



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 19, 2019

**Summary Response to Comments on Title I, Part A Supplement not Supplant
Non-Regulatory Informational Document**

On January 25, 2019, the U.S. Department of Education (Department) published for public comment a draft informational document on the Title I, Part A supplement not supplant requirement in section 1118(b) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA). More than 40 respondents provided comments for the Department to consider in finalizing the informational document. A summary of the comments and a description of changes that the Department made to the draft informational document follow. The full informational document can be found at: <https://www2.ed.gov/policy/elsec/leg/essa/index.html>.

Many commenters wrote in support of the draft informational document. Commenters encouraged the Department to finalize the document quickly without making any changes.

The majority of commenters provided suggestions for improving the document. They primarily did so by identifying topics in the document that they would like expanded or clarified or topics that they would like to see the Department address in the document. In response, the Department added information on the following topics:

- Meaning of the term “Title I neutral”;
- Connection between ESEA section 1118(b) and ESEA section 1003(e)(2), the supplement not supplant requirements of Parts C and D of Title I, the comparability provision in ESEA section 1118(c), and allowable uses of Title I, Part A funds;
- How ESEA section 1118(b) applies to Title I, Part A funds that an local educational agency (LEA) reserves;
- Exclusion provision in ESEA section 1118(d);
- Documenting compliance by an LEA;
- Grade span exceptions; and
- Confirmation that ESEA section 1118(b)(1) still applies to an LEA that does not have to comply with ESEA section 1118(b)(2).

Several commenters also asked the Department to include information on how an State educational agency (SEA) may enforce the supplement not supplant requirements. Since there is no provision regarding enforcement in ESEA section 1118(b), the Department is not adding information on this topic in this informational document. Rather, an SEA would follow the enforcement provisions under the General Education Provisions Act and 2 C.F.R. Part 200.

Some commenters expressed opposition to the draft informational document, either in part or as a whole. Objections included a contention that the ESEA requires the Department to conduct

negotiated rule making on the ESEA section 1118(b) requirement rather than issue non-regulatory guidance, concern that the Department did not indicate that a local educational agency (LEA) must allocate to a Title I school at least as much State and local funds as the average of its non-Title I schools, that non-regulatory guidance will prove insufficient for the Department to enforce ESEA section 1118(b), and that the Department did not encourage LEAs to publish their methodologies.

The Department notes that the ESEA does not require it to engage in negotiated rulemaking regarding ESEA section 1118(b); rather, ESEA section 1601 requires the Department, if it were to regulate on ESEA section 1118(b), to engage in negotiated rulemaking. However, the Department is not regulating on supplement not supplant. Similarly, the Department does not agree with the view that it lacks sufficient authority, outside of a regulation, to enforce supplement not supplant, as no such indication is given in the statute. The Department also disagrees with the view that ESEA section 1118(b) requires equal expenditures between Title I and non-Title I schools (a view which, incidentally, would also run afoul of the prohibition in ESEA section 1605 regarding mandates for equalized spending.) Accordingly, the Department did not make any changes to the informational document concerning the preceding issues.

The Department has modified question 17 to encourage LEAs to publish their methodology in recognition of the minimal burden of such an effort, the value of transparency and the public interest in such information.

The Department appreciates the public's helpful and insightful commentary on the draft informational document and would like to convey its thanks to all those that commented.