and youth in all States, as determined in accordance with paragraph (3)(B).

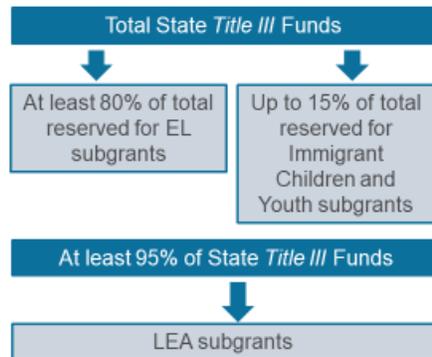
(B) MINIMUM ALLOTMENTS.—No State educational agency shall receive an allotment under this paragraph that is less than \$500,000.

(C) REALLOTMENT.—If any State educational agency described in subparagraph (A) does not submit a plan to the Secretary for a fiscal year, or submits a plan (or any amendment to a plan) that the Secretary, after reasonable notice and opportunity for a hearing, determines does not satisfy the requirements of this subpart, the Secretary— (i) shall endeavor to make the State's allotment available on a competitive basis to specially qualified agencies within the State to satisfy the requirements of section 3115 (and any additional requirements that the Secretary may impose), consistent with the purposes of such section, and to carry out required and authorized activities under such section; and (ii) shall reallocate any portion of such allotment

remaining after the application of clause (i) to the remaining State educational agencies in accordance with subparagraph (A).

(D) SPECIAL RULE FOR PUERTO RICO.—The total amount allotted to Puerto Rico for any fiscal year under subparagraph (A) shall not exceed 0.5 percent of the total amount allotted to all States for that fiscal year.

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Title III Allocations – Flow of Funds



There are different requirements for how State Title III funds are used.

- There are requirements for what percentage of the total State Title III funds must be reserved for each type of subgrants (shown in the graphic to the left).
- There is a requirement that at least 95% of the total State Title III funds be used for LEA subgrants.

Non-Regulatory Guidance:
 English Learners and Title III § A-9; A-16

Non-Regulatory Guidance: English Learners and Title III § A-9

A-9. How may a State use Title III State-level activity funds?

Consistent with the prior reauthorization of the law, a State may only reserve up to 5 percent of the total State grant for State activities (ESEA Section 3111(b)(2)). Each State must still reserve at least 95 percent of Title III funds for LEA subgrants. The ESEA, as amended by the ESSA, did, however, make changes to the authorized uses of the State-level activity funds, including by:

- Permitting the use of State-level activity funds to establish and implement the standardized Statewide entrance and exit procedures for ELs required under ESEA Section 3113(b)(2); and
- Expanding the use of State-level activity funds for professional development to include the improvement of teaching skills to meet the needs of ELs. (ESEA Section 3111(b)(2)).

In addition, a State may use up to 50 percent of Title III State-level activity funds, or \$175,000, whichever is greater, for planning and direct administrative costs of implementing the Title III State formula grant program. (ESEA Section 3111(b)(3)). The ESEA, as amended by the ESSA, made two significant changes to this provision: (1) the percentage of State-level funds that can be used for planning and administrative costs has been reduced from 60 percent to 50 percent, and (2) the portion (up to 50 percent) of State-level funds that the State reserves for administrative costs must now only be used for direct administrative costs. This gives each State the flexibility to apply its restricted indirect cost rate to the rest of its State activity funds. For example, a direct administrative cost could be the part of the salary of a State employee who works on Title III activities, if that portion of the salary can be directly attributed and allocated to the Title III grant and is not otherwise recovered as an indirect cost. See 2 CFR §§ 200.412-417 for classification of direct versus indirect costs.

Non-Regulatory Guidance: English Learners and *Title III* § A-16

A-16. What requirements pertain to the formula that States must use to award *Title III* immigrant subgrants?

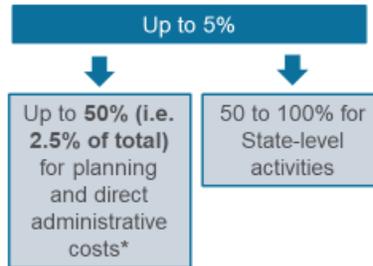
A State must reserve not more than 15 percent of the State *Title III* allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (ESEA Section 3114(d)). Prior to the ESSA, States had to compare the percentage or number of immigrant students in the preceding fiscal year to the average of the prior two fiscal years in order to determine which LEAs had a significant increase in the number or percentage of immigrant children and youth. Under that prior law, some States and LEAs raised concerns that the comparison data did not reflect the most recent changes in immigration patterns. The Department recognizes, however, that a State may not have current year data at the time it would generally award the immigrant subgrants. In that instance, the State may decide to award immigrant subgrants using estimates based on the prior year's data, and adjust those subgrant awards as necessary once the current year's data become available.

As under the previous law, each State will continue to determine what constitutes a "significant increase" and may change that definition from year to year without requesting approval from the Department.

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Title III Allocations – Flow of Funds

- After at least 95% of State Title III funds have been reserved for LEA subgrants, the SEA may reserve up to 5% of State Title III funds for administration and State-level activities.
- Of these State-level funds, up to 50% can be used for direct administrative costs. The remaining amount can be used for State-level activities.
- In short, up to 2.5% of the total State Title III funds can be used for direct administrative costs, and 2.5–5% of total State Title III funds can be used for State-level activities.

Non-Regulatory Guidance: English Learners and Title III § A-9



*Note: A State can use up to 50 percent OR \$175,000, whichever is greater, for the planning and direct administrative costs of carrying out the program (ESEA § 3111(b)(3)).

Non-Regulatory Guidance: English Learners and Title III § A-9

A-9. How may a State use Title III State-level activity funds?

Consistent with the prior reauthorization of the law, a State may only reserve up to 5 percent of the total State grant for State activities (ESEA Section 3111(b)(2)). Each State must still reserve at least 95 percent of Title III funds for LEA subgrants. The ESEA, as amended by the ESSA, did, however, make changes to the authorized uses of the State-level activity funds, including by:

- Permitting the use of State-level activity funds to establish and implement the standardized Statewide entrance and exit procedures for ELs required under ESEA Section 3113(b)(2); and
- Expanding the use of State-level activity funds for professional development to include the improvement of teaching skills to meet the needs of ELs. (ESEA Section 3111(b)(2)).

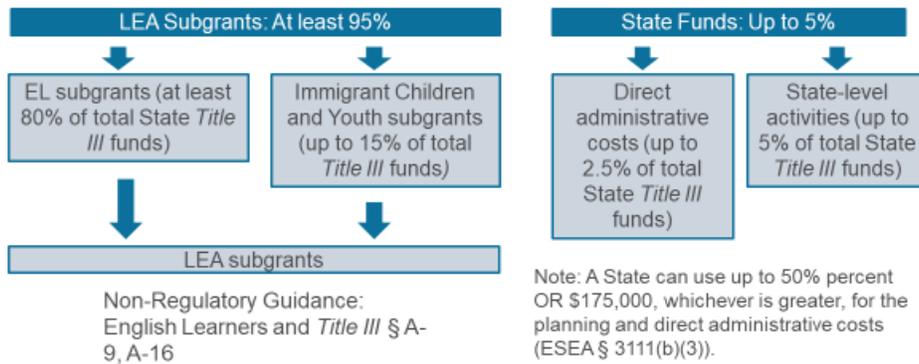
In addition, a State may use up to 50 percent of Title III State-level activity funds, or \$175,000, whichever is greater, for planning and direct administrative costs of implementing the Title III State formula grant program. (ESEA Section 3111(b)(3)). The ESEA, as amended by the ESSA, made two significant changes to this provision: (1) the percentage of State-level funds that can be used for planning and administrative costs has been reduced from 60 percent to 50 percent, and (2) the portion (up to 50 percent) of State-level funds that the State reserves for administrative costs must now only be used for direct administrative costs. This gives each State the flexibility to apply its restricted indirect cost rate to the rest of its State activity funds. For example, a direct administrative cost could be the part of the salary of a State employee who works on Title III activities, if that portion of the salary can be directly attributed and allocated to the Title III grant and is not otherwise recovered as an indirect cost. See 2 CFR §§ 200.412-417 for classification of direct versus indirect costs.

ESEA § 3111(b)(3). DIRECT ADMINISTRATIVE EXPENSES.

From the amount reserved under paragraph (2), a State educational agency may use not more than 50 percent of such amount or \$175,000, whichever is greater, for the planning and direct administrative costs of carrying out paragraphs (1) and (2).

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Title III Allocations – Flow of Funds

This graphic shows how these requirements for the flow of Title III funds fit together.



Non-Regulatory Guidance: English Learners and Title III § A-9

A-9. How may a State use Title III State-level activity funds?

Consistent with the prior reauthorization of the law, a State may only reserve up to 5 percent of the total State grant for State activities (ESEA Section 3111(b)(2)). Each State must still reserve at least 95 percent of Title III funds for LEA subgrants. The ESEA, as amended by the ESSA, did, however, make changes to the authorized uses of the State-level activity funds, including by:

- Permitting the use of State-level activity funds to establish and implement the standardized Statewide entrance and exit procedures for ELs required under ESEA Section 3113(b)(2); and
- Expanding the use of State-level activity funds for professional development to include the improvement of teaching skills to meet the needs of ELs. (ESEA Section 3111(b)(2)).

In addition, a State may use up to 50 percent of Title III State-level activity funds, or \$175,000, whichever is greater, for planning and direct administrative costs of implementing the Title III State formula grant program. (ESEA Section 3111(b)(3)). The ESEA, as amended by the ESSA, made two significant changes to this provision: (1) the percentage of State-level funds that can be used for planning and administrative costs has been reduced from 60 percent to 50 percent, and (2) the portion (up to 50 percent) of State-level funds that the State reserves for administrative costs must now only be used for direct administrative costs. This gives each State the flexibility to apply its restricted indirect cost rate to the rest of its State activity funds. For example, a direct administrative cost could be the part of the salary of a State employee who works on Title III activities, if that portion of the salary can be directly attributed and allocated to the Title III grant and is not otherwise recovered as an indirect cost. See 2 CFR §§ 200.412-417 for classification of direct versus indirect costs.

Non-Regulatory Guidance: English Learners and *Title III* § A-16

A-16. What requirements pertain to the formula that States must use to award *Title III* immigrant subgrants?

A State must reserve not more than 15 percent of the State *Title III* allocation for subgrants to LEAs in the State that have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled in schools in the LEA in the current fiscal year compared to the average of the last two fiscal years. (ESEA Section 3114(d)). Prior to the ESSA, States had to compare the percentage or number of immigrant students in the preceding fiscal year to the average of the prior two fiscal years in order to determine which LEAs had a significant increase in the number or percentage of immigrant children and youth. Under that prior law, some States and LEAs raised concerns that the comparison data did not reflect the most recent changes in immigration patterns. The Department recognizes, however, that a State may not have current year data at the time it would generally award the immigrant subgrants. In that instance, the State may decide to award immigrant subgrants using estimates based on the prior year's data, and adjust those subgrant awards as necessary once the current year's data become available.

As under the previous law, each State will continue to determine what constitutes a "significant increase" and may change that definition from year to year without requesting approval from the Department.

ESEA § 3111(b)(3). DIRECT ADMINISTRATIVE EXPENSES.

From the amount reserved under paragraph (2), a State educational agency may use not more than 50 percent of such amount or \$175,000, whichever is greater, for the planning and direct administrative costs of carrying out paragraphs (1) and (2).

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Title III Allocations – A Chart View

This table shows the same allocations shown in the previous graphic along with additional stipulations around funding. You may use this table for easy reference in your role as a Title III State Director.

Allotment for State Title III Funds		
English Learner Subgrants (ESEA § 3111(b)(2) and 3114)	at least 80%	Subgrantee must have enough ELs for a subgrant of \$10,000.
Immigrant Subgrants (ESEA § 3114(d))	up to 15%	No minimum grant size: up to 15% of the State's Title III allocation is used for these grants.
Reserved for State-Level Activities (ESEA § 3111(b)(2))	up to 5%	An SEA may reserve up to 5% of its overall allotment for State-level activities. No more than 50% of that amount (designated for State-level activities), or \$175,000, whichever is greater, can be used for planning and direct administrative costs.

ESEA § 3111(b)(2). STATE ACTIVITIES.

Subject to paragraph (3), each State educational agency receiving a grant under subTopic (a) may reserve not more than 5 percent of the agency’s allotment under subTopic (c) to carry out one or more of the following activities:

- (A) Establishing and implementing, with timely and meaningful consultation with local educational agencies representing the geographic diversity of the State, standardized Statewide entrance and exit procedures, including a requirement that all students who may be English learners are assessed for such status within 30 days of enrollment in a school in the State.
- (B) Providing effective teacher and principal preparation, effective professional development activities, and other effective activities related to the education of English learners, which may include assisting teachers, principals, and other educators in—
 - (i) meeting State and local certification and licensing requirements for teaching English learners; and
 - (ii) improving teaching skills in meeting the diverse needs of English learners, including how to implement effective programs and curricula on teaching English learners.
- (C) Planning, evaluation, administration, and interagency coordination related to the subgrants referred to in paragraph (1).
- (D) Providing technical assistance and other forms of assistance to eligible entities that are receiving subgrants from a State educational agency under this subpart, including assistance in—
 - (i) identifying and implementing effective language instruction educational programs and curricula for teaching English learners;
 - (ii) helping English learners meet the same challenging State academic standards that all children are expected to meet;

- (iii) identifying or developing, and implementing, measures of English proficiency; and
 - (iv) strengthening and increasing parent, family, and community engagement in programs that serve English learners.
- (E) Providing recognition, which may include providing financial awards, to recipients of subgrants under section 3115 that have significantly improved the achievement and progress of English learners in meeting—
- (i) the State-designed long-term goals established under section 1111(c)(4)(A)(ii), including measurements of interim progress towards meeting such goals, based on the State’s English language proficiency assessment under section 1111(b)(2)(G); and
 - (ii) the challenging State academic standards.

ESEA § 3114(a-d). SUBGRANTS TO ELIGIBLE ENTITIES.

- (a) **IN GENERAL.**—After making the reservation required under subsection (d)(1), each State educational agency receiving a grant under section 3111(c)(2) shall award subgrants for a fiscal year by allocating in a timely manner to each eligible entity in the State having a plan approved under section 3116 an amount that bears the same relationship to the amount received under the grant and remaining after making such reservation as the population of English learners in schools served by the eligible entity bears to the population of English learners in schools served by all eligible entities in the State.
- (b) **LIMITATION.**—A State educational agency shall not award a subgrant from an allocation made under subsection (a) if the amount of such subgrant would be less than \$10,000.
- (c) **REALLOCATION.**—Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.
- (d) **REQUIRED RESERVATION.**—A State educational agency receiving a grant under this subpart for a fiscal year—
- (1) shall reserve not more than 15 percent of the agency's allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase, as compared to the average of the 2 preceding fiscal years, in the percentage or number of immigrant children and youth, who have enrolled, during the fiscal year for which the subgrant is made, in public and nonpublic elementary schools and secondary schools in the geographic areas under the jurisdiction of, or served by, such entities; and
 - (2) in awarding subgrants under paragraph (1)—
 - (A) shall equally consider eligible entities that satisfy the requirement of such paragraph but have limited or no experience in serving immigrant children and youth; and
 - (B) shall consider the quality of each local plan under section 3116 and ensure that each subgrant is of sufficient size and scope to meet the purposes of this part.

Topic 1: SEA Allocation and Distribution of *Title III* Funds
SEA Allocations

In summary, State Title III allocations must include:

- At least 95% for all subgrants
- Up to 5% for State-level activities

Of the 95% of funds used for subgrants, State *Title III* allocations must include:

- At least 80% of the total for *English learner* subgrants
- Up to 15% of the total for *Immigrant Children and Youth* subgrants

Of the 5% of funds used for State-level activities, State *Title III* allocations may include:

- Up to 50% for planning and direct administrative costs

Note: If an SEA reserves only \$175,000 or less for State-level activities, the agency can use all of these funds for administrative costs.

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Allocations: State Use of Funds –
Purposes

For what purposes may States use their “up to 5%” of the Title III funds?

1. State administrative costs include activities such as overseeing the LEAs' uses of funds as well as planning, evaluation, and clerical functions.

Note: As previously described, State planning and direct administrative costs are limited to no more than 2.5% of total funds.

2. Non-administrative State activities include direct State-level activities.

ESEA 3111(b)(2))

Non-Regulatory Guidance: English Learners and Title III § A-9)

ESEA § 3111(b)(2). STATE ACTIVITIES.

Subject to paragraph (3), each State educational agency receiving a grant under subtopic (a) may reserve not more than 5 percent of the agency's allotment under subtopic (c) to carry out one or more of the following activities:

(A) Establishing and implementing, with timely and meaningful consultation with local educational agencies representing the geographic diversity of the State, standardized Statewide entrance and exit procedures, including a requirement that all students who may be English learners are assessed for such status within 30 days of enrollment in a school in the State.

(B) Providing effective teacher and principal preparation, effective professional development activities, and other effective activities related to the education of English learners, which may include assisting teachers, principals, and other educators in—

(i) meeting State and local certification and licensing requirements for teaching English learners; and

(ii) improving teaching skills in meeting the diverse needs of English learners, including how to implement effective programs and curricula on teaching English learners.

(C) Planning, evaluation, administration, and interagency coordination related to the subgrants referred to in paragraph (1).

(D) Providing technical assistance and other forms of assistance to eligible entities that are receiving subgrants from a State educational agency under this subpart, including assistance in—

(i) identifying and implementing effective language instruction educational programs and curricula for teaching English learners;

(ii) helping English learners meet the same challenging State academic standards that all children are expected to meet;

(iii) identifying or developing, and implementing, measures of English proficiency; and

(iv) strengthening and increasing parent, family, and community engagement in programs that serve English learners.

(E) Providing recognition, which may include providing financial awards, to recipients of subgrants under section 3115 that have significantly improved the achievement and progress of English learners in meeting—

(i) the State-designed long-term goals established under section 1111(c)(4)(A)(ii), including measurements of interim progress towards meeting such goals, based on the State's English language proficiency assessment under section 1111(b)(2)(G); and

(ii) the challenging State academic standards.

Non-Regulatory Guidance: English Learners and *Title III* § A-9

A-9. How may a State use *Title III* State-level activity funds?

Consistent with the prior reauthorization of the law, a State may only reserve up to 5 percent of the total State grant for State activities (ESEA Section 3111(b)(2)). Each State must still reserve at least 95 percent of *Title III* funds for LEA subgrants. The ESEA, as amended by the ESSA, did, however, make changes to the authorized uses of the State-level activity funds, including by:

- Permitting the use of State-level activity funds to establish and implement the standardized Statewide entrance and exit procedures for ELs required under ESEA Section 3113(b)(2); and
- Expanding the use of State-level activity funds for professional development to include the improvement of teaching skills to meet the needs of ELs. (ESEA Section 3111(b)(2)).

In addition, a State may use up to 50 percent of *Title III* State-level activity funds, or \$175,000, whichever is greater, for planning and direct administrative costs of implementing the *Title III* State formula grant program. (ESEA Section 3111(b)(3)). The ESEA, as amended by the ESSA, made two significant changes to this provision: (1) the percentage of State-level funds that can be used for planning and administrative costs has been reduced from 60 percent to 50 percent, and (2) the portion (up to 50 percent) of State-level funds that the State reserves for administrative costs must now only be used for direct administrative costs. This gives each State the flexibility to apply its restricted indirect cost rate to the rest of its State activity funds. For example, a direct administrative cost could be the part of the salary of a State employee who works on *Title III* activities, if that portion of the salary can be directly attributed and allocated to the *Title III* grant and is not otherwise recovered as an indirect cost. See 2 CFR §§ 200.412-417 for classification of direct versus indirect costs.

Topic 1: SEA Allocation and Distribution of Title III Funds
Understanding SEA Administrative Costs

Administrative costs are costs associated with overall project management and administration and do not include the direct provision of services. SEA administrative costs can include the following:

- Expenses classified as personnel and nonpersonnel
- Direct and indirect costs

Examples of administrative costs related to personnel include the following:

- Salaries and benefits for staff who perform administrative duties to support Title III, such as coordinators, administrative assistants, clerks, accounting and data processing personnel
- Contracted professional services, such as auditors who perform administrative duties to support Title III

Administrative costs: Costs associated with the overall project management and administration that are not directly related to the provision of services to participants. Administrative costs can include costs classified as personnel and non-personnel, direct and indirect. For example, salaries and benefits for coordinators, office assistants, clerks, accounting, data processing and contracted professional services such as auditors would be administrative costs related to personnel

Topic 1: SEA Allocation and Distribution of Title III Funds

**Understanding SEA Administrative Costs,
cont'd.**

To charge an administrative cost as direct rather than indirect,

- *The cost must be specifically identified in the budget, and*
- *The individual involved must work directly on the Title III grant.*
 - *Note: The individual does not need to work 100% of the time on Title III grant activities.*
 - *Note: The individual's time does need to be allocable to the Title III grant to charge administrative costs.*

Examples of indirect costs:

- *Facility rental and usage costs*
- *Costs apportioned across programs*

Topic 1: SEA Allocation and Distribution of Title III Funds

**Understanding SEA Administrative Costs,
cont'd.**

Because Title III has a cap on the amount of funds a State can use for administrative expenses, a question that often arises is whether to classify a particular activity as an administrative service or a direct "State activity."

The classification depends on the nature of the activity. For example, professional development and technical assistance activities are direct State activities, but some activities associated with providing those services might be administrative.

Because only direct administrative costs are limited to 50% of State-level activities, a State may include indirect costs with the remainder of State-level activity funds.

Topic 1: SEA Allocation and Distribution of Title III Funds
SEA Allocations: State Use of Funds –
Activities to Support LEAs

States receiving a Title III grant may reserve up to 5 percent of their total grant allocation to carry out one or more of the following activities:

Standardized Statewide entrance and exit procedures	Establishing and implementing Statewide standardized procedures for placing and exiting ELs from the LIEP.
Professional development	Providing effective teacher and principal preparation, effective professional development activities related to the education of ELs, which may include meeting State and local certification and licensing requirements for teaching ELs, and improving teaching skills toward meeting the diverse needs of ELs.
Planning and administration	Providing planning, evaluation, administration, and interagency coordination related to Title III subgrants to LEAs.
Technical assistance	Providing technical assistance and other forms of assistance to Title III subgrantees.
Recognition	Providing recognition, including financial awards, to recipients of subgrants that have significantly improved the achievement and progress of ELs in meeting State-designed long-term goals, including measurements of interim progress toward meeting such goals, based on the State's ELP assessment and the challenging State academic standards.

(ESEA § 3111(b)(2))

ESEA § 3111(b)(2). STATE ACTIVITIES.

Subject to paragraph (3), each State educational agency receiving a grant under subtopic (a) may reserve not more than 5 percent of the agency's allotment under subtopic (c) to carry out one or more of the following activities:

(A) Establishing and implementing, with timely and meaningful consultation with local educational agencies representing the geographic diversity of the State, standardized Statewide entrance and exit procedures, including a requirement that all students who may be English learners are assessed for such status within 30 days of enrollment in a school in the State.

(B) Providing effective teacher and principal preparation, effective professional development activities, and other effective activities related to the education of English learners, which may include assisting teachers, principals, and other educators in—

(i) meeting State and local certification and licensing requirements for teaching English learners; and

(ii) improving teaching skills in meeting the diverse needs of English learners, including how to implement effective programs and curricula on teaching English learners.

(C) Planning, evaluation, administration, and interagency coordination related to the subgrants referred to in paragraph (1).

(D) Providing technical assistance and other forms of assistance to eligible entities that are receiving subgrants from a State educational agency under this subpart, including assistance in—

(i) identifying and implementing effective language instruction educational programs and curricula for teaching English learners;

(ii) helping English learners meet the same challenging State academic standards that all children are expected to meet;

- (iii) identifying or developing, and implementing, measures of English proficiency; and
 - (iv) strengthening and increasing parent, family, and community engagement in programs that serve English learners.
- (E) Providing recognition, which may include providing financial awards, to recipients of subgrants under section 3115 that have significantly improved the achievement and progress of English learners in meeting—
- (i) the State-designed long-term goals established under section 1111(c)(4)(A)(ii), including measurements of interim progress towards meeting such goals, based on the State’s English language proficiency assessment under section 1111(b)(2)(G); and
 - (ii) the challenging State academic standards.

Topic 1: SEA Allocation and Distribution of *Title III* Funds

Resource 1: *Title III* SEA Allocations Checklist

Take a look at the handout titled "Resource 1: SEA Allocations Checklist," which may be used to manage State-level Title III funds.

Attached Resource: "Title III *SEA Allocations Checklist*"

Topic 1: SEA Allocation and Distribution of *Title III* Funds
Resource 2: Distribution of *Title III* Funds

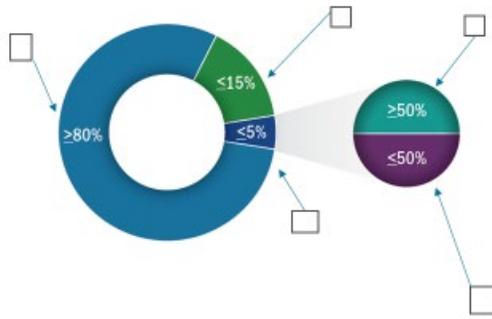
Now that you know the basics of Title III funds distribution, let's take a deeper dive into the details.

Take a look at the handout titled "Resource 2: Distribution of Title III Funds."

Attached Resource: "Distribution of *Title III* Funds"

Check for Understanding Topic 1, SEA Allocation and Distribution of Title III Funds

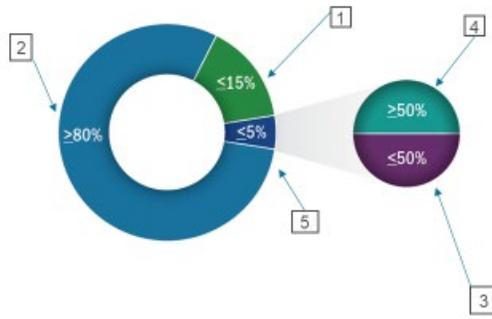
Match the sections of the pie charts below to the correct label for how the State's total Title III allocation is distributed.



1. Title III Immigrant Children and Youth Subgrants
2. Title III English Learner Subgrants
3. SEA support to Subgrantees
4. SEA's Administrative Costs
5. Reserved for State-Level Activities

Check for Understanding Topic 1: SEA Allocation and Distribution of *Title III* Funds

Answers



1. *Title III* Immigrant Children and Youth Subgrants
2. *Title III* English Learner Subgrants
3. SEA support to Subgrantees
4. SEA's Administrative Costs
5. Reserved for State-Level Activities

Topic 1: SEA Allocation and Distribution of *Title III* Funds

SEA: *Title III* Funds Availability – Length of Time

Under the Tydings Amendment, *Title III* funds are generally available for up to 27 months from the date of the grant award to the State. Specifically, *Title III* funds are available until the end of the fiscal year (September 30) following the fiscal year for which funds are appropriated.

Unlike *Title I*, there is no limit on the amount of funds that LEAs can carry over from year to year within the Tydings period. However, an LEA that receives a *Title III* subgrant is expected to implement the subgrant (consistent with its local application and *Title III* regulations) for each year of the grant.

(Tydings Amendment, Topic 421(b) of the General Education Provision Act (GEPA))

Tydings Amendment: is the 12-month period after the initial grant period; under Topic 421(b) of the General Education Provision Act (GEPA), sometimes referred to as the Tydings Amendment (20 U.S.C. § 1225(b)). An SEA or LEA that does not obligate all of the Federal funds allocated to it for a given fiscal year may carry over the unobligated funds and obligate them during the succeeding fiscal year. That is, funds are available for obligation for the fiscal year for which they were appropriated, plus a carryover period of one additional fiscal year, resulting in a total period of 27 months from the grant to the State.

Topic 1: SEA Allocation and Distribution of *Title III* Funds

SEA: *Title III* Funds Availability for Charter Schools

Under the ESEA, an "eligible entity" that can apply for *Title III* funds is either

- One or more LEAs
- One or more LEAs, in consortia or collaboration with an institution of higher education, educational service agency, community-based organization, or SEA.

(ESEA § 3201(3))

Charter school(s) are also eligible to apply for *Title III* funds.

(September 28, 2015 Dear Colleagues Letter)

ESEA § 3201(3). ELIGIBLE ENTITY.

The term "eligible entity" means—

(A) one or more local educational agencies; or

(B) one or more local educational agencies, in consortia or collaboration with an institution of higher education, educational service agency, community-based organization, or State educational agency.

September 28, 2015 Dear Colleagues Letter

As public schools, charter schools are eligible to receive assistance from a wide range of Federal education programs. For example, under the Elementary and Secondary Education Act of 1965, as amended (ESEA), eligible charter schools may apply for funds under *Titles I* and *III* (the latter assisting students who are English learners).

Topic 1: SEA Allocation and Distribution of Title III Funds
Understanding the 2 Percent Cap

LEAs can spend no more than 2 percent of the *Title III* English Learner Subgrant for direct administrative costs.
(ESEA § 3115(b))

However, that cap does not apply to Immigrant Children and Youth Subgrants.
(Non-Regulatory Guidance: English Learners and *Title III* § A-10)

ESEA § 3115(b). DIRECT ADMINISTRATIVE EXPENSES.

Each eligible entity receiving funds under section 3114(a) for a fiscal year may use not more than 2 percent of such funds for the cost of administering this subpart.

Non-Regulatory Guidance: English Learners and Title III § A-10

A-10. How much of an LEA's Title III formula subgrant may the LEA use for administrative costs?

An LEA may use no more than 2 percent of its LEA funds for administrative costs. (ESEA Section 3115(b)). However, as a result of the ESSA changes, any funds the LEA reserves for administrative costs may be used only for direct administrative costs. This provides an LEA with flexibility to apply its restricted indirect cost rate to the portion of its subgrant that it does not reserve for administrative costs. See references in question A-9 above for guidance on direct versus indirect costs.

Topic 1: SEA Use and Administration of Title III Funds

SEA: Reallocation of Unused LEA Title III Funds

If an SEA determines that an LEA cannot use its *Title III* subgrant, the SEA is required to reallocate the funds, with the reallocation to be determined by the State's rules. Thus, the SEA should establish and follow written policies and procedures for reallocating funds.

(ESEA § 3114(c))

(Non-Regulatory Guidance: English Learners and *Title III* § A-14)

ESEA § 3114(c). REALLOCATION.

Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.

Non-Regulatory Guidance: English Learners and Title III § A-14

A-14. Under what circumstances may a State reallocate Title III EL formula subgrant funds to LEAs?

As under previous law, a State may reallocate funds made to an LEA that will not be used for the purpose for which the allocation was made to another LEA or other LEAs "...in accordance with such rules as it determines to be appropriate..." that the State "...determines will use the amount to carry out that purpose." (ESEA Section 3114(c)). The State must be able to justify its determination that the LEA will not use the *Title III* funds for the intended purpose. For example, a State may determine that an LEA will not use the funds for the purpose for which they were intended if the LEA has not obligated a significant portion of the funds after 24 months or if the LEA is a single-school LEA that closes at some point during the period of availability of the funds.

Each State must have business rules in place that will govern how it reallocates funds. For example, the State's business rules may require that the State reallocate the funds to all remaining eligible entities, based on the formula it used to make the initial *Title III* formula allocations. Alternatively, a State may use criteria to determine to which LEAs it will award reallocated funds. Such criteria may include, for example, whether the LEA will use the funds for

their intended purpose, how the funds will help EL students, the LEA's need for additional funds as demonstrated by the amount of *Title III* funds the LEA has remaining, and the LEA's commitment to using the funds within the period of availability. Whether the State uses additional criteria, the State must reallocate funds on a formula basis based on the number of ELs in the LEA or LEAs receiving the reallocated funds. (ESEA Section 3114(c)).

Topic 1: SEA Use and Administration of Title III Fund
SEA: Reallocation of Unused LEA Title III Funds, cont'd.

Title III English Learner Subgrant funds can be reallocated when LEAs return funds or when the SEA takes back funds not used for the purpose for which they were awarded.

(ESEA § 3114(c))

If the SEA takes back a subgrant, it would constitute a State enforcement action that, under the Education Department General Administrative Regulations (EDGAR) and the General Education Provisions Act, would be subject to the requirement that the SEA provide the LEA an opportunity for a hearing.

(20 USC § 1232(c), 34 CFR § 76.783)

ESEA § 3114(c). REALLOCATION.

Whenever a State educational agency determines that an amount from an allocation made to an eligible entity under subsection (a) for a fiscal year will not be used by the entity for the purpose for which the allocation was made, the agency shall, in accordance with such rules as it determines to be appropriate, reallocate such amount, consistent with such subsection, to other eligible entities in the State that the agency determines will use the amount to carry out that purpose.

20 USC § 1232(c) State Agency Monitoring and Enforcement

(c)Withholding of payments

Any withholding of payments under subsection (b)(3) of this subsection [1] shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

34 CFR § 76.783 State educational agency action - subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 76.401(d)(2)-(7) apply to any request for a hearing under this section.

Topic 2: SEA Administration and Monitoring of Title III Funds

By the time you complete this topic, you will be able to explain the following concepts related to administering Federal funds, including Title III funds:

- *Reasonable, allocable and allowable criteria*
- *Indirect and direct costs*
- *Administrative versus direct services costs.*



Topic 2: SEA Administration and Monitoring of Title III Funds
SEA Procedures for Administrating Title III Funds

Each State receiving Title III funds must have procedures for the following:

- *Calculating and allocating subgrants to LEAs in a timely fashion*
- *Reviewing and approving applications for subgrants and amendments to those applications*
- *Providing technical assistance*
- *Evaluating projects*
- *Performing other administrative responsibilities necessary to ensure compliance with applicable program requirements.*

Topic 2: SEA Administration and Monitoring of Title III Funds
SEA Monitoring of LEA Grant Activities

States must monitor grant- and subgrant-supported activities to ensure compliance with applicable Federal requirements.

(ESEA § 3113(b)(3)(F))

(2 CFR § 200.328)

The following slides describe criteria for use of Title III funds.

ESEA § 3113(b)(3)(f). CONTENTS.

The agency will monitor each eligible entity receiving a subgrant under this subpart for compliance with applicable Federal fiscal requirements.

2 CFR § 200.328. Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.331 Requirements for pass-through *entities*.

(b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90

calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a Statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this part if not needed.

Topic 2: SEA Administration and Monitoring of Title III Funds
SEA Monitoring of LEA Grant Activities

Criteria for Use of Federal Funds

All Federal education funds must be used in a manner that is allowable, reasonable and allocable. Click on each word below for a brief explanation.

Allowable

A cost is **allowable** if it is necessary and reasonable for proper and efficient performance of the award, is allocable to the award and if it meets other criteria set forth in Federal provisions (see 2 CFR § 200.403 for more information).

Reasonable

A cost is **reasonable** if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing when the decision was made to incur the cost (see 2 CFR § 200.404 for more information).

Allocable

A cost is **allocable** if the goods or services involved are chargeable or assignable to the cost objective in accordance with the relative benefits received (see 2 CFR § 200.405 for more information).

2 CFR § 200.403. Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- (g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

2 CFR § 200.404. Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

2 CFR § 200.405. Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

- (1) Is incurred specifically for the Federal award;
 - (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
 - (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.
- (b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to

the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§200.310 Insurance coverage through 200.316 Property trust relationship and 200.439 Equipment and other capital expenditures.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

Topic 2: SEA Administration and Monitoring of Title III Funds SEA Monitoring of LEA Grant Activities

Criteria for Use of Federal Funds: Examples of Allowable and Unallowable Costs

Some costs are always unallowable for both SEAs and LEAs. Others may be allowable under some circumstances but not others. For each of the five categories of Title III costs shown below, consider whether the cost is "allowable," "not allowable" or "it depends."

 Transportation	 Food	 Entertainment	 Donations	 Alcohol
<p>It Depends Transportation associated with entertainment is not allowable. However, transportation may be allowable for students in afterschool or summer school programs if transportation is needed to implement the program and is not provided by the district.</p>	<p>It Depends Food may be an allowable expense under certain circumstances, if the expense is reasonable.</p>	<p>Not Allowable Entertainment costs such as tickets to shows or sporting events, meals, lodging, rentals, transportation and gratuities are never allowable.</p>	<p>Not Allowable Donations and contributions are never allowable.</p>	<p>Not Allowable Alcoholic beverages are never allowable.</p>

See [2 CFR § 200](#) for more information.

2 CFR § 200. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

See [2 CFR § 200](#)

Topic 2: SEA Administration and Monitoring of Title III Funds

Understanding Indirect Versus Direct Costs

It is important to understand the difference between indirect costs and direct costs.

Indirect costs are those that are:

- Incurred for a common or joint purpose benefitting more than one cost objective
- Not readily assignable to specific cost objectives.
(2 CFR 200.414)

Direct costs are those that can be identified specifically with particular cost objectives for a grant, contract, project, function or activity. For example:

- Salaries and wages
- Consultant services
- Travel expenses
- Materials, supplies and equipment purchased for dedicated grant/contract use
(2 CFR 200.413)

Indirect costs: The expenses of doing business that are not readily identified with a particular grant, contract, project function, or activity, but are necessary for the general operation of the organization and the conduct of activities it performs. (See the U.S. Department of Education Office of the Chief Financial Officer's FAQs page at <http://www2.ed.gov/about/offices/list/ocfo/fipao/abouticg.html>.)

Direct costs: Expenses that can be identified specifically with particular cost objectives such as a grant, contract, project, function or activity. Direct costs usually include salaries and wages, employee benefits allocable on direct labor employees, consultant services contracted to accomplish specific grant purposes, employee travel, materials, supplies and equipment purchased directly for use on a specific grant or contract; and communication costs such as long-distance telephone calls or telegrams identifiable with a specific award or activity. (See the U.S. Department of Education Office of the Chief Financial Officer's FAQs page at https://www.ecfr.gov/cgi-bin/text-idx?SID=631576fc84ae52139f06124ed8f883aa&mc=true&node=se2.1.200_1413&rgn=div8)

2 CFR § 200.413. Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs

of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

(d) *Minor items*. Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

- (1) Include the salaries of personnel,
- (2) Occupy space, and
- (3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

- (1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454 Memberships, subscriptions, and professional activity costs.
- (2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying.
- (3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 Advertising and public relations and 200.450 Lobbying.
- (4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432 Conferences.
- (5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442 Fund raising and investment management costs.
- (6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431 Compensation - fringe benefits.

2 CFR § 200.414. Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for institutions of higher education, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.331 Requirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:

(1) Appendix III to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200 - State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200 - Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200 - States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200 - Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200 - States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

Topic 2: SEA Administration and Monitoring of *Title III* Funds
Understanding the Consistent Treatment of Costs

Costs to Federal awards must be accorded consistent treatment.

For example, if an expenditure under another Federal award is allocated as a direct cost, a *Title III* expenditure made for the same purpose in similar circumstances must also be treated as a direct cost.

For more about direct and indirect costs, see the *Office of the Chief Financial Officer's Indirect Cost Group* webpage [here](#).

Topic 2: SEA Administration and Monitoring of Title III Funds
Check for Understanding: Direct Administrative or Other State-Level Activity Costs?

Listed below are common SEA duties under Title III . Determine the correct cost category (Administrative Service or Direct SEA-level services) for each SEA activity.

SEA Activity	Direct Administrative	Other State-Level Activity
1. Computing the amount for LEA Title III grants		
2. Completing a Consolidated State Performance Report (CSPR)		
3. Interagency coordination activities: active participation		
4. Interagency coordination activities: planning for participation		
5. Recognizing LEAs whose ELs meet the State-designed long-term goals, including interim progress toward meeting such goals		
6. Providing professional development for LEAs receiving Title III		
7. Preparing an evaluation report		

Topic 2: SEA Administration and Monitoring of Title III Funds
Check for Understanding: Direct Administrative or Other State-Level Activity Costs?

Answers

SEA Activity	Direct Administrative	Other State-Level Activity
1. Computing the amount for LEA Title III grants	√	X
2. Completing a Consolidated State Performance Report (CSPR)	√	X
3. Interagency coordination activities: active participation	X	√
4. Interagency coordination activities: planning for participation	√	X
5. Recognizing LEAs whose ELs meet the State-designed long-term goals, including interim progress toward meeting such goals	X	√
6. Providing professional development for LEAs receiving Title III	X	√
7. Preparing an evaluation report	√	X

Topic 2: SEA Administration and Monitoring of *Title III* Funds
Check for Understanding: State Direct Administrative Activities

Look at the list and consider which items you think must be classified as direct administrative.

- 1. Completing Consolidated State Performance Report (CSPR)
- 2. Providing Technical Assistance
- 3. Working on the Evaluation Report
- 4. Providing Professional Development
- 5. Computing Amount of LEA *Title III* Grants

Topic 2: SEA Administration and Monitoring of Title III Funds
Check for Understanding: State Direct Administrative Activities

Answers

- 1. Completing Consolidated State Performance Report (CSPR)
- 2. Providing Technical Assistance
- 3. Working on the Evaluation Report
- 4. Providing Professional Development
- 5. Computing Amount of LEA Title III Grants

As you can see, items 2 and 4 ("Providing Technical Assistance" and "Providing Professional Development") should be categorized as other State-level activities (i.e., as non-administrative expenses), except for any other components of these activities that are administrative in nature.

Topic 2: SEA Administration and Monitoring of Title III Funds
Resource 3: SEA Draft Budget

Another responsibility you have as the Title III State Director is managing the State-level budget. You might have questions about indirect costs or who can be considered personnel that carry out administration of Title III, for example.

Take a look at the handout titled "Resource 3: SEA Draft Budget." See whether you can identify the errors in the sample draft budget in the document. You may want to have a calculator ready.

Attached Resource: "SEA Draft Budget"

Topic 3: *Title III* Fiscal Management

Supplement, Not Supplant

If you are administering Title III funds, it's important to understand that Title III funds cannot be used for expenses that are covered by other funds. This is known as the "supplement, not supplant" requirement.

By the time you complete this topic, you will know what questions to ask to determine whether a proposed use of Title III funds meets the "supplement, not supplant" requirement. You will also be able to practice communicating with LEAs about other requirements.



**Topic 3: *Title III* Fiscal Management
Supplement, Not Supplant**

Title III funds must be used to supplement, not supplant, the level of Federal, State, and local public funds that, in the absence of the *Title III* funds, would have been expended for programs for ELs and immigrant children.

(ESEA § 3115(g))

(Non-Regulatory Guidance: English Learners and *Title III* § A-2)

ESEA § 3115(g). SUPPLEMENT, NOT SUPPLANT.

Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for English learners and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

Non-Regulatory Guidance: English Learners and *Title III* § A-2

A-2. Does the amended supplement-not-supplant provision in the ESEA that applies to *Title I* also apply to *Title III* funds?

No. The provision in Section 1118(b) of the ESEA setting forth requirements that *Title I* funds supplement and do not supplant non-Federal funds does not apply to *Title III*. *Title III* does, however, contain its own provision prohibiting supplanting of other federal, State, and local funds, and that provision was not changed by the ESSA. (See Section 3115(g) of the ESEA). In general, it is presumed that supplanting has occurred: 1) if the SEA or LEA uses Federal funds to provide services that the State Educational Agency (SEA) or LEA was required to make available under other laws; or 2) the SEA or LEA uses Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year. See OMB Compliance Supplement, Department of Education Cross-Cutting Section, Part 4, Section 84 Section III.G.2.2, at 4-84.000-16, available at

https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf. These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available. Therefore, just as prior to enactment of the ESEA, as amended by the ESSA, *Title III* funds cannot be used to fulfill an LEA's obligations under *Title VI* of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). These obligations are explained in greater detail in question A-3.

Topic 3: *Title III* Fiscal Management

Supplement, Not Supplant: A-C-R-E Review

To ensure that the *Title III* programs and services meet the "supplement, not supplant" requirement, ask the A-C-R-E questions. Click on each letter below to learn more.

A—All Students? What is the instructional program/service provided to all students?



E—Existed Previously? Was the program/service previously provided with State, local, or other federal funds?

C—Civil Rights? What does the LEA do to meet civil rights requirements?

R—Regulations? What services is the LEA required to provide, according to other federal, State, and local laws or regulations?*

*Note: It is not considered supplanting to use *Title III* funds for EL-related activities under *Title I* that were previously required by *Title III* (Non-Regulatory Guidance: English Learners and *Title III* § A-4).

Non-Regulatory Guidance: English Learners and *Title III* § A-4

A-4. Does the *Title III* supplement-not-supplant prohibition mean that States and LEAs can no longer use *Title III* funds for State or LEA EL-related activities that have moved from *Title III* to *Title I*?

States and LEAs may continue to use *Title III* funds to carry out activities relating to ELs that have been moved from *Title III* to *Title I* in the circumstances described below. The inclusion of English language proficiency standards and assessments, and the inclusion of progress in attaining English proficiency as a separate component of the Statewide accountability system under *Title I*, will help facilitate a unified Statewide approach to supporting ELs across *Title I* and *Title III*, and should provide a necessary focus on the nation's growing EL population and high-quality services for these students.

A State and its LEAs may use *Title III* funds for activities relating to ELs that were previously required under *Title III* and are now required under *Title I* as long as:

- 1) The specific use of funds is consistent with the purpose of *Title III* and meets Federal guidelines for "reasonable and necessary costs" (See 2 Code of Federal Regulations (CFR) Parts 200 and 225);
- 2) The specific use of funds is supplemental to the SEA's or LEA's civil rights obligations to ELs under *Title VI* and the EEOA (See question A-2 and A-3 above); and
- 3) The SEA or LEA can demonstrate that it is also using *Title III* funds to conduct activities required under *Title III* (for SEAs, see ESEA Section 3111(b); for LEAs, see ESEA Section 3115(c)). Examples of State activities that have moved from *Title III* to *Title I* include:
 - Alignment of English language proficiency standards to State content standards (ESEA Section 1111(b)(1)(F));

- Alignment of English language proficiency assessments to English language proficiency standards (ESEA Section 1111(b)(2)(G)(ii)); Establishment of English language proficiency goals and indicators for accountability purposes (ESEA Sections 1111(c)(4)(A)(ii), 1111(c)(4)(B)(iv)), and
- Identification of interventions to address ELs' academic achievement and progress in attaining English language proficiency (ESEA Sections 1111(c)(4)(C)(iii), 1111(c)(4)(D)).

Examples of LEA activities that have moved from *Title III* to *Title I* include:

- EL parental notification regarding LIEPs and related information (ESEA Section 1112(e)(3));
- Parental participation (e.g., regular EL parent meetings) (ESEA Section 1116(f)); and
- Reporting to the State on the number and percentage of ELs achieving English language proficiency (ESEA Section 1111(h)(2)).

Topic 3: Title III Fiscal Management

**Resource 4: Supplement, Not Supplant:
A-C-R-E Quick Reference**

Take a look at the handout titled "Resource 4: Quick Reference Sheet on A-C-R-E" and reflect on whether your State has requirements for educating ELs that are codified in State law.

Attached Resource: "A-C-R-E Quick Reference"

Topic 3: *Title III* Fiscal Management
Supplanting: Types of Services

The U.S. Department of Education assumes supplanting exists if an LEA uses *Title III* funds to

- Provide services the LEA is required to make available under State or local laws, or under other federal laws ("Required by Law"); and/or
- Provide services the LEA provided in the prior year with State, local or other federal funds ("Prior Year").

(Non-Regulatory Guidance: English Learners and *Title III* § A-2)

Non-Regulatory Guidance: English Learners and *Title III* § A-2

A-2. Does the amended supplement-not-supplant provision in the ESEA that applies to *Title I* also apply to *Title III* funds?

No. The provision in Section 1118(b) of the ESEA setting forth requirements that *Title I* funds supplement and do not supplant non-Federal funds does not apply to *Title III*. *Title III* does, however, contain its own provision prohibiting supplanting of other federal, State, and local funds, and that provision was not changed by the ESSA. (See Section 3115(g) of the ESEA). In general, it is presumed that supplanting has occurred: 1) if the SEA or LEA uses Federal funds to provide services that the State Educational Agency (SEA) or LEA was required to make available under other laws; or 2) the SEA or LEA uses Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year. See OMB Compliance Supplement, Department of Education Cross-Cutting Section, Part 4, Section 84 Section III.G.2.2, at 4-84.000-16, available at https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf. These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available. Therefore, just as prior to enactment of the ESEA, as amended by the ESSA, *Title III* funds cannot be used to fulfill an LEA's obligations under *Title VI* of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). These obligations are explained in greater detail in question A-3.

Topic 3: *Title III* Fiscal Management

Supplanting: Examples

The U.S. Department of Education would presume that supplanting occurred if an LEA used *Title III* funds to pay for ESL teachers providing core language instruction. This is because LEAs are required to provide core LIEPs and services to ELs under *Title VI* of the Civil Rights Act of 1964 and *Lau v. Nichols*.

Please note:

- Supplanting would occur if State law requires a district to have a licensed EL teacher but the LEA uses *Title III* funds to pay for that teacher.
- However, an LEA could use *Title III* funds for supplemental services and supplies (e.g., books and software designed specifically for ELs).
(Non-Regulatory Guidance: English Learners and *Title III* § A-2)

Lau vs. Nichols (1974): A class action suit brought by parents of non-English-proficient Chinese students against the San Francisco Unified School District. In 1974, the Supreme Court ruled that the district must take affirmative steps to overcome educational barriers faced by the non-English speaking Chinese students in the district. [414 U.S. 563 (1974)] (See <http://www2.ed.gov/about/offices/list/ocr/ell/lau.html> and <http://www2.ed.gov/about/offices/list/ocr/ell/glossary.html>.)

on-Regulatory Guidance: English Learners and *Title III* § A-2

A-2. Does the amended supplement-not-supplant provision in the ESEA that applies to *Title I* also apply to *Title III* funds?

No. The provision in Section 1118(b) of the ESEA setting forth requirements that *Title I* funds supplement and do not supplant non-Federal funds does not apply to *Title III*. *Title III* does, however, contain its own provision prohibiting supplanting of other federal, State, and local funds, and that provision was not changed by the ESSA. (See Section 3115(g) of the ESEA). In general, it is presumed that supplanting has occurred: 1) if the SEA or LEA uses Federal funds to provide services that the State Educational Agency (SEA) or LEA was required to make available under other laws; or 2) the SEA or LEA uses Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year. See OMB Compliance Supplement, Department of Education Cross-Cutting Section, Part 4, Section 84 Section III.G.2.2, at 4-84.000-16, available at https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf. These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available. Therefore, just as prior to enactment of the ESEA, as amended by the ESSA, *Title III* funds cannot be used to fulfill an LEA's obligations under *Title VI* of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). These obligations are explained in greater detail in question A-3.

Topic 3: Title III Fiscal Management
Supplanting: The “Prior Year” Test

The U.S. Department of Education assumes that supplanting exists if an LEA uses Title III funds to provide services it provided in prior years with State, local, or other federal funds.

To refute the “prior year” test of supplanting, the LEA would need to have records to confirm the following:

- There was, in fact, a reduced amount of State, local, or other federal funds to pay for the activity or position (e.g., contemporaneous documentation, such as school-board meeting minutes, showing that less funding was available to pay for the activity or position).*
- The LEA made a decision to eliminate the position or activity without taking into consideration Federal Title III funds.*

Topic 3: *Title III* Fiscal Management

Supplanting: The “Prior Year” Test, cont’d.

As a State Title III Director, it is important to keep a paper trail regarding prior years. Circumstances such as a budget shortfall or changing educational needs may result in a situation in which Title III funds are used for an activity or position that had been funded by other sources in prior years. In such situations, the LEA can rebut the “prior years” test of supplanting.

Topic 3: Title III Fiscal Management
How LEAs Can Avoid Supplanting

As noted previously, States and LEAs have legal obligations to ELs due to civil rights requirements (e.g., identifying ELs). Due to civil rights requirements, LEAs may not use Title III funds for activities that are civil rights obligations.

Specifically, LEAs may not use Title III funds:

- To administer State ELP assessments of students' progress and proficiency in learning English
- To develop or administer ELP assessments for identification and placement purposes
- For test administration expenses (e.g., scoring assessment results, using substitute teachers to cover classes for teachers who are administering the assessment, hiring extra test administrators)
(Non-Regulatory Guidance: English Learners and Title III § A-3)
(Non-Regulatory Guidance: English Learners and Title III § A-6)
(Non-Regulatory Guidance: English Learners and Title III § A-8)

Non-Regulatory Guidance: English Learners and Title III § A-3.

A-3. What are the legal obligations of States and LEAs to ELs under Title VI of the Civil Rights Act of 1964 and the EEOA?

Under Title VI of the Civil Rights Act of 1964 and the EEOA, all States and LEAs must ensure that ELs can participate meaningfully and equally in educational programs and services. To meet their obligations under Title VI and the EEOA, LEAs must, for example:

- Identify and assess all potential EL students in a timely, valid, and reliable manner;
- Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with *Castañeda v. Pickard* and the Supreme Court decision in *Lau v. Nichols*;
- Provide sufficiently well prepared and trained staff and support the language assistance programs for EL students;
- Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
- Avoid unnecessary segregation of EL students;
- Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services;
- Meet the needs of EL students who opt out of language assistance programs;

- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
- Evaluate the effectiveness of a school district’s language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated¹¹ to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and
- Ensure meaningful communication with limited English proficient (LEP) parents.

Additional information about States’ and LEAs’ legal obligations under *Title VI* and the EEOA can be found in a 2015 Dear Colleague Letter about EL students and LEP parents jointly released by the Department of Education and the Department of Justice (hereinafter “DCL”), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

Recommendations on promising practices to ensure that language instruction educational programs (LIEPs) facilitate improved English language proficiency and academic outcomes can be found in the Department’s English Learner Tool Kit, available at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>.

Non-Regulatory Guidance: English Learners and *Title III* § A-6.

A-6. What ESEA funds are available for States to develop or align English language proficiency assessments?

There are specific funds available under the ESEA to help States develop or align their English language proficiency assessments. Among other uses, grants to States under Section 1201 of the ESEA (“Grants for State Assessments and Related Activities”) may be used specifically to develop or improve “assessments for English learners, including assessments of English language proficiency....” (ESEA Section 1201(a)(2)(C)); in addition, Enhanced Assessment Grants under ESEA Section 1203(b)(1) may be used for the same purpose. The authorized uses of these funds for developing an English language proficiency assessment include developing an alternate English language proficiency assessment for certain English learners with disabilities who cannot take the regular English language proficiency assessment even with accommodations. Neither the supplement-not-supplant provision in *Title III* (ESEA Section 3115(g)) nor the supplement-not-supplant provision that applies to funds under *Title I* (ESEA Section 1118) apply to these grants for State Assessments, which are provided under *Title I*, Part B.

The use of *Title III* funds to develop the annual English language proficiency assessment is not permitted because it would violate the supplement-not-supplant provision. This is because, under *Title VI* and the EEOA, a State must monitor EL students’ progress in achieving English language proficiency to ensure that EL students are making appropriate progress with respect to acquiring English. (See DCL, referenced in A-3 above). Assuming that a State uses its annual Statewide English language proficiency assessment to meet this civil rights obligation, the use of *Title III* funds to develop the annual English language proficiency assessment would constitute supplanting.

Please note, however, that a State may use *Title I* or *Title III* administrative funds, either alone or consolidated with other ESEA administrative funds (see ESEA Section 8201(f)) to align the English language proficiency assessment with English language proficiency standards, although

the amount of State *Title I* and *Title III* administrative funds is restricted by statute (see ESEA Sections 1004(a) and (b) and 3111(b), respectively).

Non-Regulatory Guidance: English Learners and *Title III* § A-8.

A-8. May an LEA use *Title III* funds to develop or administer a screening assessment used to identify ELs?

No. The obligation to identify all ELs is part of an LEA's civil rights obligations under *Title VI* and the EEOA (See question A-3 above for more information). Therefore, an LEA may not use *Title III* funds for purposes relating to identification of ELs, including a screening assessment, home language survey, or other related tools.

Topic 3: *Title III* Fiscal Management

Resource 5: Use of Funds for Meetings and Conferences

Take a look at the handout titled "Resource 5: Use of Funds for Meetings, Conferences, and Technology."

Attached Resource: "Use of Funds for Meetings, Conferences, and Technology"

Topic 3: Title III Fiscal Management

**SEA Practice Communicating With SEA
colleagues**

The following slides present sample email communications and possible answers you might share as the Title III State Director. You may use these sample communications to check your understanding of Title III fiscal management requirements.

Topic 3: *Title III* Fiscal Management
SEA Practice Communicating With SEA
Colleagues: Email #1

To: Maria, State Director

From: John, State Accounting Office

Re: *Title III* Conference

Maria, I got a call from Krista about the upcoming State *Title III* Conference. Attached is the worksheet you approved for travel expenses (transportation, per diem and lodging) for our staff and invited experts attending or presenting at the conference. It looks good to me. Also attached is the proposal we got from the hotel to cover an evening reception for the invited experts and LEA grantees. Krista says she thought the reception would be useful for LEA networking. It includes the cost of one drink ticket (wine or beer) for each attendee. Does this idea work for you? Thanks! John

How would you respond?

1. So-so idea. The proposed reception violates regulations against the use of Federal funds as it relates to third parties such as invited experts.
2. Great idea. The proposed reception is a good networking opportunity. Since it is after the actual conference day, it (including offering the drinks) is allowable under *Title III*.
3. Not a good idea. The proposed reception violates regulations against the use of Federal funds to cover alcoholic beverages and entertainment.

Topic 3: *Title III* Fiscal Management

SEA Practice Communicating With SEA Colleagues: Email #1 - Response

The correct response is:

✓ 3. Not a good idea. The proposed reception violates regulations against the use of Federal funds to cover alcoholic beverages and entertainment.

Some items are **never** allowable uses of Federal funds. Federal grants may not be used to pay for the cost of alcoholic beverages or entertainment, including the cost of amusement, diversion, and social activities.

Topic 3: *Title III* Fiscal Management
SEA Practice Communicating With SEA
Colleagues: Email #2

To: Maria, State Director

From: Krista, State Staff

Re: *Title III* Conference—Conference Title & Materials

Hi, Maria. Below is the proposed name for this year's conference. I'm also providing a mock-up of the conference logo for all electronic and printed materials. I thought it would be a good idea to use the seals for both ED and our SEA. Let me know what you think!

"Enhancing Statewide *Title III* Programs: A U.S. Department of Education Perspective"

How would you respond?

1. The SEA and ED seals look good. Proceed with the logo and proposed title.
2. To use the ED seal, you must have ED's approval, and it is unlikely approval would be granted for a non-ED-sponsored conference. Also, the conference title suggests that this conference is an ED meeting. Remove both the ED seal and the reference to ED in the title.
3. The SEA and ED seals look great. You will need prior approval by ED's Office of Communications and Outreach (OCO) for the use of the ED seal. Get approval and use the proposed title.

Topic 3: *Title III* Fiscal Management

SEA Practice Communicating With SEA Colleagues: Email #2 - Response

The correct response is:

✓2. To use the ED seal, you must have ED's approval, and it is unlikely approval would be granted for a non-ED-sponsored conference. Also, the conference title suggests that this conference is an ED meeting. Remove both the ED seal and the reference to ED in the title.

A meeting or conference hosted by a grantee using grant funds must not be promoted as an ED meeting or conference. The proposed title implies that it is sponsored by ED. Although it is possible to get approval for using the ED seal, it is highly unlikely.

Topic 3: Title III Fiscal Management
SEA Practice Communicating With SEA
Colleagues: Email #3

To: Maria, State Director

From: Lu, State Staff

Re: *Title III* Conference—Local LEA Activities and Progress

Good afternoon, Maria. I've been thinking about our discussion about the Bravo School District subgrantee. It has been 15 months, and it doesn't look like this LEA is carrying out activities consistent with its application. Let's talk about taking away their funds and reallocating them to other LEAs that are making progress. Can you meet next week about this?

How would you respond?

1. The grant funds are available for obligation for a total of 27 months. Reallocation in 15 months could be premature and unreasonably restrictive. However, LEAs do have an obligation to implement their annual local plan. Let's check in with them and see if they need some technical assistance.
2. As the SEA, we have authority to reallocate funds that are not being used for the purposes for which allocation was made. Let's plan on meeting to immediately identify and execute reallocation options.
3. As the SEA, we have no authority to reallocate funds distributed to an LEA under any circumstances. Let's review any applications they submit in the future with greater scrutiny.

Topic 3: *Title III* Fiscal Management

**SEA Practice Communicating With SEA
Colleagues: Email #3 - Response**

The correct response is:

✓ 1. The grant funds are available for obligation for a total of 27 months. Reallocation in 15 months could be premature and unreasonably restrictive. However, LEAs do have an obligation to implement their annual local plan. Let's check in with them and see if they need some technical assistance.

Generally, the SEA must ensure that LEAs have access to the grant funds for the 27-month period of availability authorized under the Tydings Amendment. The SEA would likely be unreasonably restricting the period of time provided to its LEAs by reallocating after 15 months. Any determination by the SEA to reallocate funds must be based on very specific information.

However, SEAs should monitor and provide technical assistance to LEAs regarding subgrant implementation. In addition, each SEA should establish and follow its written policies and procedures for reallocation.

Topic 3: *Title III* Fiscal Management
SEA Practice Communicating With SEA
Colleagues: Email #4

To: Maria, State Director

From: Oscar, State Accounting Office

Re: Clarification re: State Admin Expenses

Hey, Maria, Good to see you since my vacation! I see that we've prepared our *Title III* budget. I know that ED says we can retain up to 5 percent of the total budget for State-level activities, including administration. It looks like we are setting aside 4 percent of the budget for State-level activities. Even so, can I set aside 60 percent of the 5 percent of the total SEA allotment (which is the maximum SEAs can set aside for State-level activities) for administration? Let me know, Oscar

How would you respond?

1. Yes, 50 percent of the 5 percent cap for State-level activities can always be set aside for administration.
2. No, 50 percent of the actual amount reserved can be set aside for administrative activities, or \$175,000, whichever is greater (in our case it is 50%). Because the actual amount we are reserving is 4 percent, we can reserve a total of 2% of the total for administrative purposes.
3. No, since we are only retaining 4 percent of the total budget for State-level activities, the percentage should likewise be 4 percent.

Topic 3: *Title III* Fiscal Management

**SEA Practice Communicating With SEA
Colleagues: Email #4 - Response**

The correct response is:

✓ 2. No, 50 percent of the actual amount reserved can be set aside for administrative activities, or \$175,000, whichever is greater (in our case it is 50%). Because the actual amount we are reserving is 4 percent, we can reserve a total of 2% of the total for administrative purposes.

Fifty percent of the actual amount reserved is available for administrative expenses at the State level. If a State reserves less than 5 percent of its grant, it can reserve 50 percent of that lower amount for administration, not 50 percent of the maximum State-level reservation.

Topic 4: SEA Role With LEA Fiscal Responsibilities

The previous topic (Topic 3) covered the Title III fiscal management responsibilities of the SEA. This next topic (Topic 4) covers LEA fiscal responsibilities.

Topic 4 focuses on the role of the Title III State Director in managing and monitoring subgrants that the State makes to LEAs.

Topic 4: LEA Fiscal Responsibilities

SEA Responsibilities to LEAs

Resource 6: LEA Allocations Checklist

Take a look at the handout titled "Resource 6: LEA Allocations Checklist."

Attached Resource: "Title III LEA Allocations Checklist"

Topic 4: LEA Fiscal Responsibilities

SEA Responsibilities to LEAs: Monitoring and Managing LEA Subgrants

Your top priority as State Title III Director is working with LEAs to make sure that they can answer "yes" to every item on the Title III LEA Allocations Checklist.

LEAs are responsible for

- Ensuring that LEA expenditures meet all Title III criteria and*
- Providing the SEA with documentation to justify proposed expenditures (Burden of Proof).*

You will help the LEAs meet the criteria on the checklist by meeting your responsibilities to the LEAs as the SEA.

Topic 4: LEA Fiscal Responsibilities
Resource 7: LEA Draft Budget

Take a look at the handout titled "Resource 7: LEA Draft Budget."

Attached Resource: "LEA Draft Budget"

Topic 5: Module Quiz

This quiz will help you review and remember what you have learned. You will receive additional insight from experts along the way. The quiz is a self-assessment of your knowledge.

Topic 5: Final Module Quiz and Certificate

Instructions: Consider what your answer would be to the sample questions.

Susan, Alpha School District:

Our high school EL English/language arts teacher has decided to retire early. We've found the perfect replacement, but there's not enough in our budget to match her current salary. Any chance we could use *Title III* funds to cover part of her salary?

ESEA § 3115(c)(1-2). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(1) to increase the English language proficiency of English learners by providing effective language instruction educational programs that meet the needs of English learners and demonstrate success in increasing—

- (A) English language proficiency; and
- (B) student academic achievement;

(2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is—

- (A) designed to improve the instruction and assessment of English learners;
- (B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for English learners;
- (C) effective in increasing children's English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and
- (D) of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers' performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher's supervisor based on an assessment of the needs of the teacher, the

supervisor, the students of the teacher, and any local educational agency employing the teacher, as appropriate;

on-Regulatory Guidance: English Learners and *Title III* § A-2

A-2. Does the amended supplement-not-supplant provision in the ESEA that applies to *Title I* also apply to *Title III* funds?

No. The provision in Section 1118(b) of the ESEA setting forth requirements that *Title I* funds supplement and do not supplant non-Federal funds does not apply to *Title III*. *Title III* does, however, contain its own provision prohibiting supplanting of other federal, State, and local funds, and that provision was not changed by the ESSA. (See Section 3115(g) of the ESEA). In general, it is presumed that supplanting has occurred: 1) if the SEA or LEA uses federal funds to provide services that the State Educational Agency (SEA) or LEA was required to make available under other laws; or 2) the SEA or LEA uses Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year. See OMB Compliance Supplement, Department of Education Cross-Cutting Section, Part 4, Section 84 Section III.G.2.2, at 4-84.000-16, available at https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf. These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available. Therefore, just as prior to enactment of the ESEA, as amended by the ESSA, *Title III* funds cannot be used to fulfill an LEA's obligations under *Title VI* of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). These obligations are explained in greater detail in question A-3.

Non-Regulatory Guidance: English Learners and *Title III* § A-3.

A-3. What are the legal obligations of States and LEAs to ELs under *Title VI* of the Civil Rights Act of 1964 and the EEOA?

Under *Title VI* of the Civil Rights Act of 1964 and the EEOA, all States and LEAs must ensure that ELs can participate meaningfully and equally in educational programs and services. To meet their obligations under *Title VI* and the EEOA, LEAs must, for example:

- Identify and assess all potential EL students in a timely, valid, and reliable manner;
- Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with *Castañeda v. Pickard* and the Supreme Court decision in *Lau v. Nichols*;
- Provide sufficiently well prepared and trained staff and support the language assistance programs for EL students;
- Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
- Avoid unnecessary segregation of EL students;
- Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services;
- Meet the needs of EL students who opt out of language assistance programs;

- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
- Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated¹¹ to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and
- Ensure meaningful communication with limited English proficient (LEP) parents.

Additional information about States' and LEAs' legal obligations under *Title VI* and the EEOA can be found in a 2015 Dear Colleague Letter about EL students and LEP parents jointly released by the Department of Education and the Department of Justice (hereinafter "DCL"), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

Recommendations on promising practices to ensure that language instruction educational programs (LIEPs) facilitate improved English language proficiency and academic outcomes can be found in the Department's English Learner Tool Kit, available at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>.

Topic 5: Final Module Quiz and Certificate

Susan, Alpha School District:

Our high school EL English/language arts teacher has decided to retire early. We've found the perfect replacement, but there's not enough in our budget to match her current salary. Any chance we could use *Title III* funds to cover part of her salary?

Title III funds cannot be used to pay for teachers providing core language instruction because the LEA is required by law to provide such instruction to ELs.

(ESEA § 3115(c)(1-2)).

(Non-Regulatory Guidance: English Learners and *Title III* § A-2)

(Non-Regulatory Guidance: English Learners and *Title III* § A-3)

ESEA § 3115(c)(1-2). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(1) to increase the English language proficiency of English learners by providing effective language instruction educational programs that meet the needs of English learners and demonstrate success in increasing—

- (A) English language proficiency; and
- (B) student academic achievement;

(2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is—

- (A) designed to improve the instruction and assessment of English learners;
- (B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for English learners;
- (C) effective in increasing children's English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and
- (D) of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers' performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher's supervisor based on an assessment of the needs of the teacher, the

supervisor, the students of the teacher, and any local educational agency employing the teacher, as appropriate;

Non-Regulatory Guidance: English Learners and *Title III* § A-2

A-2. Does the amended supplement-not-supplant provision in the ESEA that applies to *Title I* also apply to *Title III* funds?

No. The provision in Section 1118(b) of the ESEA setting forth requirements that *Title I* funds supplement and do not supplant non-Federal funds does not apply to *Title III*. *Title III* does, however, contain its own provision prohibiting supplanting of other federal, State, and local funds, and that provision was not changed by the ESSA. (See Section 3115(g) of the ESEA). In general, it is presumed that supplanting has occurred: 1) if the SEA or LEA uses federal funds to provide services that the State Educational Agency (SEA) or LEA was required to make available under other laws; or 2) the SEA or LEA uses Federal funds to provide services that the SEA or LEA provided with non-Federal funds in the prior year. See OMB Compliance Supplement, Department of Education Cross-Cutting Section, Part 4, Section 84 Section III.G.2.2, at 4-84.000-16, available at https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2016/2016_compliance_supplement.pdf. These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available. Therefore, just as prior to enactment of the ESEA, as amended by the ESSA, *Title III* funds cannot be used to fulfill an LEA's obligations under *Title VI* of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA). These obligations are explained in greater detail in question A-3.

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- Identify and assess all potential EL students in a timely, valid, and reliable manner;
- Provide EL students with a language assistance program that is educationally sound and proven successful, consistent with *Castañeda v. Pickard* and the Supreme Court decision in *Lau v. Nichols*;
- Provide sufficiently well prepared and trained staff and support the language assistance programs for EL students;
- Ensure that EL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities;
- Avoid unnecessary segregation of EL students;
- Ensure that EL students who have or are suspected of having a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 are identified, located, and evaluated in a timely manner and that the language needs of students who need special education and disability related services because of their disability are considered in evaluations and delivery of services;
- Meet the needs of EL students who opt out of language assistance programs;

- Monitor and evaluate EL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level content knowledge, exit EL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;
- Evaluate the effectiveness of a school district's language assistance program(s) to ensure that EL students in each program acquire English proficiency and that each program is reasonably calculated¹¹ to allow EL students to attain parity of participation in the standard instructional program within a reasonable period of time; and
- Ensure meaningful communication with limited English proficient (LEP) parents.

Additional information about States' and LEAs' legal obligations under *Title VI* and the EEOA can be found in a 2015 Dear Colleague Letter about EL students and LEP parents jointly released by the Department of Education and the Department of Justice (hereinafter "DCL"), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

Recommendations on promising practices to ensure that language instruction educational programs (LIEPs) facilitate improved English language proficiency and academic outcomes can be found in the Department's English Learner Tool Kit, available at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/eltoolkit.pdf>.

Topic 5: Module Quiz and Certification

Eduardo, Yankee School District:

We have been using a bilingual instructional program in our schools, and it seems to be working well. But today someone told me *Title III* requires that we take an ESL approach. Is that correct?

Topic 5: Module Quiz and Certification

Eduardo, Yankee School District:

We have been using a bilingual instructional program in our schools, and it seems to be working well. But today someone told me *Title III* requires that we take an ESL approach. Is that correct?

No. The ESEA does not prescribe or recommend a particular program or program type.

Topic 5: Module Quiz and Certification

Nate, Delta School District:

It would be really helpful to have our principals and regular classroom teachers participate in an upcoming *Title III* professional development session for teachers involved in our language instruction educational program. Is it okay to invite them?

ESEA § 3115(c)(2). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is—

(A) designed to improve the instruction and assessment of English learners;

(B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for English learners;

(C) effective in increasing children’s English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers’ performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher’s supervisor based on an assessment of the needs of the teacher, the supervisor, the students of the teacher, and any local educational agency employing the teacher, as appropriate;

ESEA § 3115(g). SUPPLEMENT, NOT SUPPLANT.

Federal funds made available under this subpart shall be used so as to supplement the level of federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for English learners and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

Topic 5: Module Quiz and Certification

Nate, Delta School District:

It would be really helpful to have our principals and regular classroom teachers participate in an upcoming *Title III* professional development session for teachers involved in our language instruction educational program. Is it okay to invite them?

Yes. In fact, you may provide effective professional development to everyone you mentioned and other school- or community-based organizational personnel, provided that it doesn't violate the supplanting prohibition (ESEA § 3115(c)(2) and (g)).

ESEA § 3115(c)(2). REQUIRED SUBGRANTEE ACTIVITIES.

An eligible entity receiving funds under section 3114(a) shall use the funds—

(2) to provide effective professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals and other school leaders, administrators, and other school or community-based organizational personnel, that is—

(A) designed to improve the instruction and assessment of English learners;

(B) designed to enhance the ability of such teachers, principals, and other school leaders to understand and implement curricula, assessment practices and measures, and instructional strategies for English learners;

(C) effective in increasing children's English language proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) of sufficient intensity and duration (which shall not include activities such as 1-day or short-term workshops and conferences) to have a positive and lasting impact on the teachers' performance in the classroom, except that this subparagraph shall not apply to an activity that is one component of a long-term, comprehensive professional development plan established by a teacher and the teacher's supervisor based on an assessment of the needs of the teacher, the supervisor, the students of the teacher, and any local educational agency employing the teacher, as appropriate;

ESEA § 3115(g). SUPPLEMENT, NOT SUPPLANT.

Federal funds made available under this subpart shall be used so as to supplement the level of federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for English learners and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

Topic 5: Module Quiz and Certification

Donna, Foxtrot School District:

Our district received a *Title III* Immigrant subgrant, and we have several recent immigrants from English-speaking countries. For *Title III* purposes, are those students considered to be immigrants?

Topic 5: Module Quiz and Certification

Donna, Foxtrot School District:

Our district received a *Title III* Immigrant subgrant, and we have several recent immigrants from English-speaking countries. For *Title III* purposes, are those students considered to be immigrants?

Yes, unless they have been enrolled in U.S. schools for more than three full academic years (ESEA § 3201(5)).

ESEA § 3201(5). IMMIGRANT CHILDREN AND YOUTH.

The term “immigrant children and youth” means individuals who— (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years.

Topic 5: Module Quiz and Certification

Joellyn, Kilo School District:

I'm confused about the 2 percent cap for LEAs that get *Title III* subgrants. Does the 2 percent apply to both English Learner Subgrants and immigrant subgrants?

Topic 5: Module Quiz and Certification

Joellyn, Kilo School District:

I'm confused about the 2 percent cap for LEAs that get *Title III* subgrants. Does the 2 percent apply to both English Learner Subgrants and immigrant subgrants?

No. The 2 percent administrative cost cap applies only to English Learner subgrants (ESEA § 3115(b)).

ESEA § 3115(b). DIRECT ADMINISTRATIVE EXPENSES.

Each eligible entity receiving funds under section 3114(a) for a fiscal year may use not more than 2 percent of such funds for the cost of administering this subpart.

Topic 5: Module Quiz and Certification

Fiona, Golf School District:

I just received a call from a for-profit private school located within our school district. The head of the school was asking if the school is eligible for *Title III* services. I wasn't sure what to say. Do you know?

ESEA § 8501(a)(1). IN GENERAL.

Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

Topic 5: Module Quiz and Certification

Fiona, Golf School District:

I just received a call from a for-profit private school located within our school district. The head of the school was asking if the school is eligible for *Title III* services. I wasn't sure what to say. Do you know?

For-profit schools are not eligible for equitable services from *Title III* LEAs; only private schools are eligible for equitable services from *Title III* LEAs. (ESEA § 8101(a)(1)).

ESEA § 8501(a)(1). IN GENERAL.

Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

Topic 5: Module Quiz and Certification

Message 1 From Jackie

Maria,

Big Lake School District wants to use *Title III* funds to support the salary of an administrator who will, as part of her duties, oversee district *Title III*-funded activities. Is it allowable to pay part of the administrator's salary with *Title III* funds?

Call Jackie 415-555-0167

Determine the correct response below.

1. No problem, Jackie. Paying for a *Title III* administrator is always allowable. Assign it to the 2 percent LEA administrative cost.
2. Not a good idea, Jackie. A *Title III* administrator's salary must be supported 100 percent by *Title III* funds.
3. Jackie, this is allowable if the *Title III* funds support only her duties that are related to *Title III*. If this is the case, assign the correct percentage of the salary to the 2 percent LEA administrative cost. Please note that the salary cannot exceed the 2 percent cap.

Topic 5: Module Quiz and Certification

Message 1 From Jackie

Maria,

Big Lake School District wants to use *Title III* funds to support the salary of an administrator who will, as part of her duties, oversee district *Title III*-funded activities. Is it allowable to pay part of the administrator's salary with *Title III* funds?

Call Jackie 415-555-0167

Answer

- x 1. No problem, Jackie. Paying for a *Title III* administrator is always allowable. Assign it to the 2 percent LEA administrative cost.
- x 2. Not a good idea, Jackie. A *Title III* administrator's salary must be supported 100 percent by *Title III* funds.
- ✓ 3. Jackie, this is allowable if the *Title III* funds support only her duties that are related to *Title III*. If this is the case, assign the correct percentage of the salary to the 2 percent LEA administrative cost. Please note that the salary cannot exceed the 2 percent cap.

Title III funds can be used for direct costs like salaries and wages and included in the 2 percent LEA administration costs. In this case, a PAR or substitute system would be important because the administrator works only a percentage of time on *Title III* (ESEA § 3115(b)).

ESEA § 3115(b). DIRECT ADMINISTRATIVE EXPENSES.

Each eligible entity receiving funds under section 3114(a) for a fiscal year may use not more than 2 percent of such funds for the cost of administering this subpart.

Topic 5: Module Quiz and Certification

Message 2 From Lu

Maria,

I want to call Greentree School District about their *Title III* budget, which included the purchase of textbooks that are the same as textbooks that it bought last year with non-*Title III* funds. They've told me that it is not supplanting. What should they provide as a rebuttal to the "prior year" assumption?

Call Lu x5962

Determine the correct response below.

1. Lu, textbooks purchased in prior years can never be presented for rebuttal. This is not allowable.
2. Lu, the district needs to provide fiscal records, such as budget documents and programmatic records, like school board minutes, to show that the decision to no longer purchase the textbooks was made without regard to the availability of *Title III* funds.
3. Lu, the district needs to provide fiscal records, such as its budget documents, showing a budget shortfall. That would be sufficient to disprove supplanting.

Topic 5: Module Quiz and Certification

Message 2 From Lu

Maria,

I want to call Greentree School District about their *Title III* budget, which included the purchase of textbooks that are the same as textbooks that it bought last year with non-*Title III* funds. They've told me that it is not supplanting. What should they provide as a rebuttal to the "prior year" assumption?

Call Lu x5962

Answer

- x 1. Lu, textbooks purchased in prior years can never be presented for rebuttal. This is not allowable.
- ✓ 2. Lu, the district needs to provide fiscal records, such as budget documents and programmatic records, like school board minutes, to show that the decision to no longer purchase the textbooks was made without regard to the availability of *Title III* funds.
- x 3. Lu, the district needs to provide fiscal records, such as its budget documents, showing a budget shortfall. That would be sufficient to disprove supplanting.

ED assumes supplanting exists if an LEA uses Title III funds to provide services that it provided in prior years with State, local, or other federal funds. However, if the LEA can demonstrate through fiscal and programmatic records the existence of a budget shortfall in a number of areas and that the decision to discontinue funding was made without regard to Title III, the LEA might be able to use Title III funds for the purchase [ESEA § 3115(g)].

ESEA § 3115(g). SUPPLEMENT, NOT SUPPLANT.

Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for English learners and immigrant children and youth and in no case to supplant such Federal, State, and local public funds.

Topic 5: Module Quiz and Certification

Message 3 From Carole

Maria,

I'm calling from the Red Creek School District. I've got two questions about the use of my *Title III* funds. First, we have an English learner intake center. Can I use *Title III* funds to purchase office supplies for the center? Second, can we use *Title III* funds to pay teacher stipends to assess newly enrolled students for English language proficiency?

Carole Smith 415-555-0112

Determine the correct response below.

1. Ms. Smith, I'm sorry but *Title III* funds can't be used for either of these requests.
2. Ms. Smith, you can use *Title III* funds for supplies but not the stipends.
3. Ms. Smith, you can use *Title III* funds for the stipends but not the supplies.

Topic 5: Module Quiz and Certification

Message 3 From Carole

Maria,

I'm calling from the Red Creek School District. I've got two questions about the use of my *Title III* funds. First, we have an English learner intake center. Can I use *Title III* funds to purchase office supplies for the center? Second, can we use *Title III* funds to pay teacher stipends to assess newly enrolled students for English language proficiency?

Carole Smith 415-555-0112

Answer

- ✓ 1. Ms. Smith, I'm sorry but *Title III* funds can't be used for either of these requests.
- ✗ 2. Ms. Smith, you can use *Title III* funds for supplies but not the stipends.
- ✗ 3. Ms. Smith, you can use *Title III* funds for the stipends but not the supplies.

Title III funds should be used only to support purchase of *Title III*-specific supplies; in this example, the supplies do not meet the criteria because they are for the intake center itself, which is provided as part of the district's civil rights obligation to identify ELLs. Also, assuming the assessment is part of the identification process, the LEA cannot use *Title III* funds for stipends to teachers because the LEA is obligated to identify English learners as part of its civil rights obligation.

Topic 5: Module Quiz and Certification

Message 4 From Kevin

Maria,

Our school district requires schools to send home a monthly math newsletter for each grade. Some schools in the district are developing additional parent resource guides that include websites with math games. Can we use *Title III* funds to translate both of these communications?

Kevin Wang 415-555-0165

Determine the correct response below.

1. Kevin, because this involves translation for parents of ELs, it's okay to use *Title III* funds.
2. Kevin, *Title III* funds never cover translation of any documents. They cannot be used to fund either communication.
3. Kevin, you cannot use *Title III* funds for the monthly math newsletter because it is sent to all parents, and the district would need to make reasonable efforts to provide translations for parents who need it; thus, the use of *Title III* funds would be supplanting. However, if the *Title III* program chooses to make optional resource guides available to parents of *Title III* students, that might be above and beyond the regular school program or services and therefore could be allowable under *Title III*.

Topic 5: Module Quiz and Certification

Message 4 From Kevin

Maria,

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Kevin Wang 415-555-0165

Answer

- X 1. Kevin, because this involves translation for parents of ELs, it's okay to use *Title III* funds.
- X 2. Kevin, *Title III* funds never cover translation of any documents. They cannot be used to fund either communication.
- ✓ 3. Kevin, you cannot use *Title III* funds for the monthly math newsletter because it is sent to all parents, and the district would need to make reasonable efforts to provide translations for parents who need it; thus, the use of *Title III* funds would be supplanting. However, if the *Title III* program chooses to make optional resource guides available to parents of *Title III* students, that might be above and beyond the regular school program or services and therefore could be allowable under *Title III*.

If the LEA communicates weekly with all parents about school activities, it is not appropriate to use *Title III* funds to pay for translation or interpretation of these documents because, under the civil rights laws, the LEA is required to provide parents of ELs with meaningful access to the same information that is provided to parents of students who are not ELs.

Congratulations!

You have completed the *Title III* State Director Training Modules. You can return to this module as often as you like to refresh your knowledge. You can also use this module as a training tool for staff members who are new to *Title III* requirements.