

June 2, 2009

Joseph Conaty  
Acting Assistant Secretary  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Acting Assistant Secretary Conaty:

We are writing to inquire how the State *Grants for Innovative Programs, Title V Part A, FY 2008 Transferability and Flexibility Options* guidance dated March 2008 affects the period of availability of the transferred funds.

The March 2008 guidance makes it clear that a State educational agency (SEA) may continue to transfer eligible fiscal year (FY) 2008 non-administrative funds to eligible Title V Part A program allotments under the Elementary and Secondary Education Act (ESEA) through September 30, 2009. A local educational agency (LEA) may also transfer eligible FY 2008 funds to eligible program allotments in Title V Part A through September 30, 2009. We are assuming that the reference to FY 2008 funds is to funds appropriated in the federal fiscal year 2008 which became available for obligation on July 1, 2008 and remain available for 27 months from that date, until September 30, 2010.

The March 2008 guidance does not clarify whether an SEA or an LEA that transferred these funds to eligible Title V Part A program allotments prior to September 30, 2009 transferability deadline may continue to obligate them past September 30, 2009 for their full period of availability, until September 30, 2010. This has caused confusion and hesitation among grant administrators who would like to make the transfers into Title V Part A, but seek assurance that the funds will retain their availability thru September 30, 2010.

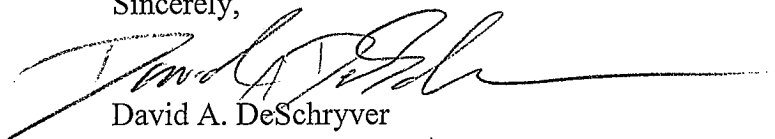
The June 2004 *Guidance on the Transferability Authority* states that "transferability does not extend the period during which an SEA may obligate funds because transferred funds retain the identity of the fiscal year for which the funds were appropriated. Funds may be transferred only to an allocation of the same fiscal year." (*Guidance on the Transferability Authority* at question I-D-6). The guidance also makes clear that "funds may not be transferred from an account for one fiscal year to an account for another fiscal year. Allocated funds retain the identity of the fiscal year for which they are appropriated." (*Id.* at question I-D-5). These requirements also apply to LEAs.

In light of the June 2004 guidance, we have the following question regarding the March 2008 guidance. When an SEA and an LEA transfers eligible fiscal year 2008 funds to an eligible allotment under Title V Part A of the ESEA prior to September 30, 2009, do the funds retain

their original 27 month period of availability, beginning on July 1, 2008 until September 30, 2010?

Thank you in advance for addressing this question in a timely manner. This issue is of compelling and immediate interest to many of our state clients and your response will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "David A. DeSchryver", with a long horizontal flourish extending to the right.

David A. DeSchryver