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Tightening Up Title I

How the Supplement-Not-Supplant Requirement Can Work Against the Policy Goals of Title I

A Case for Using Title I, Part A, Education Funds More Effectively and Efficiently

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Introduction and summary

Title I of the Elementary and Secondary Education Act, a federal program to provide additional assistance to academically struggling students in high-poverty areas, has long contained a provision called the "supplement-not-supplant" requirement.[1] This provision was designed to ensure Title I funds were spent on extra educational services for at-risk students, but in practice, the rule as it is currently enforced can prevent school districts and schools from spending federal money on effective educational strategies. Complying with the supplement-not-supplant rule also carries an enormous administrative burden.

Spending Title I funds effectively on academically struggling and at-risk students can be difficult because the federal government currently tests for supplement-not-supplant violations on a cost-by-cost basis. In other words, school districts and schools must prove that each individual cost charged to Title I supports an activity the district or school would not have otherwise carried out with state or local funds. Any cost a school district or school would have paid for in the absence of Title I is not considered to be extra.

Federal administrative rules instruct auditors and other oversight personnel to presume that activities mandated by law, previously supported with state or local funds, or benefiting all students are, by default, not extra. As a result, it is difficult for school districts and schools to:

- Implement comprehensive programs with Title I funds (please see page 13 for an example)
- Implement innovative programs with Title I funds (please see page 16 for an example)
- Manage administrative responsibilities in a way that minimizes burden (please see page 14 for more information)

This works against Title I's goals of ensuring all students have access to a high-quality education, and targeting resources effectively to make a difference where needs are greatest.[2]

Title I was designed to be a flexible program, giving school districts and schools latitude to spend Title I funds on a broad array of educational services as long as they are consistent with the program's purposes. The supplement-not-supplant rule as it is currently enforced, however, substantially limits how school districts and schools may spend their Title I funds, restricting the ways in which Title I can support at-risk students.

This paper briefly describes the origins of Title I's supplement-not-supplant requirement and provides examples of how the rule affects state and local implementation of Title I programs. This paper also offers three options for reforming the rule:

- Replace the current "cost-by-cost test" with a test that focuses on the amount of state and local funding Title I schools receive to ensure such funds are allocated neutrally without regard to the Title I funds available to the school.

- Allow the U.S. Department of Education, and perhaps state educational agencies, to waive the supplement-not-supplant requirement as needed to promote effective and efficient educational strategies for at-risk students.

- Eliminate the supplement-not-supplant test altogether.

The purpose of this paper is to explore the ways in which the supplement-not-supplant requirement works against the goals of Title I and to offer suggestions for alternatives that better promote the responsible use of Title I funds.

Overview of the supplement-not-supplant requirement

> *A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.*
>
> *– Section 1120A of the Elementary and Secondary Education Act*

At its most basic, Title I's supplement-not-supplant provision requires states and districts to use Title I funds to add to (supplement) and not replace (supplant) the state and local funds they spend on education. In other words, Title I funds are not meant to substitute for state and local funds, but rather provide an additional layer of support. Thus, states and districts are required to demonstrate that Title I funds are used to purchase extra academic services, staff, programs, or materials the state or district would not normally provide.

Supplement-not-supplant is best understood as a fiscal test that states and districts must apply to verify they are spending Title I funds on extra costs. It is one of three fiscal tests a school district must meet in order to spend Title I funds, each of which operates differently:

- **Test #1—Maintenance of effort.** The maintenance-of-effort provision focuses on spending at the school district level. To receive Title I funds, a district generally may not reduce the amount of state and local money it spends for public education from one year to the next.[3] This test looks at the total amount of state and local money a district spends each year.

- **Test #2—Comparability.** The comparability provision focuses on services supported at the school level with state and local funds and is a prerequisite for receiving Title I funds. To receive Title I funds, a district must verify it uses state and local funds to provide services in Title I schools that, taken as a whole, are at least comparable to the services provided in schools that are not receiving Title I funds.

- **Test #3—Supplement-not-supplant.** The supplement-not-supplant provision focuses on individual costs as it is currently enforced. A state, district, or school that receives Title I funds must verify all costs paid with Title I funds are additional to what the agency would otherwise provide with state and local funds. This test looks at what the agency would have done in the absence of federal funds. At the school level, supplanting is analyzed differently in a Title I "targeted assistance" school versus a "schoolwide" school, which is discussed in further depth on page 8 of this report.

Finally, it is important to address the relationship between Title I and low-income children in order to understand the challenges of the supplement-not-supplant requirement. While the Title I program was designed to address poverty in general, and money is allocated to school districts and schools based on aggregate poverty levels, individual students are eligible for Title I services based on *academic need*, not economic disadvantage. Thus, in a Title I "targeted assistance" school—the current "default" program model that delivers services only to specifically identified students within the school—a Title I student may be poor or wealthy—eligibility depends on whether the student is struggling academically, not the student's socioeconomic status.[4] In a Title I "schoolwide" school—a model for delivering services in high-poverty schools that meet certain criteria—all students are eligible to receive services, though the law still requires schools to pay special attention to academically struggling students.[5] Services are not targeted to students based on poverty.

Understanding student eligibility for the Title I program is an important framework for understanding the modern challenges of the supplement-not-supplant requirement.[6]

History and policy behind supplement-not-supplant

> *In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance … to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means … which contribute particularly to meeting the special educational needs of educationally deprived children.*
>
> *– Original "Declaration of Policy" from the Elementary and Secondary Education Act of 1965*

Although supplement-not-supplant is a fiscal test, it has been closely connected to the policy purpose of Title I and the debate about what that purpose is, throughout its history.

In a 2001 anthology on the history of Title I, Jack Jennings, a former high-level congressional staffer and current director for the Center on Education Policy, explains that Title I went through an identity crisis in the early years of its implementation as policymakers and early federal administrators of the program struggled to determine Title I's purpose.[7]

On the one hand, the law was enacted as the cornerstone of President Johnson's war against poverty. It was based on the belief that providing extra financial assistance to high-poverty school districts would help raise the quality of education those districts could provide. Thus, some policymakers, whom Jennings calls "traditionalists," felt the Title I program was simply a mechanism to deliver aid to needy school districts. Those districts would then have substantial flexibility in how they spent the funds.

On the other hand, the law was designed to help "educationally deprived children." Thus, other policymakers, whom Jennings calls "reformers," felt Title I funds should be spent only on targeted services for specific groups of needy students instead of for the benefit of school districts as a whole.

When a well-publicized report drew attention to the fact that Title I funds often were being spent on general school expenses, including operational costs, rather than specific services for at-risk students, Jennings argues the pendulum shifted to the "reformers."[8] Congress responded by imposing a supplement-not-supplant requirement on Title I funds. As a result, the U.S. Department of Education used the supplement-not-supplant requirement to enforce the idea that states and districts should not use Title I funds on general education expenses. This was intended to ensure funds were concentrated on educationally disadvantaged children. Any cost that was provided to all students was considered a general expense and could not be supported with Title I funds.

In essence, federal enforcement of the supplement-not-supplant requirement became a change management tool—a way to communicate to states and districts accustomed to receiving flexible federal grants that Title I money was meant to be concentrated on specific students.

Thus, by the mid-1970s, Title I's supplement-not-supplant requirement was an important enforcement tool used by the federal government to direct schools and districts to provide additional services and resources to Title I students, instead of having Title I funds benefit a school or district as a whole. From that perspective, supplement-not-supplant did help further some of the initial goals of Title I. Yet, as the law continued to evolve, it is not clear that the supplement-not-supplant requirement is consistent with the policy goals of today's Title I.

Supplement-not-supplant and today's Title I

> *The purpose of this title is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.*
>
> *– Statement of Purpose from currently authorized Elementary and Secondary Education Act*

In many ways, Title I's identity crisis still exists, but has evolved. By statute, schools and districts must use Title I funds to improve the academic achievement of specifically identified students including:

- Students who are failing or most at risk of failing to meet state standards as determined through multiple, educationally related, objective criteria established by school districts and schools
- Children who participated in certain federally supported preschool programs such as Head Start
- Migrant students
- Neglected and delinquent students
- Homeless students[9]

Therefore, at the individual student level, poverty is not a criterion for receiving services, and a student's eligibility for Title I services has nothing to do with the student's income level. While funds are distributed in substantial part based on poverty levels, Title I funds are to be used to help academically disadvantaged students.

The current tension revolves around how best to improve the achievement of academically disadvantaged students.

As the federal government began to use supplement-not-supplant and other fiscal requirements to crack down on improper Title I spending, districts responded by using Title I funds to build programs for at-risk students that were separate and distinct from the regular classroom's program. Districts relied heavily on "pull-out" models that removed academically at-risk children from the normal classroom because such programs made it easier to demonstrate that Title I funds were being used to provide extra services.

Yet, federal policymakers now point to research showing that offering "compartmentalized services" may not be the most effective way to improve the academic performance of at-risk students, particularly in schools with high concentrations of poverty.[10] Instead, these policymakers have relied on research pointing to the value in implementing comprehensive strategies throughout a school to improve the academic performance of all students, particularly those most academically at risk.[11]

As a result, federal policy now encourages states and districts to use funds more comprehensively. At the legislative level, Congress has worked to make federal education programs more consistent so that elementary and secondary education, special education, and career and technical education programs can be offered more seamlessly. At the executive level, the U.S. Department of Education actively encourages districts to incorporate their Title I services into broader educational improvement plans. Rather than offering programs in silos—like a pull-out Title I program—the department encourages districts to integrate Title I services into more comprehensive school-reform efforts.

Nowhere is this policy intention more clear than with the concept of schoolwide programs. Title I authorizes two different models for delivering services:

- **Model #1—Targeted assistance.** Any school receiving Title I funds may choose to operate a targeted-assistance model. In a targeted-assistance program, the school identifies specific academically at-risk students and may use Title I funds only to serve those selected students. In other words, the school maintains a list of eligible children—if a student is not on the list, then he or she cannot receive Title I services.

- **Model #2—Schoolwide.** High-poverty schools, those in which at least 40 percent of the students are from low-income families, may choose to operate a schoolwide program model if they also meet certain other criteria, such as having a schoolwide plan with specific required components. In a schoolwide program all students are eligible to participate in Title I-funded services, and the school uses its Title I funds to upgrade the school's entire educational program. The goal is to improve the academic performance of all students, particularly the lowest-achieving students.

While both models are permissible, from a policy perspective the federal government encourages eligible schools to implement schoolwide programs. The Title I statute requires states to encourage schools to implement schoolwide programs and to reduce barriers to schoolwide implementation.[12] Additionally, the U.S. Department of Education promotes the benefits of the schoolwide model in its nonregulatory guidance.[13]

In addition to the comprehensive nature of schoolwide programs, the U.S. Department of Education has encouraged that model as a way to use Title I to promote innovation. In nonregulatory guidance on designing schoolwide programs, the department noted, "the Title I schoolwide process supports the creation of high-performing schools by encouraging schools to make significant, even radical, changes in how they do business."[14]

From a practical standpoint, however, it can be very difficult for districts and schools to implement comprehensive programs with Title I funds, including schoolwide programs, and supplement-not-supplant is one of the most significant barriers.

Practical implementation

To best understand the practical challenges of dealing with supplement-not-supplant, it is important to understand how the provision has been interpreted by executive branch agencies. As discussed above, the Title I statute requires states and school districts to use Title I funds only to supplement and not to supplant state and local funds that would be available in the absence of federal funds. While the statute is silent as to how a state or school district can demonstrate compliance with the supplanting requirement, executive branch agencies have imposed a cost-by-cost test for supplanting. As explained in more detail below, this cost-by-cost approach to supplanting leads to practical outcomes very different from what Congress likely intended.

Because it is very difficult to determine what a state or school district would have done in the "absence of federal funds" as is required by the Title I statute, the executive branch developed three "presumptions" of supplanting that are used by the U.S. Department of Education and other oversight entities, including auditors and monitors,[15] to determine if supplanting has occurred:

- **Presumption #1—Required by law.** Supplanting is presumed if a state, district, or school uses Title I funds to pay for something that it is required to provide under other federal, state, or local laws. If state law requires a school district to maintain a specific class size, for example, then the district could not use Title I funds to pay the salary of any teacher used to meet the state's class-size reduction mandate.

- **Presumption #2—Supported last year.** Supplanting is presumed if a state, district, or school uses Title I funds to pay for something it supported last year with state or local funds.[16] If a district used state and local funds to support reading coaches one year, for example, then it could not use Title I funds to pay for those same reading coaches the next year.

- **Presumption #3—Provided to everyone.** Supplanting is presumed if a state, district, or school uses Title I funds to pay for services to Title I students if the state, district, or school uses state or local funds to provide the same services to other students. A district cannot use Title I funds to offer extended day schooling to Title I students, for example, if it provides the same extended day schooling to non-Title I students with state or local funds.

These presumptions can be overcome (or rebutted) in limited circumstances where a state, district, or school can demonstrate to an auditor or monitor's satisfaction that it would not have supported a particular cost in the absence of Title I, but in practice this is very hard to do.[17] These presumptions also work differently in schools that have implemented schoolwide programs, which is discussed in more detail below.

While the three presumptions are not contained in the Title I statute or regulations, they are the method the U.S. Department of Education, auditors, monitors, and other oversight entities use to test compliance with the supplement-not-supplant requirement. The presumptions are included in several nonregulatory guidance documents prepared by the department and also in a set of instructions the U.S. Department of Education and the Office of Management and Budget jointly issue to auditors.[18]

These three presumptions result in supplanting being tested for on a cost-by-cost basis, where each individual item purchased with Title I funds must satisfy the above criteria in order to be considered "extra." Thus, it is nearly impossible to say with any certainty exactly what constitutes supplanting because the analysis varies from cost to cost, entity to entity, and reviewer to reviewer. Consider these statements from the U.S. Department of Education during a 2004 webinar on supplement-not-supplant:

> *[Supplement-not-supplant] sounds like a very simple requirement, but … it [is] very fact specific. And, you really can't talk about it well in general terms because it is so dependent upon the facts of the specific situation.*
>
> *Again you have to look at it on a case-by-case basis … it's difficult to always to say, at first blush, it appears to be supplanting, but when you look at the detail, that may not be the case. So, again, it's very case-specific. We would have to look at that situation in a lot more detail.*[19]

This cost-by-cost test creates variability and burden. Unlike maintenance of effort, which focuses on aggregate spending from year to year, or comparability, which focuses on spending from school to school, states, districts, and schools cannot perform one single calculation to demonstrate they have complied with supplement-not-supplant. Rather, they must justify each cost charged to Title I funds in light of the three presumptions above, be they goods, services, or salary costs.

What does this all mean for the practical implementation of Title I? Supplement-not-supplant has at least three effects that arguably work against the goals of Title I:

Supplement-not-supplant makes it difficult to implement comprehensive programs with Title I funds

As discussed above, both Congress and the U.S. Department of Education encourage states, districts, and schools to implement comprehensive programs to ensure services are coordinated across a school. Supplement-not-supplant, however, is designed to ensure Title I funds remain focused on a select group of students and requires states, districts, and schools to ensure those students receive unique services that non-Title I students do not receive.

This makes it administratively difficult to coordinate services. Consider, for example, that the U.S. Department of Education has advised it would constitute supplanting to:

- Use Title I funds to pay for services written into the individualized education plan of a student with disabilities, complicating the coordinated delivery of Title I and special education services to a student eligible for both[20]

- Use Title I funds to pay for certain services to English language learners, complicating the coordinated delivery of Title I and other services to these students[21]

Therefore, it is easiest for a district to comply with the supplement-not-supplant requirement when it can segregate services into separate silos in order to prove that each funding source is paying for the appropriate services. (see box "Example: Response to intervention")

The federal government recognized some of the challenges supplement-not-supplant can pose when coordinating services, so Congress tried to mitigate those challenges for schools implementing schoolwide programs. While schoolwide program schools still must use Title I funds to add to and not replace the state and local funds they would normally spend, there is no individual cost test written into the statute. Instead of evaluating each cost charged to Title I using a cost-by-cost test, the focus of schoolwide programs is on ensuring the school, in the aggregate, received all of the state and local money it would normally receive in the absence of Title I funds. Once that is established, the school is no longer required to demonstrate an individual cost is supplemental. (see box "Example: The special case of schoolwide programs")

Example: Response to intervention

Many states and districts are implementing tiered intervention programs to assist students that are struggling academically. This approach, also known as Response to Intervention, or RTI, typically uses data and progress monitoring to determine whether certain interventions are helping a student academically, and provides increasingly intensive supports when necessary. Because a well-designed RTI program provides different types of interventions to an individual student depending on what works for that student, it can be challenging to use federal funds, especially Title I, to support a comprehensive RTI model.

It is very difficult to "blend" Title I with other federal funds to implement a comprehensive approach to assist struggling students given the way supplement-not-supplant is enforced because a district must ensure all services to the student are "extra." For instance, any service that is offered to all children typically cannot be supported with Title I funds—even if the funds are only used for Title I-eligible students (but see information on schoolwide programs on page 13).

Therefore, a district could not use Title I funds to pay for a share of a districtwide universal screening program to find struggling readers, which could be an entry point for receiving RTI services. In addition, if any part of the RTI program is mandated by state or local law, it cannot be supported with Title I funds. Thus, a proactive state legislature or local board of education wishing to promote an RTI strategy could inadvertently prevent districts from supporting the program with Title I funds depending on how it worded language regarding the use of the RTI model.

While Title I funds can be used to support RTI programs, the money can only be used in limited circumstances. When the U.S. Department of Education released a presentation on the use of Title I funds to support RTI, it outlined nearly 15 different considerations a school or district would need to take into account before it could use Title I funds for an RTI-based service, most of them related to supplement-not-supplant considerations.[22] This imposes a substantial barrier to using Title I funds to implement an RTI model, especially when one remembers that each individual cost charged to Title I would have to be evaluated against supplement-not-supplant considerations.

Example: The special case of schoolwide programs

The idea behind the schoolwide model is that all children are eligible to participate, and that by upgrading the school's educational program, everyone will benefit, especially those most academically at risk. Thus, schools operating schoolwide models are not required to identify specific students eligible to receive services or demonstrate that particular costs are supplemental. In other words, unlike in a targeted assistance program, a schoolwide school could use Title I funds to improve its core curriculum or offer universal services to all students in the school.

While the normal supplement-not-supplant test requires a cost-by-cost analysis, the schoolwide test for supplanting is a modified test based on aggregate financial data; and like maintenance of effort and comparability, it is demonstrated at the district level. In the modified test for supplanting in a schoolwide school, a school district must be able to show that each schoolwide school received all of the state and local funds it would receive were it not a Title I school by demonstrating, through its regular procedures for distributing funds, that it distributes state and local funds fairly and equitably to all of its schools without regard to whether those schools are receiving federal education funds.[23]

In practice, however, there is substantial confusion about how this modified supplanting test works. Thus, many auditors, monitors, and even program administrators continue to apply the "normal" cost-by-cost test of supplanting in schoolwide programs. This happens for a few reasons.

First, there continues to be confusion in the field about the nature of schoolwide programs. As conceived by statute, the schoolwide model offers schools the opportunity to use their federal resources more flexibly to support comprehensive whole school reforms. In particular, the Title I statute requires schoolwide schools to determine what issues impact their students' academic performance and then use their Title I funds to address those issues. Schools may, but are not required to, use additional funding sources as well, such as other federal education funds and, if permitted, state and local funds. In other words, a schoolwide program can be supported exclusively with Title I funds or by a combination of funding sources, depending on state or local law, school district needs, and administrative capabilities.

Combining various funding sources is known as "consolidation," which could be either a literal consolidation of funds in an accounting system or a "virtual" consolidation, which simply recognizes that different individual funding streams are paying for different parts of a schoolwide program.

In recent years, the enforcement community has focused heavily on the concept of consolidation, appearing to link the programmatic flexibility offered in the Title I statute to the financial practice of consolidating funds. As a result, schools that do not consolidate Title I with other funding sources, which is the vast majority of schools operating schoolwide programs, are typically not afforded the full range of flexibilities available under Title I. This is particularly true when it comes to supplanting. The statute, however, does not require consolidation as a precondition for gaining programmatic flexibility—it is simply an option.

Second, there has been little technical assistance on how school districts can verify they meet the modified schoolwide test for supplanting, as opposed to the traditional "three presumption" cost-by-cost test. Thus, auditors, monitors, and other enforcement personnel have been left to design their own methodologies, which can vary dramatically from state to state, and often default back to the traditional supplanting test.

Knowing this, states often counsel their districts (and districts their schools) to analyze supplanting, even in a schoolwide program school, on an individual cost-by-cost basis, instead of using the aggregate test that is available. As a practical matter, this severely restricts the types of comprehensive academic supports that can be implemented in a schoolwide school.

As a result, even though Title I offers schoolwide programs flexibility in meeting the supplement-not-supplant requirement, supplement-not-supplant remains an administrative barrier to the implementation of schoolwide programs.

Even though the modified supplanting test for schoolwide programs has the potential to make the implementation of *school-level* programs easier to administer, it does not fully address the range of services Title I could offer. For instance, initiatives operated at the district level are not covered by the modified test, thus the traditional supplement-not-supplant test would apply.[24]

Supplement-not-supplant makes it difficult to implement innovative programs with Title I funds

Another key priority for Title I is the development of innovative programs that improve student achievement. This is particularly challenging in light of the current economic downturn and the closing of federal stimulus programs. Secretary of Education Arne Duncan recently challenged states, districts, and schools to embrace the "new normal" of doing more with less, and has promoted Title I as a way to drive needed reforms.[25] Supplement-not-supplant, however, runs contrary to these goals because it locks schools and districts into funding decisions they made in prior years and therefore limits districts' and schools' ability to move to innovative strategies or promising best practices. In short, supplement-not-supplant is a powerful lever in maintaining the status quo. (see boxes "Example: Expanding an innovative program" and "Example: District reform")

Supplement-not-supplant increases administrative burdens at all levels

One need only look to the examples above to realize that districts and Title I schools must extensively analyze each cost they propose to spend not only with Title I funds but also state and local funds to determine if the supplement-not-supplant requirement may have an effect in the future. States also are burdened by this rule when making their own state-level spending decisions, and even more significantly are burdened by their oversight responsibility in ensuring district-level compliance with supplement-not-supplant. Finally, because what constitutes supplanting varies from cost-to-cost depending on each situation's unique facts and circumstances, it is difficult for districts to know for certain when they are at risk of supplanting.

Example: Expanding an innovative program

As districts begin to think about implementing new and innovative programs, they may decide to pilot an initiative in a limited setting first. Once the program proves to be successful, they may then choose to roll it out to other students. To do this, however, it is critical that the district carefully consider how it will fund the pilot project and how it will expand the initiative if successful. Otherwise, it may find itself at risk of supplanting.

Consider a district that wishes to hire reading intervention specialists for a few schools to see whether they can improve student reading scores. The district uses Title I funds to hire specialists in its Title I schools and the initiative is successful. If the district wishes to expand the project to all of its schools, it may have to support the entire cost, including the cost of the already hired specialists, with state or local funds. This is because using Title I funds to provide services to Title I students, when the district provides the same services to non-Title I students with state or local funds, constitutes supplanting (see presumption #3 on page 10).

Thus, "scaling up" can mean losing the ability to support services with Title I funds. Given the significant budget pressures districts are experiencing across the country, the loss of any Title I support, even for a few specialists, may make it impossible to expand the project. Also, while it is possible to overcome the presumption in certain circumstances, it is up to the specific auditor, monitor, or other reviewer examining the cost to determine if the district has made a compelling case. The risk of a supplanting finding may be too high for a district.

Consider instead that the district uses state or local funds to hire the intervention specialists to pilot the program in a few of its Title I schools. The initiative is successful and the district wants to expand it for all Title I schools and fund the entire project with Title I. This would constitute supplanting, at least in the schools where the district has already funded intervention specialists with state or local money (see presumption #2 on page 10). This has the practical effect of not only locking the district into whatever funding decision it made in the first year of the pilot but also sends a confusing message to districts about how to responsibly use federal funds.

There are a variety of reasons why a district may choose to pilot a project that benefits Title I students with state and local money first. A district, for example, may have limited Title I resources and so may want to ensure a project is likely to be successful before picking up any costs with Title I—particularly in light of the governmentwide rule that all costs charged to federal grants must be "necessary and reasonable."[26] A district's wish to test a new project by supporting it with state and local funds first may be particularly relevant if the district is considering defunding a current Title I initiative in favor of a new initiative.

Although the district is trying to responsibly implement new and extra services by piloting an initiative, and initially bearing the cost with state and local funds, the bluntness of the cost-by-cost test makes it risky for a district to proceed using state or local funds. While this is not the kind of behavior the supplement-not-supplant requirement was trying to curtail, under the cost-by-cost test, districts are left with few options.

One option is to pilot the project with Title I from the beginning, requiring the district to reengineer its Title I budget before an innovative program has proven to be successful (which also shifts the risk the project will not be successful entirely to the federal government). Another is to simply bear the cost with state or local funds in perpetuity. Another is to attempt to persuade an oversight entity it did not supplant, but this means accepting the risk of potentially repaying funds if the oversight entity does not agree.

While there are ways around supplanting determinations, because supplanting is "in the eye of the beholder," it can be difficult for states, districts, and schools to establish reliable administrative controls to prevent supplanting. Therefore, the supplement-not-supplant requirement often disincentivizes states and districts from using Title I funds in new and more effective ways because of the administrative risks and burdens.

Example: District reform

Many school districts across the country face enormous financial and academic challenges. Whether these conditions were caused by a lack of resources, poor management, a lack of oversight, or something else, the effect is the same—misaligned budgets, burdensome bureaucratic procedures, and poor academic performance. Many of these districts are increasingly looking to outside specialists who can help reform the districts to better serve students.

The first thing a responsible specialist should do is examine the district's budget to determine where its money is going. Often this exercise will reveal substantial disconnects—among them, staff working on federal programs that might be paid with state or local funds, or other similar budget alignment problems. The practical thing to do would be to put the budget back into alignment, making sure that those working on federal programs are paid from the appropriate federal funding source, instead of with state or local funds.

Unfortunately, supplement-not-supplant would prevent this realignment (see presumption #2 on page 10) even if the end result of realigning budgets and expenditures would result in cost savings and increased efficiencies in federal programs and better management of district operations.

As these examples illustrate, supplement-not-supplant is a blunt tool that prevents districts from taking all sorts of actions, even when those actions may end up benefiting federal programs.

Potential solutions

To the extent supplement-not-supplant limits districts from using Title I funds on comprehensive, innovative, and reform-oriented costs, it can be said to work against the goals of the Title I program. There are three options to address this issue:

- Use a "Title I-neutral" allocation test for supplanting like the one originally designed for schoolwide programs.
- Allow the U.S. Department of Education, and perhaps state educational agencies, to waive the supplement-not-supplant requirement as needed to promote effective and efficient educational strategies for at-risk students.
- Eliminate the supplement-not-supplant test altogether.

Each option is examined in more depth below.

Use a "Title I-neutral" allocation test for supplanting rather than the traditional cost-by-cost analysis

Possible legislative language for a Title I-neutral allocation test:

> *In order to demonstrate compliance with the supplement-not-supplant requirement, a school district receiving Title I funds must be able to demonstrate that the methodology it uses to allocate state and local funds to each Title I school ensures the school receives all of the state and local funds it would otherwise receive if it were not a Title I school.*[27]

A Title I-neutral allocation test would look at how a school district allocates state and local funds to its schools to ensure the district's methodology does not take into account the Title I funds a school may receive. This would allow the U.S. Department of Education and other oversight entities to verify each Title I school receives the state and local money it is entitled to receive, and that its state and local allocation is not reduced as a result of *receiving Title I funds*. This is the same test currently designed for testing compliance with supplanting in schoolwide programs and could be expanded to all Title I schools. This test would not require districts or schools to "cost out" each item of their basic educational program supported with state and local funds; rather, this test would focus on whether the LEA had a Title I-neutral methodology to allocate the pot of state and local funds to each Title I school.

It is important to note that this proposed test would not look at whether the amount of state and local money a Title I school receives is equitable. Given the significance of the problems caused by the current supplement-not-supplant test, this issue should be addressed on its own, separate from other Title I fiscal issues. Concerns over equity can be addressed through Title I's comparability requirement.

While the proposed supplanting test focuses on how districts allocate state and local funds to Title I schools, this is appropriate because Title I funds are driven to schools based on Title I's ranking and serving requirements.[28] For district-level spending, the cost-by-cost test should also be eliminated because Title I's "maintenance of effort" test would ensure school districts do not reduce the amount of state and local money they spend to provide education from year to year, therefore eliminating the need for the burdensome cost-by-cost analysis for district-level spending.

It is not necessary to test each and every cost charged to Title I at the school and district level to satisfy the original purposes of the supplement-not-supplant requirement, which were to ensure that states, districts, and schools receiving Title I funds used the money to benefit eligible students; and that they did not reduce the state or local money they would have otherwise spent on education just because they were receiving federal funds.

First, Title I already contains mechanisms to ensure Title I funds benefit eligible students.[29] Second, if a school district can verify it allocates to each Title I school the amount of state or local money the school was entitled to had it not been a Title I school, then the district can demonstrate it did not reduce the state or local money made available to a Title I school because of its Title I status.

In other words, through this type of allocation test, which requires districts to show their state and local allocation process is "Title I neutral" and does not take Title I status into account, districts can demonstrate they provide Title I schools with a "floor" of state and local funds. This way, districts can show Title I money is being used in addition to (supplementing) those funds.

A Title I-neutral allocation test would be easier to administer than the current cost-by-cost test of supplanting, and would make it easier to use Title I funds consistent with the goals of the Title I program. The major benefit of the Title I-neutral allocation test of supplanting is that it would no longer focus on individual costs, but rather would give districts a clear and consistent mechanism to demonstrate Title I funds supplement state and local funds.

There are two ways this test could be implemented:

- Because the initial presumptions that result in the cost-by-cost test were established in documents published by executive agencies, the test could be revised through executive action, such as through OMB Circulars or U.S. Department of Education guidance.

- Through legislative action.

Because of the continued confusion over how to comply with the supplement-not-supplant requirement in a schoolwide program, congressional clarification of this issue might be a powerful way to establish a new test for supplanting generally, and also to address lingering confusion around the intention and scope of the schoolwide program model.

Allow the U.S. Department of Education, and perhaps state educational agencies, to waive the supplement-not-supplant requirement

Currently, the U.S. Department of Education does not have the legal authority to waive the supplement-not-supplant requirement. This is problematic because there is no "safety valve" to permit the use of Title I funds on a cost that constitutes supplanting but benefits the federal program and the students it serves. Even if the first recommendation above were adopted, a waiver provision would be helpful since the proposed test would not address supplanting concerns for state-level costs. As a practical matter, 99 percent of Title I funds are spent at the district and school levels, but there may be instances where states need relief from the cost-by-cost test. Therefore, providing them with an opportunity to seek a waiver from the U.S. Department of Education would act as a "safety valve" in the unique circumstance where a state might need relief.

If the "Title I-neutral" test for supplanting is not adopted, making the provision waivable could at least mitigate some of the problems discussed in this paper. For example, if a district could demonstrate that moving costs from state and local funds to Title I does not reduce the level of state and local funding made available for education, then it might make public policy sense to provide a waiver if doing so would promote reforms or benefit Title I students.

If district-level waivers were permitted, Congress may wish to consider whether the ability to grant a waiver would be limited to the U.S. Department of Education or if it would be appropriate to vest waiver authority with states. Because states have the legal responsibility to oversee their districts' implementation of Title I programs, it may make sense to permit states the authority to evaluate district waiver requests.

Eliminate the supplement-not-supplant test

A third option would be to eliminate the supplement-not-supplant test entirely. Most of the proposals that recommend this option, however, impose new administrative burdens on other Title I fiscal tests, such as comparability and maintenance of effort. Adding new administrative burdens would make it harder to implement effective Title I programs. In addition, eliminating supplement-not-supplant entirely would work against the goal of ensuring Title I funds are supplemental at the school level. Therefore, the first recommendation would be easier to implement and preserve the intent behind the supplement-not-supplant requirement.

Conclusion

The current cost-by-cost test for supplanting arguably works against the goals of Title I because of its unintended implementation consequences. A Title I-neutral allocation test would better promote the goals of Title I, reduce burden, and still preserve the supplemental nature of Title I funds.

Endnotes

1 *Elementary and Secondary Education Act of 1965*, as amended by Public Law 91-230, §109 (a) (1970).

2 Section 1001 of the *No Child Left Behind Act*, Public Law 107-110, 107th Cong. (January 8, 2002).

3 The Title I maintenance-of-effort test requires districts to spend at least 90 percent of the state and local money they spent in the prior year; thus, in essence, districts may reduce their spending by up to 10 percent without penalty.

4 Section 1115(b) of the *No Child Left Behind Act*. ("Eligible children are children identified by the school as failing, or most at risk of failing, to meet the State's challenging student academic achievement standards on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school.")

5 A school is eligible to become a schoolwide school if it has at least a 40 percent poverty level, has a schoolwide plan that contains 10 required statutory components, and meets other specific criteria defined in Section 1114 of ESEA. Schoolwide programs and its relationship to supplement-not-supplant are discussed in more depth in section IV.

6 In large part, Title I is based on the belief that poverty is a significant cause of low academic achievement; thus, in targeting high-poverty school districts and schools, Congress linked poverty and academic disadvantage at the macro level. On the individual student level, however, academic disadvantage is the sole eligibility criterion.

7 John F. Jennings, "Title I: Its Legislative History and Its Promise." In Geoffrey D. Borman, Samuel C. Stringfield, and Robert E. Slavin, eds., *Title I: Compensatory Education at the Crossroads* (Mahwah, NJ: Lawrence Erlbaum Associates, 2001).

8 The report, published in 1969, explored various challenges facing the Title I program and touches on themes that continue to be relevant. See: NAACP and the Washington Research Project, "Is It Helping Poor Children? Title I of ESEA" (1969), available at http://www.eric.ed.gov/PDFS/ED036600.pdf.

9 Section 1115(b) of the *No Child Left Behind Act*.

10 *Non-Regulatory Guidance*: *Title I Fiscal Issues* (Department of Education, 2008), available at: http://www2.ed.gov/programs/titleiparta/fiscalguid.doc; *Non-Regulatory Guidance*: *Designing Schoolwide Programs* (Department of Education, 2006), available at http://www2.ed.gov/policy/elsec/guid/designingswpguid.doc.

11 See, for example, research cited in: Gail L. Sunderman, "Designing Title I Schoolwide Programs: Comparison of Three Urban Districts" (Baltimore, MD: Johns Hopkins University, 1999, available at http://www.eric.ed.gov/PDFS/ED434182.pdf.

12 Section 1111(c)(9)–(10) of the *No Child Left Behind Act*.

13 *Non-Regulatory Guidance*: *Designing Schoolwide Programs*; *Guidance: Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students* (Department of Education, 2009), available at http://www2.ed.gov/policy/gen/leg/recovery/guidance/titlei-reform.pdf.

14 *Non-Regulatory Guidance, Designing Schoolwide Programs*, p. 3.

15 Federal education programs are overseen by a variety of different entities including: the U.S. Department of Education's Office of Inspector General; U.S. Department of Education program offices; nonfederal auditors who conduct an annual audit known as the Single Audit for all entities that spend more than $500,000 in federal funds; and the Government Accountability Office. State educational agencies are also responsible for monitoring their school districts' Title I activities.

16 Generally, the term "state and local funds" does not include supplemental money a state or district allocates for a "Title I-like" purpose. In other words, if a state appropriates additional funds above and beyond its normal allocation to school districts for an educational program that serves Title I-eligible students, such funds would be excluded from any supplanting analysis.

17 Specifically, if a state, district, or school can demonstrate to an oversight entity's satisfaction that it would not have supported a particular cost with state or local funds in the absence of federal funds, then it may be able to pick up the cost with Title I. It is not entirely clear what an agency would have to prove to in order to overcome the presumption because this option has evolved over the years. In a 2003 letter ED advised a district could overcome the presumption if it could show it could not afford to pay a cost because of declining state and local resources. In more recent guidance, ED implied this option is available even in the absence of declining revenue if the district's educational priorities change. See: Guidance: *Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under The American Recovery and Reinvestment Act of 2009* (Department of Education, 2010), p. 30, C-11, available at: http://www2.ed.gov/policy/gen/leg/recovery/guidance/title-i-rev-201003.doc. For example, if the district in the example in presumption #2 above could demonstrate that even though its state and local resources have not declined, it has determined to focus the money it has on math and science programs, then the district may be able to overcome the presumption. More recently, in January 2011, ED advised in a letter that although its longstanding guidance permits states, districts, and schools to overcome the first presumption of supplanting (the "required by law" test), in practice it would be nearly impossible to do. This demonstrates how variable the supplement-not-supplant test can be.

18 See, for example, *Non-Regulatory Guidance, Title I Fiscal Issues*, p. 38–39; OMB Circular A-133 Compliance Supplement, p. 4-84.000-19–4.84.000-20, available at http://www.whitehouse.gov/sites/default/files/omb/circulars/a133_compliance/2010/ed.doc.

19 Susan Wilhelm and others, "Key Title I Fiscal Issues: Supplement, Not Supplant," Office of Elementary and Secondary Education Webcast, October 13, 2004, available at http://www2.ed.gov/admins/lead/account/fiscal/part5.doc.

20 *Non-Regulatory Guidance, Title I Fiscal Issues*, p. 38.

21 "Title I Key Fiscal Issues: Supplement, Not Supplant," available at http://www2.ed.gov/admins/lead/account/fiscal/index.html; *Supplement Not Supplant Provision of Title III of the ESEA* (Department of Education, 2008), available at http://www2.ed.gov/programs/sfgp/supplefinalattach2.pdf.

22 *Implementing RTI Using Title I, Title III, and CEIS Funds: Key Issues for Decision-makers* (Department of Education, 2009), available at http://www2.ed.gov/programs/titleiparta/rtifiles/rti.ppt.

23 *Non-Regulatory Guidance, Title I Fiscal Issues,* p. 64.

24 Districts that receive Title I funds may, and in some cases must, reserve some of the money for district-level activities (such as school improvement, public school choice, supplemental educational services, parental involvement, equitable services for eligible private school students, and other district-level initiatives). Once the district reserves its funds, it must allocate the remaining money to schools based on a formula established by the Title I statute. The modified supplanting test for schoolwide programs governs only the money that is allocated to schools. It does not cover the funds retained at the district level.

25 Arne Duncan, "The New Normal: Doing More With Less," Remarks at the American Enterprise Institute panel, "Bang for the Buck in Schooling," November 17, 2010, available at http://www.aei.org/docLib/20101117-Arne-Duncan-Remarks.pdf; Department of Education, "Duncan Wants Title I Dollars to Drive Education Reform," Press release, May 11, 2009, available at http://www2.ed.gov/news/pressreleases/2009/05/05112009.html; *Guidance: Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies*.

26 Office of Management and Budget, "OMB Circular A-87" (2004), Attachment A, available at http://www.whitehouse.gov/omb/circulars_a087_2004.

27 This language is based on current language used in ED's nonregulatory guidance for testing supplanting in a Title I schoolwide program. See: *Non-Regulatory Guidance, Title I Fiscal Issues,* p. 64.

28 Section 1113 of the *No Child Left Behind Act*.

29 Because federal law requires districts to be able to trace how they spend Title I money, school districts currently have systems established to verify they spend Title I funds on eligible students in targeted assistance schools. Therefore, expanding a Title I-neutral allocation test for supplement-not-supplant to targeted assistance schools would have no impact on ensuring only Title I-eligible students are served in targeted assistance schools.

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