

How to Determine Allowable Costs

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Introduction

Federal Education Group, PLLC (FEG) is a law and consulting firm that helps states, school districts, and other educational organizations understand federal law so they can use federal money to achieve their goals while maintaining compliance.

FEG's practice areas include all major federal K-12 education programs, including COVID relief programs, ESEA, IDEA, and Perkins, as well as federal grants management requirements, such as the Uniform Grant Guidance.

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Opportunity in Light of ESSER: Rethinking Uses of Funds Strategically

- Within the constraints of the pandemic, ESSER provides opportunities to rethink parts of K-12 education.
- These opportunities might be limited by misunderstandings about existing ED programs that have incentivized SEAs and LEAs to structure systems in ways they might not feel can be changed.
- This might mean re-examining common misperceptions about ED programs to identify ways systems could change with ESSER support.

Opportunity in Light of ESSER: Rethinking Uses of Funds Strategically (cont.)

- Existing ED programs often have more spending options than SEAs or LEAs realize and could potentially help to sustain some ESSER funded activities.
- To sustain ESSER funded activities with existing ED funds LEA might need to:
 - Rethink how they *currently* spend their funds, and
 - Reexamine existing ED programs to better understand spending options.

Use of Funds Framing Questions

- Is the activity to be supported consistent with a grant program's allowable activities?
- How would the expense affect fiscal tests that apply to a grant program (like supplement not supplant)?
- Is the expense consistent with federal cost principles (for example, is it necessary and reasonable)?
- Are there any other federal spending rules that might affect the analysis?

Allowable Activities

General Considerations

- Each of ED's programs has its own rules for what activities can be carried out as part of the program.
 - Often activities must target specific students like students with disabilities for IDEA or English learners for Title III.
 - Activities should also generally be consistent with program goals like improving academic achievement for Title I or supporting effective instruction for Title II.
- Some ED programs are more specific about allowable activities than others.
 - For example, Title II lists 16 examples of allowable activities.
 - Title I and IDEA are not so specific, giving more discretion to implement activities aligned to program goals.

Expanded Opportunities

- Often, ED programs allow for more activities than many realize.
 - For example, Title I schools tend to spend Title I funds on reading and math interventions. Title I can also support other subjects (like science, engineering, history, languages, arts, PE and CTE), as well as non-academic supports (like counseling, mentoring, student wellbeing, and mental health).
 - LEAs tend to spend Title II funds on teacher professional development. Title II can also support professional development for principals and other school leaders, recruitment and retention, professional advancement opportunities, feedback mechanisms to improve working conditions, and more.

Title I, Part A

- Designed to support academically struggling students in high poverty schools.
- Does not have a use of funds section, but ESSA more explicit than NCLB about allowable Title I strategies.
- Allowable spending depends, in part, on what program model a school implements.

Title I, Part A

- Unlike other federal programs, most money flows to schools, which can operate:
 - A schoolwide program (upgrade school's educational program based on needs and plan), or
 - A targeted assistance program (target specific students).
- Money is generally distributed to schools in poverty order (“ranking and serving”).
- Districts can keep some money to operate district-managed programs for all or a subset of Title I schools.
- Designed to be flexible program.
- Spending tends to focus on reading and math, but Title I can support many other academic and non-academic activities.

Title II, Part A

- Designed to support educator quality to drive student achievement.
- State can keep some money for state activities.
- Most money flows to districts, which can run programs centrally or allocate money to schools.
 - LEAs must prioritize funds for CSI/TSI schools with the highest poverty.
 - This does not mean LEAs must allocate funds to individual schools.

Title II, Part A

- Allowable activities include (list not exhaustive):
 - Teacher evaluation and support systems
 - Recruiting, hiring, and retaining teachers
 - Teacher/principal leadership opportunities
 - Induction and mentoring programs
 - Methods to use evaluation results to inform professional development, improvement strategies, and personnel decisions
 - Reducing class size to evidence-based levels
 - Evidence-based personalized professional development
 - Training in recognizing trauma, mental illness and child sexual abuse
 - Training to support the identification of gifted and talented students
 - Developing feedback mechanisms
 - Professional development on integrated academics and career and technical education

Title III, Part A

- All LEAs, whether they receive Title III funds or not, have certain legal obligations to ensure English learners (ELs) can meaningfully and equally participate in educational programs and services:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>
- LEAs that receive Title III funds may not use them to meet those legal obligations.
- Instead, LEAs must use Title III EL funds for additional activities to assist ELs in learning English and meeting state academic standards.

Title III, Part A

- LEAs must use Title III funds to:
 - Provide effective language instruction educational programs (LIEPs),
 - Provide effective professional development to improve EL instruction, and
 - Implement other effective activities and strategies that enhance or supplement language LIEPs, which must include parent, family, and community engagement activities.
- LEAs may also use Title III funds for other optional activities to improve outcomes for EL students consistent with Title III goals.

Title IV, Part A

- Designed to improve student academic achievement by improving access to a well-rounded education, school conditions for student learning, and the use of technology.
- LEAs that receive \$30,000 or more must:
 - Perform a comprehensive needs assessment the areas of well-rounded education, safety and health, and technology.
 - Spend at least 20% on well-rounded educational opportunities, at least 20% on safe and healthy students, and some funds on technology use.

Title IV, Part A

- Well-rounded education:
 - College and career counseling, music and arts, instruction and engagement with STEM (including robotics competitions, hands-on learning, integrating arts and stem) , accelerated learning programs, history, foreign language, environmental education, promoting volunteerism, etc.
- Safety and health:
 - Drug and violence prevention, school-based mental health services, healthy/active lifestyle, preventing bullying and harassment, mentoring and school counseling, school dropout and reentry programs, schoolwide PBIS.
- Effective use of technology:
 - Professional learning tools for school personnel, capacity and infrastructure, delivering specialized or rigorous courses through technology, blended learning, professional development on tech in STEM, providing high-quality digital learning experiences to students in rural/remote/underserved areas, etc.

IDEA, Part B

- A program to support students with disabilities (ages 3-21) with two grants:
 - Section 611 funds support students with disabilities ages 3 to 21, and
 - Section 619 funds support students with disabilities ages 3 to 5.
- Part B funds must be used for the excess cost of providing special education and related services to eligible students with disabilities.
 - This can include student specific activities called for in an IEP.
 - It can also include contributions to whole school/whole district initiatives that improve outcomes for students with disabilities.

IDEA, Part B - Potential Barriers

- Misunderstandings about use of funds options.
 - ED encourages LEAs to coordinate IDEA with other funding sources, and even suggests strategies for doing so, but LEAs rarely do.
 - For example, IDEA could pay a share of a whole school PBIS program or an MTSS initiative.
- Misunderstandings about IDEA fiscal rules
 - Many SEAs and LEAs mistakenly believe IDEA cannot contribute to comprehensive strategies even if they benefit students with disabilities.

Fiscal Tests

Supplement not Supplant

- Supplement not supplant (SNS) means LEAs must use federal funds to “add to” state/local funding for education, not replace state/local funding.
- Each federal program has its own way of testing for SNS compliance.
- SNS has been a historical barrier to effective spending because of perception that “extra” means different.

Title I, Part A Supplement not Supplant

- **The three presumptions no longer apply.** LEAs do not have to show individual costs paid with Title I funds are supplemental.
- Instead, LEAs must demonstrate the “**methodology used to allocate State and local funds** to each school receiving assistance under [Title I, Part A] ensures that such school receives all of the State and local funds it would otherwise receive if it were not receiving assistance under [Title I, Part A].”
- In other words, LEAs must allocate (budget) state and local funds (or state/locally-funded resources) in ways that do not deprive Title I schools of money or resources they would have received if they did not participate in Title I.

Title II, Part A and Title IV, Part A Supplement not Supplant

- Supplanting is presumed if an LEA uses Title II or Title IV:
 - For an activity the LEA or school is legally required to carry out.
 - For an activity the LEA or school funded with state or local money last year.
- An LEA may overcome the second presumption of supplanting if it can demonstrate it cannot continue to support an activity with state or local funds because of state or local funding reductions.

Title III Supplement not Supplant

- Supplanting is presumed if an LEA uses Title III:
 - For an activity required by state, local, or other federal law (including civil rights obligations to ELs), or
 - For an activity it supported with state or local funds the year before.
- An LEA may be able to overcome these presumptions if it can show it could not have provided the services in question with state or local funds.

Title III Supplement Not Supplant (cont.)

- Note that despite the first presumption on the prior slide, LEAs can use Title III funds for activities certain Title I activities like:
 - EL parental notification regarding language instruction educational programs (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)).
- These activities used to be part of Title III but were moved to Title I in the most recent ESEA reauthorization (NCLB → ESSA).

IDEA, Part B

- **The three traditional presumptions of supplanting do not apply.**
- An LEA that meets maintenance of effort obligations satisfies supplement not supplant as well.
- IDEA's excess cost test is often confused with supplement not supplant leading some SEAs and LEAs to mistakenly apply certain presumptions to determine if costs are "excess." This is not required by federal law and is inconsistent with IDEA's excess cost rules. (See next slide.)

IDEA, Part B Excess Cost Test

- IDEA, Part B funds can only pay for the excess cost of providing special education and related services.
- The excess cost of providing special education and related services is calculated through a process that looks at an LEA's aggregated spending, not individual expenses.
- This means LEAs do not have to show each cost supported with IDEA funds is "excess."

Federal Cost Principles

Introducing Federal Cost Principles

- Federal grants, including ED grants, are subject to a set of federal regulations called the [Uniform Grant Guidance](#) (UGG).
- The UGG has:
 - **Administrative rules**, like how to procure and manage items purchased with federal funds, financial management standards, state oversight responsibilities, and more.
 - **Spending rules**, known as federal cost principles, including general criteria all costs paid with federal funds must satisfy, costs that may never be paid with federal funds, and special rules for certain types of costs.
 - **Audit rules** for single audits.

General Criteria All Costs Must Meet

- Necessary and reasonable for the performance of the federal award,
- Allocable,
- Conform with any federal rules limiting costs (like Perkins's cap on administrative costs),
- Consistent with policies and procedures recipients apply uniformly to both federally and non-federally funded spending,
- Accorded consistent treatment, which means a cost usually cannot be charged as a direct cost sometimes and as an indirect cost other times,
- Consistent with generally accepted accounting principles,
- Separate from any cost sharing or matching requirement,
- Adequately documented, and
- Incurred during the approved budget period. [2 CFR § 200.403](#)

Necessary and Reasonable

- A cost is considered 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. [2 CFR § 200.404](#)
- In other words, would an objective observer would understand the decision to spend funds considering the amount of money being spent, the needs of the program, and other relevant circumstances?

Factors to Consider When Assessing Necessary and Reasonable

- Whether the cost is needed to carry out the grant program properly and efficiently,
- Whether the entity followed sound business practices,
- The cost of the good, service, or activity being supported and whether the cost is consistent with market prices,
- Whether the entity acted prudently considering its responsibilities to itself, its students, the public, and the federal government, and
- Whether the entity generally followed its internal practices and policies. [2 CFR § 200.404](#)

Allocable

- In general, allocable means a federal program only pays for a cost in proportion to the benefit the program receives. [2 CFR § 200.405](#)
- For example:
 - If Perkins pays for a teacher's entire salary, that teacher must spend all their time working on Perkins activities.
 - If the teacher only spends 20% of their time on Perkins activities, Perkins can only pay 20% of the teacher's salary.

Examples of Costs that May Not be Charged

- Advertising and public relations costs (with limited exceptions)
- Advisory councils unless permitted by the grant or federal awarding agency
- Alcoholic beverages
- Bad debts
- Contributions and donations
- Entertainment except where there is a programmatic purpose and costs are authorized either in the approved grant or by the federal awarding agency
- Fines, penalties, damages and other settlements (with limited exceptions)
- Fund raising and investment management costs (with limited exceptions)
- General costs of government
- Goods or services for personal use
- Lobbying
- Organizing activities in connection with establishment or reorganization of an organization, except with prior approval
- Selling and marketing
- Student activity costs (like costs for intramural activities, student publications, student clubs, and other student activities) unless specifically allowed under the grant

Examples of Other Spending Considerations

Prior Approval for Capital Expenditures, Including Equipment 2 CFR § 200.439

- Capital expenditures are “expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.”
- Capital assets are “tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [generally accepted accounting procedures],” including land, buildings (facilities), equipment, intellectual property (including software), and certain kinds of leases, as well as improvements and modifications to those assets.
- Equipment is tangible personal property (including information technology systems) with a useful life of more than one year and a per-unit acquisition cost at or above the LEA’s capitalization level or \$5,000, whichever is less.

Support for Employee Compensation

- LEAs that use federal funds to pay employees must maintain records that reflect the work employees performed. [2 CFR § 200.430\(i\)](#)
- These records help to verify the employee worked on the program(s) supporting their compensation.
- For example, if an LEA charges an employee's entire salary to Title I, Part A, the SEA must have records demonstrating the employee spent their entire time working on Title I activities.

Employee Compensation Records Must:

- Be supported by a system of internal control that provides reasonable assurance employee compensation charges are accurate, allowable, and properly allocated.
- Be incorporated into the entity's official records.
- Reasonably reflect the total activity for which the employee is compensated.
- Encompass both federal grant-related activities and any other activities an employee works on.
- Comply with the entity's established accounting policies and practices.
- Support the distribution of the employee's salary or wages among the specific activities or cost objectives the employee works on.

Record Keeping Policies

- ED guidance suggests SEAs and LEAs should have written time and effort policies and procedures as an internal control.
- ED expects time and effort policies and procedures to address:
 - How to report employee time,
 - How the reports are approved,
 - How employee compensation is charged to federal grants, and
 - The system of controls an entity has in place to ensure charges are accurate.
- According to ED, “generally, the information should be in sufficient detail to permit an understanding of how the system will operate from the point the time worked to the point the time is recorded in the accounting records and charged to federal awards.”

Putting it Together: Spending Scenarios

Analyzing Spending with an Eye on Sustainability

- Many of an LEA's students with disabilities have specific learning disabilities in reading.
- These students tend to receive pull-out interventions delivered by special educators (often, paraprofessionals) paid with IDEA funds.
- The LEA uses ESSER funds to invest in a new K-2 reading structured literacy curriculum that provides explicit instruction in phonemic awareness, systematic phonics, sound-symbol association, among other components.
- If that helps to lower costs because many student needs can now be met in the regular classroom, the LEA can repurpose existing ED grants to sustain the initiative (see next slide).

Sustainability (cont.)

- The LEA could use IDEA and Title II funds to provide ongoing professional development to teachers on meeting the needs of diverse learners in the general classroom.
- The LEA could repurpose IDEA funds for students with disabilities who need extra supports beyond the new curriculum.
- The LEA could use/repurpose IDEA CEIS funds to meet the needs of students without disabilities who need extra supports beyond the new curriculum.
- The LEA could use Title I funds to meet the needs of struggling students in Title I schools who need extra supports beyond the new curriculum.

Four Step Process: Step 1

- Define the strategy or activity the LEA wants to implement along with its scope.
- For example, if an LEA is considering investing in new high-quality K-2 reading curricula, would it be for all elementary schools or for a specific school with a specific need? Would it be a general curriculum for all students or an intervention program for struggling students?

Four Step Process: Step 2

- Define the universe of specific costs the LEA needs to pay for to implement the strategy or activity.
 - For example, if an LEA were to implement a new K-2 reading curriculum for all elementary schools, it could incur costs such as:
 - Purchasing curriculum and related instructional materials
 - Professional development for general education teachers on how to adapt instruction in the new curriculum to meet the needs of special education students
 - Additional time for professional development (such as stipends, substitute teacher costs)
 - Professional development for school leaders, teachers, and educators on implementing the new curriculum and using the new instructional materials
 - Professional development for special educators on the new curriculum
 - Technology costs
 - Instructional coaches and other support positions, such as reading specialists

Four Step Process: Step 3

- Determine which ED grants can pay for which costs.
 - Keep in mind that different parts of an initiative can be supported with different funding sources, sometimes known as braiding funds.
 - For example, to support the costs listed above, the LEA might use ESSER funds to purchase the new curriculum, Title II to provide professional development to all teachers, and IDEA funds to provide specialized professional development to teachers who work with students with disabilities.

Four Step Process: Step 4

- Evaluate what activities ED grants are currently supporting and whether funding should be repurposed.
 - To sustain ESSER initiatives with ED funds, LEAs may have to move funds away from currently supported activities.
 - To do this effectively, LEAs can consider how long currently supported activities have been in place, whether they have achieved intended goals, whether they have been effective in improving student outcomes, whether they align to current priorities, and other factors.

Can We Pay for This?

- Is there a reasonable case to be made the activity supports an ED program goal?
- Is the activity consistent with allowable activities listed in the relevant program law?
- Even if an ED grant could not support the entire cost of an activity, could it support part of it?

Can We Pay for This?

- Before concluding no, identify the specific concern and what federal requirement it relates to.
 - If the concern is that the activity is not specifically listed in the program law, is there ED guidance that may support the expenditure?
 - If the concern is that the activity violates a program's supplement not supplant restriction, is the right test being applied? Spending that might raise concerns in one program might not in another.
 - If the concern is that the activity does not seem to be "necessary and reasonable" what standards are being applied? Who should be involved in the decision?

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