

# 2012–2013 USER MANUAL

## **Title I, Part A, Comparability of Services Requirement** *Title I of the Elementary and Secondary Education Act of 1965 (ESEA), (Public Law 107-110, Section 1120A[c])*

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## ***Title I, Part A Comparability of Services Requirement***

- Federal law requires that campuses receiving Title I, Part A funding must receive the same level of services through state and local funds as campuses that are *not* receiving Title I, Part A funding. If *all* campuses in a school district or open-enrollment charter school are receiving Title I, Part A funds, then the district or charter school must ensure that services provided with state and local funds at their Title I, Part A campuses with higher percentages of low-income students are equal to or greater than the services provided at their Title I, Part A campuses with lower percentages of low-income students.

Title I, Part A participating local education agencies (LEAs) are required to submit comparability data annually by conducting comparability testing on an electronic form provided by TEA. This form is the Title I, Part A Comparability Computation Form (CCF). The deadline for submitting the CCF for the 2012–2013 school year is **November 12, 2012**. LEAs must use their latest budgeted data.

- *Not all LEAs are required to prove compliance with the comparability of services requirement.* For those who are required to prove compliance, there are some services for which funds are expended that are *excluded* from the comparability calculation process. In addition, there is other information that LEAs should take into account before calculating comparability.

### ***Reporting Exemptions—Who Is Exempt?***

- LEAs that participate in Title I, Part A and have only one campus per grade span are *not* required to conduct comparability compliance testing. For example, an LEA receiving Title I, Part A funds that has one campus serving elementary grades, one campus serving middle school grades, and one campus serving high school grades is not required to prove comparability of services in any of these campuses because there is only one campus per grade-span group. There must be at least two campuses per grade-span group in order to conduct comparability testing.
- LEAs that do not participate in Title I, Part A are *not* required to conduct comparability compliance testing.
- All LEAs that are exempt from comparability compliance testing *must notify TEA of their exemption* by completing and submitting the Title I, Part A, Comparability of Services Requirement Assurance Document by the November 12, 2012, reporting deadline for the 2012–2013 school year.

### ***Comparability Testing—Who Is Required to Prove Compliance?***

- LEAs that are not exempt because they participate in Title I, Part A and have more than one campus per grade-span group are required to conduct comparability compliance testing to ensure that they meet the comparability of services requirement.
- LEAs that are required to conduct comparability compliance testing must complete and submit both of the following documents by November 12, 2012:
  - Title I, Part A Comparability of Services Requirement Assurance Document
  - Title I, Part A Comparability Computation Form (CCF).

## Exclusions from Comparability Calculations

Certain campuses and certain supplemental state and local funds may be *excluded* from the comparability calculation process. LEAs should determine which of the following apply to them:

- Campuses with 100 or fewer students may be excluded from the comparability calculation process.
- If an LEA has a grade-span group with no Title I, Part A campuses, the LEA does not have to calculate comparability of services for that grade-span group.
- Certain services are designed individually for a specific student. Expenditures for those services could vary greatly from campus to campus depending on the student populations. Therefore, for the purpose of determining compliance with the comparability of services requirement, an LEA may exclude supplemental state and local funds expended for any of the following:
  - Bilingual education for children with limited English proficiency.
  - English as a second language (ESL) services.
  - The excess costs of providing services to children with disabilities as determined by the LEA.
  - Programs that meet the exclusion requirements described in Title 34 of the Code of Federal Regulations (CFR) Section 200.79. These exclusion requirements are given in Appendix 1 of this document.

Example:

Campus	Column A Total State & Local Funds	Column B Supplemental State & Local Funds Spent on Specific Services	Column C Funds for Comparability Calculations (Column A minus Column B)
Campus 1	\$120,000	\$10,000	\$110,000
Campus 2	\$150,000	\$25,000	\$125,000

Campus 1 has total state and local funds of \$120,000 (Column A), which includes \$10,000 (Column B) in supplemental state and local funds that were spent on bilingual education for children with limited English proficiency. Campus 2 has total state and local funds of \$150,000 (Column A), which includes \$25,000 (Column B) in supplemental state and local funds spent on ESL services. Reducing the amount in Column A by the amount in Column B results in the correct amount of state and local funds that should be used in comparability calculations (Column C).

- If an LEA has a group of campuses with the same grade span and one of the campuses in the group has an enrollment that is substantially lower or higher than the enrollment of the other campuses in that grade-span group, that campus should be excluded from the comparability calculation.

Example:

Campus	Grade Span	Enrollment
Campus 1	6–8	1592
Campus 2	6–8	599
Campus 3	7–8	1481

Campus 2 has an enrollment of less than half the number of students as the other two campuses, so it should not be used in the comparability calculation.

- If there are only two campuses being compared in a grade-span group, and one campus has an enrollment that is substantially larger than the enrollment of the other campus, then there is no basis for comparison because of the disparity in enrollment between the two campuses. The entire grade span should be excluded from the comparability calculation.

Example:

Campus	Grade Span	Enrollment
Campus 1	9–12	1592
Campus 2	9–12	614

Campus 1 has more than twice the enrollment of Campus 2, so this grade span should be excluded from the comparability calculation.

More information about exclusions is given in Appendix 1 of this document.

### ***Additional Information to Consider Prior to Testing***

In order to make comparability testing as accurate as possible, LEAs should consider certain other situations that may apply to them and affect the outcome of the testing. LEAs should consider the following before completing the CCF:

- **Specific Grouping Situation.** If an LEA has a group of campuses with similar grades served, but with a significant difference in enrollment between the largest and smallest campus in the group (such as the largest campus having an enrollment of at least two times the enrollment of the smallest campus), then the LEA may choose to subdivide the group into larger campuses and smaller campuses.

Example:

Campus	High School Grade Span	Enrollment
Campus 1	9–12	300
Campus 2	9–12	400
Campus 3	8–12	800
Campus 4	8–12	850
Campus 5	8–12	900

In this example, the LEA may divide its five high school campuses into two groups as illustrated in the two tables below. *Please note that when entering the data on the CCF for this type of grouping, the LEA should distinguish between the two groups as shown below.*

Campus	High School Grade Span (Small)	Enrollment
Campus 1	9–12 Small	300
Campus 2	9–12 Small	400

Campus	High School Grade Span (Large)	Enrollment
Campus 3	8–12 Large	800
Campus 4	8–12 Large	850
Campus 5	8–12 Large	900

- **Skipped Campuses.** Campuses that have been designated by the LEA as “skipped” must still be included in the comparability calculations. If a campus is “skipped” by the LEA as documented on Schedule SC5000 of the NCLB Consolidated Application—Title I, Part A,

Campus Selection, the LEA is still responsible for ensuring that *all* of the following conditions are met:

- The “skipped” campus meets the comparability requirement just as if it were a Title I, Part A campus.
- The “skipped” campus receives supplemental funds from other state or local sources that are spent according to the school-wide or targeted-assistance requirements.
- The funds expended from such other sources equal or exceed the amount that would be provided under Title I, Part A.
- A “skipped” campus is a campus that is *not* receiving Title I, Part A funds, but is *eligible* and is among other same-grade-span campuses in an LEA that *are* receiving Title I, Part A funds
- A campus is considered “skipped” if an LEA is providing Title I, Part A services to campuses in rank order and a campus does not receive Title I, Part A services even though it has a higher percentage of poverty than a campus that *is* receiving Title I, Part A services.

Skipped Campuses Example:

Campus	Grade Span	Title I or Non Title I, Part A	Low-Income %
Campus 1	K-5	Non-Title I, Part A	64%
Campus 2	K-5	Title I, Part A	50%
Campus 3	K-5	Title I, Part A	42%
Campus 4	K-5	Title I, Part A	35%

In the example above, Campus 1 is considered “skipped” because it is not receiving Title I, Part A services while Campuses 2, 3 and 4 that have a lower percentage of poverty *are* receiving Title I, Part A services.

- A campus is considered “skipped” if it is a campus in a Multiple Attendance Area that has a low-income percentage exceeding 75 percent, but is not receiving Title I, Part A funds while another campus(es) with a *lower* percentage of low-income students *is* served, regardless of grade spans.

Example:

Campus	Grade Span	Title I or Non Title I, Part A	Low-Income %
Campus 1	K-5	Non Title I, Part A	76%
Campus 2	6-8	Title I, Part A	50%

In the example above, Campus 1 is considered “skipped” since it is not receiving Title 1, Part A services while Campus 2, even though a different grade span, is receiving Title 1, Part A services.

## ***Data Required for Compliance Testing***

Each LEA is required to enter the following information into the CCF:

- County-district number.
- District name.
- Grade-span grouping (such as elementary, middle school, high school-small, or high school-large).
- Campus number and campus name.

- Whether the campus is a Title I, Part A campus (enter Y), a “skipped” campus (enter Y), or a non–Title I, Part A campus (leave blank).
- Campus enrollment.
- Total annual state and local expenditures for the campus (for Test 1 only). Please refer to Appendix 2 for fund codes, function codes, object codes, and role IDs related to the expenditures that should be included on the CCF.
- Total base salaries for non–federally funded instructional staff (for Test 2 only). Please note that “instructional staff” refers to numerous categories of personnel and does not include only teachers. Please refer to Appendix 2 for the role IDs of staff that may be considered instructional staff. Staff coded as instruction, instructional leadership, or instructional support should be included on the CCF as instructional staff.
- Non–federally funded staff in number of FTEs (for Test 3 only).

Please note that the data entered in the Title I, Part A Expenditure column on the CCF is not required for compliance testing. This column is optional and data entered by the LEA will be used for information purposes only.

### **Selecting a Test to Determine Compliance**

Each LEA must select *one* of the following tests and apply it district-wide to prove compliance with the Title I, Part A comparability requirement:

- Test 1: Comparison of State and Local Expenditures per Pupil.
- Test 2: Comparison of Per-Pupil Expenditures for State and Local Base Salaries.
- Test 3: Comparison of Pupil/Non–Federally Funded Instructional Staff Ratio.

Each test involves calculations from either an “A” or “B” series of tests. Eligibility for each series is determined by the composition of the campuses in each grade-span group being tested.

- The “A” Series. This series of tests compares Title I, Part A campuses in a grade-span group to the average of all of the *Non–Title I, Part A campuses* within the group. Any grade-span group that has *both Title I, Part A and Non–Title I, Part A campuses* is eligible for an “A” test, which must be used to demonstrate compliance with the comparability requirement. Any grade-span group that contains both Title I, Part A and Non–Title I, Part A campuses is not eligible for any “B” test.
- The “B” Series. This series of tests compares each individual Title I, Part A campus in a grade-span group to the average of all of the *other Title I, Part A campuses* within the group. Any grade-span group that has *only Title I, Part A campuses* is eligible for a “B” test, which must be used to demonstrate compliance with the comparability requirement. Any grade-span group that contains only Title I, Part A campuses is not eligible for any “A” test.
- Please note that per the US Department of Education (USDE) Non-Regulatory Guidance issued in May 2006, individual campus test results for the “B” test must fall within the range of 90 to 110 percent of the grade-span group average. See Appendix 3 for a detailed example.

In summary, each of the three tests may involve a specific “A” or “B” test, as follows:

- For Test 1: Comparison of State and Local Expenditures per Pupil, each grade-span group will involve calculations from one of the following tests:

- Test 1A, which compares expenditures for individual Title I, Part A campuses to the average expenditure for Non–Title I, Part A campuses in the group.
- Test 1B, which compares expenditures for individual Title I, Part A campuses to the average expenditure for all the campuses in the group.
- For Test 2: Comparison of Per-Pupil Expenditures for State and Local Base Salaries, each grade-span group will involve calculations from one of the following tests:
  - Test 2A, which compares expenditures for individual Title I, Part A campuses to the average expenditure for Non–Title I, Part A campuses in the group.
  - Test 2B, which compares expenditures for individual Title I, Part A campuses to the average expenditure for all the campuses in the group.
- For Test 3: Comparison of Pupil/Non–Federally funded Instructional Staff Ratio, each grade-span group will involve calculations from one of the following tests:
  - Test 3A, which compares expenditures for individual Title I, Part A campuses to the average expenditure for Non–Title I, Part A campuses in the group.
  - Test 3B, which compares expenditures for individual Title I Part A campuses to the average expenditure for all the campuses in the group

In the following example, the LEA has selected Test 3: Comparison of Pupil/Non–Federally Funded Instructional Staff Ratio. The LEA must therefore show compliance with the comparability requirement using the appropriate “A” or “B” as shown in the table below:

Grade-Span Group Configuration identified by LEA	Type of Campuses in the Grade-Span Group	District-Wide Test Selected	Test That Must Show Compliance
Elementary Schools (Large)	Title I and Non–Title I	3	3A
Elementary Schools (Small)	Title I only	3	3B
Middle Schools	Title I and Non–Title I	3	3A
High Schools	Title I only	3	3B

### ***Completing the CCF***

Taking into account all of the exemptions, exclusions, test options, and other information provided above, each LEA should enter its data into the appropriate columns in the CCF.

- LEAs must use their most current budgeted data to complete the CCF.
- To determine if State Fiscal Stabilization Funds (SFSF) received under the American Recovery and Reinvestment Act of 2009 (ARRA) must be included in the LEA’s comparability testing, please refer to Appendix 4.
- As indicated above, the LEA should select one of the three possible tests and ensure that the selected test is applied consistently district-wide.
- The CCF will automatically apply the tests to all the data entered by the LEA. The test results for each Title I, Part A campus are indicated with either “Yes” for compliant or “NC” for noncompliant.

### ***What to Do with the Test Results***

For every test with a noncompliant result, the LEA must make the appropriate adjustments to bring all of the campuses into compliance. This must be done before the LEA submits the CCF to TEA.

- ❖ For information regarding the Fund Codes, Function Codes, Roll IDs and Object Codes used in comparability testing, please refer to Appendix 2 at the end of this document.

## **Definitions**

- Full-Time Equivalent (FTE). According to the Public Education Information Management System (PEIMS) Data Standards, the full-time equivalency of non-federal instructional staff members is calculated as illustrated in these examples:
  - Example 1: If a staff member is employed for at least 187 days (which is considered by the Texas Education Code to be full time), the FTE is calculated by determining the percent of the day spent teaching classes paid with state and local funds, and then dividing that number by 100. In this example, a teacher is employed for 190 days and teaches two classes paid with Title I, Part A funds and four regular classes in a six-period day. The four classes paid with state and local funds make up 67 percent of the day, and that number divided by 100 is .67. So the non-federal FTE for this teacher is .67.
  - Example 2: If a staff member is employed for fewer than 187 days, the FTE is calculated by determining the percent of the day spent teaching classes paid with state and local funds, dividing that number by 100, multiplying the result by the number of days employed, then dividing that number by 187 [(percent of day ÷ 100) x days employed] ÷ 187. In this example, a teacher is employed for 175 days and teaches two classes paid with Title I, Part A funds and four regular classes in a six-period day. The four classes paid with state and local funds make up 67 percent of the day, and that number divided by 100 is .67. This result multiplied by 175 is 117.25, which divided by 187 is .63. So the non-federal FTE for this teacher is .63 [  $67 \div 100 \times 175 \div 187 = .63$ ].
- Similar Grade Spans. The grade-span groupings should match the basic organization of schools in the LEA. For example, if the LEA's organization includes elementary, middle, and senior high schools, the LEA would have three grade-span groups. If there is any overlap in grades, the campuses with the same grades must be grouped together. If there is no overlap in grades, the campuses may be considered separately. Here are some examples:
  - An LEA has the following grade spans at three elementary school campuses: K–3, PK–5, and 4–5. Because grades overlap, these three campuses must be grouped together as “elementary.”
  - An LEA has the following grade spans at three elementary school campuses: PK–1, 2–3, and 4–5. Because no grades overlap, these campuses may be considered separately and are therefore exempt from comparability testing.
  - An LEA has the following grade spans at four middle school campuses: 5–7, 6–8, 7–8, and dedicated sixth grade. Because grades overlap, these four campuses must be grouped together as “middle.”
  - An LEA has the following grade spans at two middle school campuses: dedicated 6th grade and 7–8. Because no grades overlap, these campuses may be considered separately and are therefore exempt from comparability testing.
  - An LEA has the following grade spans at three high school campuses: 9–12, 10–12, and dedicated ninth grade. Because grades overlap, these three campuses must be grouped together as “high.”
  - An LEA has the following grade spans at two high school campuses: dedicated ninth grade and 10–12. Because no grades overlap, these campuses may be considered separately and are therefore exempt from comparability testing.

- **Instructional Staff.** This term refers to numerous categories of personnel and does not include only teachers. Those employees with role identification numbers listed in Appendix 2 are considered instructional staff.
- **Expenditures Per Pupil.** According to P.L. 107-110, Section 1120A(c), as amended by 34 CFR 299.5, expenditures per pupil are defined as current expenditures for free public education. These are expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and for student body activities that are exclusively for instructional purposes.

### **Optional Testing Procedure**

An LEA may have a situation in which all campuses within a grade-span group are Title I, Part A campuses. In the event that one or more of these Title I, Part A campuses has a percentage of low-income students that is *below* the district average and that one or more of these Title I, Part A campuses has a percentage of low-income students that is *above* the district average, the LEA may benefit from an optional testing procedure that compares the low-income campuses. To use this testing procedure, however, LEAs cannot use the CCF that is available for downloading, and must contact the Division of Federal Program Compliance at [FPC\\_Compliance@tea.state.tx.us](mailto:FPC_Compliance@tea.state.tx.us).

For this comparison, the high-percentage low-income group includes all campuses in the grade-span group that are above the district-wide low-income percentage. The low-percentage low-income group includes all campuses in the grade-span group that are below the district-wide low-income percentage.

The district-wide low-income percentage is calculated by dividing the total number of low-income students in all campuses in the district by the total number of students in the district.

Example:

Campus	Grade Span	Campus Type	Low Income %	Description
Campus 1	K–5	Title I, Part A	75%	High-percentage low-income group
Campus 2	K–6	Title I, Part A	64%	
			53.2%	District-wide low-income percentage
Campus 3	K–6	Title I, Part A	50%	Low-percentage low-income group
Campus 4	K–5	Title I, Part A	42%	
Campus 5	K–6	Title I, Part A	35%	

In this example, Campuses 1 and 2 are above the district-wide low-income percentage and Campuses 3, 4, and 5 are below the district-wide low-income percentage.

If all campuses in a participating grade span are either above or below the district-wide average, the LEA must use the grade-span average method to test the campuses for comparability (see the traditional CCF, tests 1B, 2B, or 3B).

### **TEA Contact Information**

If you need more information about comparability testing, please contact the Division of Federal Program Compliance at [FPC\\_Compliance@tea.state.tx.us](mailto:FPC_Compliance@tea.state.tx.us) or (512) 463-9127.

# Appendix 1

## Exclusions

A local education agency may receive Title I, Part A funds only if it uses state and local funds to provide services at Title I, Part A campuses that are at least comparable to the services provided at campuses that are not receiving Title I, Part A funds. For the purpose of determining compliance with the fiscal comparability of services requirement, a local education agency may exclude state and local funds expended for any of the following:

1. Bilingual education for children with limited English proficiency.
2. English as a second language (ESL) services.
3. The excess costs of providing services to children with disabilities.
4. Expenditures from supplemental state or local funds that meet the exclusion requirements under 34 CFR 200.79.

### Requirements for Exclusion of Funds on a Schoolwide Campus

A supplemental state or local program must meet *all* of the following Title I, Part A schoolwide requirements, given in Public Law 107-110, Section 1114, in order for supplemental state or local funds to be excluded for determining comparability:

- The program must be implemented in a school in which the percentage of children from low-income families is at least 40 percent.
- The program must be designed to promote schoolwide reform and upgrade the entire educational operation of the school to help students meet the state's student performance standards.
- The program must be designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or who are most at risk of failing, to meet the state's student performance standards.
- The program must use the state's system of assessment to review the effectiveness of the program.

Note: These criteria apply to schoolwide campuses that have been granted an Ed-Flex Waiver to waive the schoolwide poverty threshold.

### Requirements for Exclusion of Funds on a Targeted-Assistance Campus

A supplemental state or local program must meet *all* of the following Title I, Part A targeted assistance requirements, given in Public Law 107-110, Section 1115, in order for supplemental state or local funds to be excluded for determining comparability:

- The program must serve only children who are failing, or who are most at risk of failing, to meet the state's student performance standards;
- The program must provide supplementary services designed to meet the special educational needs of the children who are participating in the program to help them meet the state's student performance standards.
- The program must use the state's system of assessment to review the effectiveness of the program.

## Questions and Answers Regarding the Exclusion of State or Local Funds

**Question 1:** When may nonfederal supplemental funds be excluded for determining compliance with the comparability of services requirement on a targeted-assistance campus?

**Answer 1:** Nonfederal supplemental funds may be excluded when all of the following conditions apply:

- The funds are used to implement a program that meets the requirements of 34 CFR 200.79.
- The funds are not used to implement the regular mandated foundation program.
- The funds are not used to implement an activity required by state law, State Board of Education rule, or local board policy.
- The program determines student eligibility by using multiple, educationally related, objective criteria that are comparable to those given in Title I, Part A.

**Question 2:** Must the same criteria used to identify Title I, Part A students on a targeted assistance campus also be used by programs conducted with nonfederal funds when those nonfederal funds will be excluded from determining compliance with the comparability of services requirement?

**Answer 2:** No. However, the multiple criteria must be objective and educationally related and must be comparable to that used in Title I, Part A.

**Question 3:** Who determines if the nonfederal funds meet the criteria for “supplemental” on a schoolwide or targeted assistance campus?

**Answer 3:** The campus may request the exclusion. The LEA reviews and approves the exclusion, and TEA may verify that the program meets the intent and purpose of Section Public Law 107-110, 1114 or 1115 as appropriate, by monitoring for exclusion from the supplement, not supplant requirement, and by reviewing and approving the written documentation submitted for exclusion from the comparability of services requirement.

### Examples of Exclusions of Funds

**Example 1:** On a Title I, Part A targeted-assistance campus, a teacher is paid partially from Title I, Part A funds (50 percent) and partially from supplemental local funds (50 percent) for performing Title I, Part A services 100 percent of the time.

**Question 1a:** May these supplemental local funds be excluded from the calculation of comparability of services?

**Answer 1a:** Yes, if the funds meet the requirements for exclusion; the funds are not used for implementing the regular mandated foundation program; and multiple, objective, comparable educational criteria are used to determine student eligibility.

**Example 2:** On a Title I, Part A targeted-assistance campus, an LEA implements a supplemental program in first through third grade to provide services for students failing mathematics and reading.

**Question 2a:** May an LEA use Title I, Part A funds to provide services for students failing reading and use supplemental state funds to provide services for students failing mathematics?

**Answer 2a:** Yes.

**Question 2b:** Is this a violation of the supplement, not supplant requirement?

**Answer 2b:** Title I, Part A students must have equitable access to money and services that non–Title I, Part A students receive. It would appear in this example and other examples described in this appendix that Title I students are not getting their fair share. However, if nonfederal supplemental funds are used to carry out a “Title I, Part A–like program” that meets the requirements given in Answer 1, the funds may be excluded when determining comparability of services.

**Question 2c:** Must these nonfederal supplemental funds be used to serve students that are eligible for Title I, Part A in order to meet the requirements for exclusion?

**Answer 2c:** No.

**Question 2d:** Must the school serve those students most in need with Title I, Part A funds or may the most in need be served with the supplemental state compensatory (SCE) funds?

**Answer 2d:** Either option is allowable in this example if the program is a “Title I, Part A–like program.”

**Example 3:** An LEA implements a Title I, Part A program at grade 1 on a K–3 targeted-assistance campus. The LEA uses supplemental SCE and local funds to implement a similar program on that campus in grades 2–3.

**Question 3a:** Can these nonfederal supplemental funds at grades 2–3 be excluded when determining comparability of services?

**Answer 3a:** Yes, if the requirements in 34 CFR 200.79 are met.

**Example 4:** Campus A (K–3) is a Title I, Part A targeted-assistance campus and implements a Title I, Part A program at grades 2–3. Campus B (K–3) is *not* a Title I, Part A campus but provides the same supplemental program for grades 2–3 with supplemental state funds.

**Question 4a:** May Campus B exclude these supplemental state funds for determining compliance with the comparability requirement?

**Answer 4a:** Yes, if the exclusion requirements in 34 CFR 200.79 are met.

**Example 5:** An LEA uses supplemental state funds to implement an Alternative Education Program (AEP) for grades 6–12.

**Question 5a:** May the LEA exclude these supplemental state funds from the determination of compliance, supplement, not supplant, and comparability requirements?

**Answer 5a:** *Only the portion of funds* that meets the requirements in 34 CFR 200.79 and are not used to provide the required AEP may be excluded.

**Example 6:** An LEA offers a supplemental extended-day program with supplemental SCE funds at a non–Title I, Part A campus and offers a Title I, Part A extended-day program at a Title I, Part A targeted-assistance campus.

**Question 6a:** Is this a supplant?

**Answer 6a:** No, if the program meets the requirements of 34 CFR 200.79.

**Example 7:** An LEA offers a supplemental extended-year program at a Title I, Part A targeted-assistance campus. There are eight students who meet the eligibility criteria for both the Title I, Part A campus as well as the eligibility criteria established by the campus for the extended-year program. There are eight additional students who only meet the criteria for the extended-year program. However, the relative needs of all 16 students are similar.

**Question 7a:** May the LEA use Title I, Part A funds to pay for 50 percent of the Title I, Part A extended-year program costs for the eight students identified as eligible for Title I, Part A and use local funds to pay for 50 percent of the Title I, Part A extended-year program costs for the non–Title I, Part A students?

**Answer 7a:** Yes. This would not violate the supplement, not supplant requirement, and these funds may be excluded when determining comparability as long as the program meets the requirements of 34 CFR 200.79.

## Appendix 2

### Codes Used In Comparability Calculations

Fund Codes	
199	General Fund
383	Professional Staff Development
388	Innovative Education Grants
391	Year Round Schools Incentive
392	Non-Educational Community-Based Support
393	Texas Successful Schools Programs
394	Pregnancy, Education and Parenting Program
395	Comprehensive Developmental Guidance Program on Elementary Campuses for Students in At Risk Situations
396	Communities in Schools
398	Children's Trust Fund of Texas
399	Campus Deregulation and Restructuring to Improve Student Achievement
401	Retention Reduction Grant (State-Funded Optional Extended-Year Program)
420	Foundation School Program and other State Aid (Charter School Only)
429	State Funded Special Revenue Funds
461	Campus Activity Funds
499	Locally Funded Special Revenue Funds

Note: Refer to Appendix 4 to determine if the LEA's State Fiscal Stabilization Funds (SFSF) received under the American Recovery and Reinvestment Act of 2009 (ARRA) must be included in the LEA's determination of comparability of services.

Function Codes	
00	No Function
11	Instruction
12	Instructional Resources and Media Services
13	Curriculum Development and Instructional Staff Development
21	Instructional Leadership
23	School Leadership
31	Guidance, Counseling, and Evaluation Services
32	Social Work Services
33	Health Services
34	Student (Pupil) Services
35	Food Services
36	Cocurricular/Extracurricular Activities
41	General Administration
51	Plant Maintenance/Operations
52	Security and Monitoring Services
53	Data Processing Services

Role IDs			
002	Art Therapist	026	Speech Therapist
003	Assistant Principal	027	Superintendent/Chief Administrative Officer
004	Assistant/Associate/Deputy Superintendent	028	Teacher Supervisor
005	Associate School Psychologist	<del>029</del>	<del>Teacher</del> (see 087)
006	Audiologist	030	Visiting Teacher
007	Corrective Therapist	032	Vocational Education Coordinator
008	Counselor	033	Educational Aide
011	Educational Diagnostician	036	Certified Interpreter
012	Instructional Officer	037	Non-Certified Interpreter
013	Librarian	040	Athletic Director
015	Music Therapist	041	Teacher Facilitator
016	Occupational Therapist	042	Teacher Appraiser
017	Orientation and Mobility Instructor	043	Business Manager
018	Physical Therapist	044	Tax Assessor and/or Collector
019	Physician	045	Director of Personnel/Human Resources
020	Principal	047	Substitute Teacher
021	Recreational Therapist	054	Department Head
022	School Nurse	055	Registrar
023	School Psychologist	056	Athletic Trainer
024	Social Worker	058	Other Campus Professional Personnel
<del>025</del>	<del>Special Duty Worker</del> (see 087)	087	Teacher (combination of former codes 025 and 029)

Object Codes			
6112	Salaries or Wages for Substitute Teachers	6249	Contracted Maintenance and Repair
6119	Salaries or Wages—Teachers and Other Professional Personnel	6259	Utilities
6121	Extra Duty Pay/Overtime—Support Personnel	6269	Rentals-Operating Leases
6129	Salaries or Wages for Support Personnel	6299	Miscellaneous Contracted Services
6131	Contract Buyouts	6311	Gasoline and Other Fuels for Vehicles (Including Buses)
6132	\$1,000.00 TRS Supplemental Compensation	6319	Supplies for Maintenance and/or Operations
6139	Employees Allowances	6321	Textbooks
6141	Social Security/Medicare	6329	Reading Materials
6142	Group Health and Life Insurance	6339	Testing Materials
6143	Workers' Compensation	6341	Food
6144	Teacher Retirement/TRS Care—On-Behalf Payments	6342	Non-Foods
6145	Unemployment Compensation	6343	Items for Sale
6146	Teacher Retirement/TRS Care	6344	USDA Donated Commodities
6149	Employee Benefits	6349	Food Service Supplies

6211	Legal Services	6399	General Supplies
6212	Audit Services	6411	Travel and Subsistence—Employee Only
6213	Tax Appraisal and Collection	6412	Travel and Subsistence—Students
6219	Professional Services	6413	Stipends-Non-Employees
6221	Staff Tuition and Related Fees—Higher Education	6419	Travel and Subsistence—Non-Employees
6222	Student Tuition—Public Schools	6429	Insurance and Bonding Costs
6223	Student Tuition—Other than to Public Schools	6439	Election Costs
6224	Student Attendance Credits	6449	Depreciation Expense
6229	Tuition and Transfer Payments	6500	Debt Service
6239	Education Service Center Services	6600	Capital Outlay

## Appendix 3

### Example of "B" Series of Tests

This appendix refers to an example of a school district, described in the table below.

In this example, Campus #101 does not meet the comparability requirements for either state and local expenditures or base salaries because the campus averages for those two tests (1B and 2B) fall outside of the 90 percent to 110 percent range. Campus # 101 does meet comparability requirements for Test 3B. The test results for all of the other campuses fall within the range and meet comparability requirements for Tests 1B, 2B, and 3B.

Example:

A	B	C	D	E	F	G	H	I
Campus #	Title I or Skipped	Campus Enrollment	Campus State and Local Expenditures	Campus Base Salaries for Non-Federal Staff	Campus Non-Federal Staff FTEs	Test 1B State & Local Exp Avg	Test 2B Base Salary Avg	Test 3B Enroll/ FTE Avg
101	Y	500	\$1,100,000	\$900,000	35	2,200.00	1,800.00	14.29
102	Y	600	1,300,000	1,000,000	40	2,166.67	1,666.67	15.00
103	Y	700	1,400,000	1,100,000	45	2,000.00	1,571.43	15.56
104	Y	800	1,500,000	1,200,000	50	1,875.00	1,500.00	16.00
105	Y	900	1,600,000	1,300,000	55	1,777.78	1,444.44	16.36
<b>Totals</b>		<b>3,500</b>	<b>\$6,900,000</b>	<b>\$5,500,000</b>	<b>225</b>			

- Test 1B—Average State and Local Expenditures Per Pupil. This test calculates the *campus average* state and local expenditures per pupil and compares results with the *grade-span average* state and local expenditures per pupil. The individual campus results must fall within 90 percent to 110 percent of the grade-span average in order for the campus to achieve compliance.

Using the data from the table above, the grade-span average state and local expenditures per pupil can be calculated by dividing the total for Column D (\$6,900,000) by the total for Column C (3,500) to get \$1,971.43. The required range for an individual campus average of state and local expenditures per pupil must thus be between \$1,774.29 (90 percent of the average) and \$2,168.57 (110 percent of the average).

In this example, all of the campuses except Campus #101 meet the comparability requirements for Test 1B (Column G) because their average state and local expenditures fall within the calculated range.

- Test 2B—Average Base Salaries Per Pupil. This test calculates the *campus average* base salaries for non-federal FTEs per pupil and compares results with the *grade-span average* base salaries for non-federal FTEs per pupil. The individual campus results must fall within 90 percent to 110 percent of the grade-span average in order for the campus to achieve compliance.

Using the data from the table above, the grade-span average base salaries per pupil can be calculated by dividing the total for Column E (\$5,500,000) by the total for Column C (3,500) to get \$1,571.43. The required range for an individual campus average of base salaries for non-federal

FTEs per pupil must thus be between \$1,414.29 (90 percent of the average) and \$1,728.57 (110 percent of the average).

In this example, all of the campuses except Campus #101 meet the comparability requirements for Test 2B (Column H) because their average base salaries for non-federal FTEs fall within the calculated range.

- Test 3B—Average Pupils Per FTEs. This test calculates the *campus average* pupils per non-federal FTEs and compares results with the *grade-span average* pupils per non-federal FTEs. The individual campus results must fall within 90 percent to 110 percent of the grade-span average in order for the campus to achieve compliance.

Using the data from the table above, the grade-span average pupils per non-federal FTEs can be calculated by dividing the total for Column C (3,500) by the total for Column F (225) to get 15.556. The required range for an individual campus average pupils per non-federal FTEs must thus be between 14.000 (90 percent of the average) and 17.111 (110 percent of the average).

In this example, all of the campuses meet the comparability requirements for Test 3B because their average pupils per non-federal FTEs fall within the calculated range.

## Appendix 4

### Comparability and State Fiscal Stabilization Funds

[The following is an excerpt from guidance provided by the USDE concerning the applicability of the comparability of services requirements to SFSF funds received under ARRA.]

#### Questions and Answers Regarding Comparability

**Question C-8:** Must a school receiving Title I, Part A ARRA funds meet the comparability requirements in section 1120A(c) of the Elementary and Secondary Education Act of 1965 (ESEA)?

**Answer C-8:** Yes.

**Question C-9:** How are school personnel who are paid with SFSF funds treated in determining comparability?<sup>1</sup> [This question replaces the old C-12.]

**Answer C-9:** In light of the wide variety of activities for which SFSF funds may be used, the determination of whether they are treated as federal funds or state or local funds for purposes of comparability determinations should be made in consideration of the particular activity for which the funds are being used. Under section 14003(a) of ARRA, SFSF funds may be used for any activity that is authorized by the ESEA, the Individuals with Disabilities Education Act (IDEA), the Adult and Family Literacy Act, or the Carl D. Perkins Career and Technical Education Act of 2006, among other certain specified activities. The activities authorized by the ESEA include activities that are authorized by Title VIII of the ESEA, the Impact Aid Program. Because Impact Aid is considered general aid to recipient LEAs, Impact Aid funds may be used for any educational activity consistent with local and state requirements. As such, Impact Aid funds are effectively deemed state and local funds for which no accountability to the federal government is required, and staff that are paid with Impact Aid funds are included in comparability determinations.

Accordingly, if school personnel are paid with SFSF funds on the basis that the funds are being used for activities that are authorized by Impact Aid—*i.e.*, the funds are being used to pay school personnel who would ordinarily be supported with state or local funds in the absence of the current economic conditions—then the school personnel should be considered to be paid with state or local funds and should be included in comparability determinations. If, however, school personnel are paid with SFSF funds for activities that are authorized by one of the other federal programs set forth above—*e.g.*, in the absence of the SFSF funds, the staff member would otherwise be paid with IDEA funds—then the individual paid with those funds should be considered to be federally funded and should not be included in comparability determinations.

An LEA must include an explanation of how it treats SFSF funds—paid staff in the comparability procedures it is required to develop under section 1120A(c)(3)(A) of the ESEA.

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<sup>1</sup> The comparability of services requirement in section 1120A(c) of the ESEA requires an LEA to use state and local funds to provide services in each of its Title I schools that, taken as a whole, are at least comparable to the services it provides in its non-Title I schools. If all an LEA's schools are all Title I schools, the LEA must use state and local funds to provide services that, taken as a whole, are substantially comparable in each school.

## Questions and Answers regarding Supplement, Not Supplant

**Question C-10:** Do the supplement, not supplant requirements in sections 1120A(b) and (d) and 1114(a)(2)(B) of the ESEA apply to Title I, Part A ARRA funds?

**Answer C-10:** Yes.

**Question C-11:** May Title I, Part A ARRA funds be used to support activities that were previously supported with non-federal funds without violating the supplement, not supplant requirement?

**Answer C-11:** It depends. A determination of supplanting necessitates determining what activities an LEA would conduct with non-federal funds if it had no Title I, Part A funds. Generally, an LEA may not use Title I, Part A funds for activities that it would have conducted in the absence of Title I, Part A funds. Several situations give rise to a presumption of supplanting (*i.e.*, a presumption that the LEA would conduct the activity with non-federal funds if it had no Title I, Part A funds available): (1) the activity is required by local, state, or other federal law; (2) the LEA conducted the activity in the prior year with non-federal funds; or (3) the LEA uses non-federal funds to provide the same activity for non–Title I students or in non–Title I schools that it provides with Title I, Part A funds for Title I students in Title I schools.

Thus, the use of Title I, Part A ARRA funds for an activity that an LEA provided in the prior year with non-federal funds generally gives rise to a presumption that the LEA would have continued to use non-federal funds to conduct the activity this year in the absence of Title I, Part A ARRA funds and, therefore, the use of Title I Part A funds for that activity would constitute supplanting. The LEA may overcome this presumption, however, under the following conditions:

- The LEA can demonstrate that there was a reduction in the amount of non-federal funds available to the LEA to pay for the activity previously supported by non-federal funds or the LEA can demonstrate that its educational priorities with respect to its use of non-federal funds have changed.
- The LEA makes the decision to eliminate the activity without taking into consideration the availability of Title I, Part A funds, as documented by fiscal and programmatic records confirming that, in the absence of Title I, Part A funds, the LEA would have eliminated the activity. These records, for example, might document the reduction in non-federal funds or explain what priorities changed to warrant a shift of non-federal funds away from those priorities and the LEA's reasons for choosing to eliminate non-federal support for the priorities. Please note that such documentation must be *contemporaneous* with the LEA's decision-making process; it is very difficult to rebut a presumption of supplanting after the fact.
- The activity now paid with Title I, Part A funds is allowable under Title I, Part A and consistent with all Title I fiscal and programmatic requirements. This means, for instance, that a teacher formerly paid from non-federal funds must be (1) engaged in activities that are allowable under Title I, Part A; (2) meeting the academic needs of Title I students identified through a school-wide program school's comprehensive needs assessment or providing supplemental services in a targeted-assistance school; and (3) conducting activities consistent with the LEA's application approved by the SEA [state education agency].
- Using Title I, Part A funds for the activity also meets the general standards established in Office of Management and Budget (OMB) Circular A-87 Cost

*Principles for State, Local, and Indian Tribal Governments* (OMB Circular A-87). OMB Circular A-87 requires that the use of funds for a specific purpose be necessary and reasonable for the proper and efficient performance and administration of the program and be authorized and not prohibited under state and local laws or regulations.

If an LEA can successfully rebut the presumption of supplanting, the LEA may use Title I, Part A ARRA funds to support an activity that it previously supported with non-federal funds. On the other hand, if the LEA is unable to rebut this presumption, it may not use Title I, Part A ARRA funds for an activity that it conducted the previous year with non-federal funds because such use would be inconsistent with the Title I, Part A supplement, not supplant requirements. For additional information on the Title I, Part A supplement, not supplant requirements; see the relevant section in the Title I Fiscal Guidance [available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>].

**Question C-12:** How are SFSF funds treated in determining compliance with the supplement not supplant requirements in Title I, Part A? [This question replaces the old C-10.]

**Answer C-12:** An LEA should treat SFSF funds for purposes of determining compliance with the supplement not supplant requirements set forth in sections 1120A(b) and 1114(a)(2)(B) of the ESEA in the same way it treats SFSF funds for purposes of comparability. (See C-9 for how SFSF funds are treated for comparability purposes.) That is, whether SFSF funds are treated as federal funds or as state or local funds for purposes of determining compliance with the supplement not supplant requirements should be made based on the particular activity for which the funds are being used. Accordingly, if SFSF funds are being used to support activities that are authorized by Impact Aid—*i.e.*, the funds are being used as state or local funds—then the activities supported with the SFSF funds should be considered to be supported with state and local funds. Accordingly, if an LEA uses Title I, Part A funds in subsequent years to support those activities, the presumptions discussed above would be applicable. If, however, an LEA uses SFSF funds to support activities that are authorized by the other federal programs enumerated in section 14003(a) of the ARRA, then those activities should be considered to be federally funded and would not be part of a supplanting determination under Title I.