



Public Comment Period

NYSED Request for Public Comments on Waivers to Increase the Statutory Limit on Carryover for FY 2019 Title I, Part A Funds, to Extend Availability of Federal FY 2018 Elementary and Secondary Education Act Funds, and to Increase Flexibility in the Use of Title IV, Part A Funds to Support Continuity of Services

May 5, 2020

The New York State Education Department (NYSED) has submitted a request for a waiver of the carryover limitation in section 1127(b) of the Elementary and Secondary Education Act of 1965 (ESEA) for Federal fiscal year (FY) 2019 Title I, Part A funds (i.e., the Title I, Part A funds that will become carryover funds on October 1, 2020): the requirement that limits a State Educational Agency's (SEA's) ability to grant to its LEAs a waiver of the 15 percent Title I, Part A carryover limitation in section 1127(a) more than once every three years.

NYSED has also submitted a request for a waiver of the period of availability of funds in section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2018 funds for the following programs in which NYSED participates under our approved consolidated State plan until September 30, 2021:

- Title I, Part A of the ESEA (Improving Basic Programs Operated by LEAs), including the portions of the SEA's Title I, Part A award used to carry out section 1003 school improvement, section 1003A direct student services, if applicable, and Title I, Part D, Subpart 2
- Title I, Part B of the ESEA (State Assessment Formula Grants)
- Title I, Part C of the ESEA (Education of Migratory Children)
- Title I, Part D, Subpart 1 of the ESEA (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk)
- Title II, Part A of the ESEA (Supporting Effective Instruction)
- Title III, Part A of the ESEA (English Language Acquisition, Language Enhancement, and Academic Achievement)
- Title IV, Part A of the ESEA (Student Support and Academic Enrichment Grants)
- Title IV, Part B of the ESEA (21st Century Community Learning Centers)
- Title V, Part B, Subpart 2 of the ESEA (Rural and Low-Income School Program)
- McKinney-Vento Education for Homeless Children and Youth Program

NYSED has also submitted a request for a waiver of the following requirements in Title IV, Part A of the ESEA:

- Needs assessment requirements in section 4106(d) for the 2019-2020 school year.

- Content area spending requirements in section 4106(e)(2)(C), (D), and (E): the requirements to use a minimum percentage of Title IV, Part A funds for activities under sections 4107, 4108 and 4109 for FY 2019 funds and any available FY 2018 carryover funds.
- Spending limitation in section 4109(b): the 15 percent limit on the use of funds under section 4109 to purchase technology infrastructure for FY 2019 funds and any available FY 2018 carryover funds.
- The definition of professional development in section 8101(42) of the ESEA for the 2019-2020 school year.

NYSED has requested these waivers because it is not possible to obligate funds on a timely basis as originally planned due to extensive school closures in the State. In addition, New York State needs increased flexibility in the use of Title IV, Part A funds to support continuity of services due to these school closures. The school closures also present unique needs with respect to professional development for educators to meet the immediate needs of children whose education has been severely disrupted by school closures. These closures are in response to extraordinary circumstances for which a national emergency has been duly declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and will protect the health and safety of students, staff, and our communities.

In seeking these waivers, NYSED was required to provide assurance that NYSED and our Local Educational Agencies (LEAs) will use funds under the respective programs in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to these waivers, and that NYSED will work to mitigate, and ensure that our LEAs will work to mitigate, any negative effects, if any, that may occur as a result of the requested waivers.

Additionally, NYSED is required to provide the public and all Local Educational Agencies (LEAs) in the State with notice of and the opportunity to comment on this request. Comments may be submitted via email to FundingFlexibilities@nysed.gov with "Waiver Comments from (sender/organization name)" in the subject line. Comments will be accepted through May 19, 2020.