



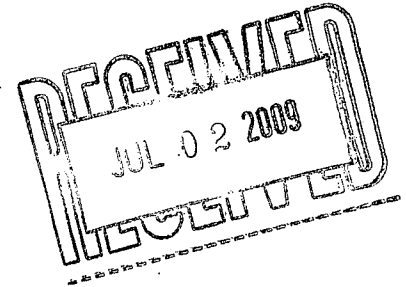
UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

JUN 29 2009

David DeSchryver
Brustein & Manasevit
3105 South Street, N.W.
Washington, D.C. 20007



Dear Mr. DeSchryver:

I am writing in response to your letter dated June 2, 2009, concerning transfers of funds to Title V, Part A of the Elementary and Secondary Education Act (Title V-A). You ask whether eligible Fiscal Year (FY) 2008 funds transferred into Title V-A prior to September 30, 2009 remain available for obligation for the normal 27-month period (until September 30, 2010). As discussed below, the answer depends on whether the funds remain in the Title V-A program or are transferred to other programs.

If a State educational agency (SEA) or local educational agency (LEA) has transferred Fiscal Year (FY) 2008 funds into Title V-A, those funds remain available for obligation under Title V-A only until September 30, 2009 because after that date, there is no Congressional authorization of the program (either through appropriation or authorization). The transfer of funds into the program by an SEA or LEA is not sufficient to “authorize” continuation of the program past September 30, 2009. Thus, an SEA or LEA that has transferred FY 2008 funds into Title V-A must obligate them by September 30, 2009 or, to the extent permissible, transfer them back out of the program in order to continue obligating them.

As with any exercise of the transferability authority, there is a limit on the amount of funds that an SEA or LEA may transfer back out of the Title V-A program – up to 50% of the program funding base (see questions I-C-7 and II-C-7 of the U.S. Department of Education’s June 2004 Guidance on the Transferability Authority (Transferability Guidance)). The program funding base is the sum of the non-administrative funds that were originally available under the program for the fiscal year and the funds that were transferred into the program (see questions I-C-8 and II-C-8 of the Transferability Guidance). Thus, SEAs and LEAs that have transferred FY 2008 funds into Title V-A must obligate those transferred funds under Title V-A before September 30, 2009, but may transfer back out up to 50% of the program funding base before September 30, 2009 (note that any Title V-A program funding base for FY 2008 was created only by the transfer of funds into the program). The funds transferred back out of Title V-A into another allowable program remain available for obligation until September 30, 2010. Any remaining funds will be lost by the SEA or LEA because of the limitation on transferability.

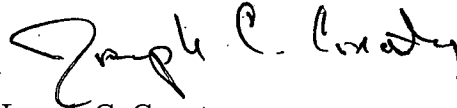
It should be noted that the program very strongly encouraged SEAs and LEAs (in a series of conference call meetings for State coordinators) against transferring funds into Title V-

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A at a late date and advised them to carefully plan any transfers to ensure that the amount of funds transferred into Title V-A could be obligated by September 30, 2009.

I hope this information is helpful to you. Please let me know if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Conaty". The signature is written in a cursive style with a large initial "J" and a distinct "C" and "A".

Joseph C. Conaty
Delegated Authority to Perform the
Functions and Duties of the Assistant
Secretary for Elementary and Secondary
Education