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Legal Sidebar

Department of Education Interagency Agreements

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On November 18, 2025, the Secretary of Education (the Secretary) announced that the Department of Education (ED) had entered into six interagency agreements (IAAs) with other federal executive departments in which ED will split with those agencies the tasks required to carry out ED programs. According to the Secretary, the IAAs aim to "break up the federal education bureaucracy, ensure efficient delivery of funded programs, activities, and move closer to fulfilling the President's promise to return education to the states." The six IAAs join an earlier such agreement concerning ED's adult and career technical education programs.

Under each IAA, ED and another federal agency (the performing agency) agree that the performing agency will perform certain tasks to carry out programs that are vested by statute with ED. For example, a performing agency will provide "services supporting the administration of" an ED grant program, while ED will retain certain other duties (e.g., budget formulation). ED will transfer Fiscal Year (FY) 2025 and subsequent year funds to the performing agencies to fund their work, including to make and administer new ED-program grant awards. Given the size and scope of covered programs, tens of billions of dollars could be transferred under the IAAs. For one affected program, Title I-A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, Congress appropriated more than $18.4 billion for grants in recent fiscal years. The IAAs cover dozens of other grant programs. ED has also said it will detail some of its employees to other agencies to support IAA work.

ED's view of its statutory flexibility to work with other departments to carry out programs assigned to the agency by law has sparked debate and legal challenges. To situate this debate, this Sidebar begins by discussing the legal limitations governing ED's organization, its functions, and its funding. It continues by examining Economy Act transfer authority, on which ED appears to primarily rely as legal authority for the IAAs. The Sidebar then considers the IAAs in light of these statutory constraints and flexibilities.

ED Authorities

The Department of Education Organization Act (DEOA), as amended, is ED's primary organizing statute. (Other statutes, such as the Higher Education Amendments of 1998, also create ED components.) The DEOA establishes ED as an executive department and stipulates that ED is to be administered, in accordance with the DEOA's provisions, "under the supervision and direction of" the Secretary of

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Education. The statute creates positions to be held by individuals (i.e., "officers") within ED as well as organizational entities housed within the department (i.e., "offices").

Federal law describes the roles that ED officers or offices are to play, with numerous statutes vesting functions in the Secretary and other ED officers. For example, the DEOA tasks the Director of the Office of Indian Education with "administering" ESEA provisions that support Indian, Native Hawaiian, and Alaska Native education. ED receives discretionary funding for nearly all of the programs covered by the IAAs in the annual Department of Education Appropriations Act. The appropriations act structures the budget authority available to ED by dividing it between distinct appropriations. Amounts provided in ED's School Improvement Programs appropriation, for example, are not available to support programs covered by its Indian Education appropriation, and vice versa. Congress has long prohibited transfers between appropriations. An agency thus needs express statutory authority, *transfer authority*, to debit one appropriation to the credit of another.

To the extent that Congress establishes an agency and delineates its structure in statute, as it has with ED, the agency is bound by those laws. An agency may only take actions authorized by law and must comply with statutory restrictions on the scope of its authority. An agency may not ignore a statutory mandate. As a general matter, efforts to shift statutory functions vested in a specific officer or agency to another officer or entity must align with an existing statutory authority. (For a more in-depth discussion of the limits on agencies' authority to restructure and delegate functions, see this CRS report.)

The DEOA provides the Secretary with a degree of organizational flexibility in carrying out her functions, allowing her to delegate authority to subordinates and make limited changes to ED's structure. Neither authority allows the Secretary to transfer her statutory duties outside of the department. The annual appropriations acts similarly provide the Secretary with a degree of funding flexibility, namely, transfer authority. The Secretary may transfer up to 1 percent of the discretionary funds provided in the act between its appropriations, subject to limitations. However, the annual appropriations acts simultaneously restrict transfer authority that is provided in authorizing statutes. A provision typically included in ED's annual appropriations act specifies that none "of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act."

As relevant here, Congress enacted the transfer limitation in Section 512 of Division D of the Further Consolidated Appropriations Act, 2024, but other statutes have continued its effect. The Full-Year Continuing Appropriations and Extensions Act, 2025 (FY2025 full-year CR) made appropriations for ED for FY2025 at the levels stated in Division D of the FCAA, 2024. It also continued in effect the "requirements, authorities, conditions, limitations, and other provisions" of that act. Division B of the Consolidated Appropriations Act, 2026 (CAA, 2026), provides ED with FY2026 discretionary appropriations and includes Section 512's limitation on transfers.

Economy Act Interagency Transaction Authority

A statute commonly referred to as the Economy Act provides ED with another transfer authority allowing it to move funds between appropriations. ED appears to rely primarily on the statute as the basis for the IAAs. In particular, while the IAAs cite four statutes as authority for the transfers, including other DEOA and General Education Provisions Act (GEPA) authorities, ED's IAA fact sheets cite only the Economy Act. For that reason, and because there are few (if any) judicial or administrative interpretations of the cited DEOA and GEPA provisions, this Sidebar focuses on the Economy Act.

Today, the Economy Act appears at 31 U.S.C. § 1535. The statute allows the head of an agency to "place an order" with "another agency" for "services." An agency may place an order only if funds are available. The ordering agency must also determine that the order is "in the best interest of the United States

Government" and could not be filled as conveniently or cheaply by a private firm. For its part, the performing agency must be "able to provide or get by contract the ordered goods or services."

Economy Act transactions are typically set forth in an IAA, a written agreement that describes the parties' roles and details how the performing agency will be paid for its work. Unlike other statutes that permit one agency to provide services to another "without reimbursement"—DEOA Section 419 is one such example—the Economy Act requires the ordering agency to pay for the "actual cost" of filling the order. To allow payment, the statute provides the ordering agency with transfer authority. The ordering agency thus transfers *budget authority* to the performing agency to fund the latter's work. Payment may be in advance of performance or afterwards as reimbursement.

However, the Economy Act does not authorize the transfer of *statutory functions*. The Department of Justice (DOJ) has distinguished, on the one hand, between a "delegation of responsibilities" from one agency to another, and, on the other hand, an Economy Act agreement in which one agency performs services for another. Similarly, the Comptroller General has stated that an Economy Act order may not result in a performing agency carrying out an "administrative function" of the ordering agency, a phrase that refers to tasks of sufficient importance that they must be retained and performed by the ordering agency. Comptroller General decisions do not expressly root the administrative function rule in Economy Act text—they do not state, for example, that particular words or phrases in the statute bar orders that amount to function transfers. Rather, the decisions reason that "inherent" in Congress's decision to grant an authority to one agency is a "responsibility which, having been reposed specifically in such department or agency by the Congress, may not be transferred except by specific action of Congress." The Comptroller of the Treasury and Comptroller General similarly concluded that the Economy Act's 1920 predecessor did not allow for function transfers.

Comptroller General decisions identify factors that bear on whether an Economy Act order, in substance, transfers a statutory function. Several decisions state that a performing agency may not exercise final, conclusive decisionmaking authority with respect to an ordering agency's statutory duty. Thus, the Comptroller General decided that an ordering agency violated the Economy Act by assigning to a performing agency the power to make final decisions regarding the ordering agency's real property and debt collection. The performing agency could provide "administrative services" for these functions. However, those services could not entail final decisions disposing of ordering agency real property, accepting as satisfaction of a debt less than the full amount owed, or ending debt collection efforts.

Relatedly, drafting an Economy Act agreement to retain ordering agency supervision and control over performance helps avoid an impermissible function transfer. Thus, the Comptroller General approved of a proposed 1944 Economy Act agreement between the Civil Service Commission (Commission) and the Department of War (War Department) that would see the Commission advance funds to the War Department to use in refunding retirement contributions to separating civilian employees. Though statute tasked the Commission with making the refunds, the Comptroller General found no flaw in the proposed agreement because the Commission would audit all refunds. This retained task provided "a certain degree of supervision and control" that ensured "the responsibility for the performance of the [refund] function generally would remain" in the Commission, even though War Department staff would actually make the refunds.

Questions Raised by ED's IAAs and Congressional Options

ED's IAAs raise various legal questions. The first such question is whether Section 512 of Division D of the FCAA, 2024 and provisions of continuing resolutions that make Section 512 effective as to FY2025 and FY2026 funds bar Economy Act transfers involving ED's discretionary funds. On the one hand, a plain-text reading of Section 512 would appear to prohibit ED from transferring its discretionary funds to another agency using transfer authority that is not provided in an appropriations act. ED receives

Economy Act transfer authority from the 1981 statute that codified Title 31 of the *U.S. Code*, not an appropriations act.

A similar provision in a different agency's annual appropriations act might bolster this reading of Section 512. Each year, Congress generally prohibits transfers of funds provided to the Department of Energy (DOE) in title III of the Energy and Water Development and Related Agencies appropriations act. Like Section 512, the DOE transfer limitation does not prohibit the use of transfer authority that is contained in an appropriations act. However, unlike Section 512, the DOE transfer limitation expressly allows the use of "authority whereby a department, agency, or instrumentality of the United States Government may provide goods or services to another department, agency, or instrumentality," a category that includes the Economy Act. Because Section 512 lacks similar language allowing funds transfers to acquire goods or services from another agency, one might argue that Section 512 prohibits Economy Act transfers.

On the other hand, Section 512-like provisions are frequently enacted in appropriations acts, and that context might support a more limited reading of their reach. The Economy Act provides *expenditure* transfer authority because the movement of funds between appropriations that it authorizes reflects payment for goods or services. Expenditure transfers acquire goods or services to further the purpose of the sending rather than the receiving appropriation. That is, if ED were to make an expenditure transfer of Indian Education appropriations, it would be to acquire goods or services to advance Indian education. As for the performing agency, the transfer ensures only that its appropriations do not ultimately bear the cost of the work it has performed (or will perform) to advance another agency's programs. At the end of the transaction, the performing agency's appropriations are not augmented above levels set by Congress.

Expenditure transfer authority stands in contrast with *nonexpenditure* transfer authority, which adjusts amounts available in the sending and receiving appropriations, so that less budget authority is available to carry out the purposes of the former and more budget authority is available for the latter. For example, if ED were to make a nonexpenditure transfer from its Indian Education appropriation to its Special Education appropriation, ED would decrease support for the former functions and increase support for the latter functions. Nonexpenditure transfers thus change spending levels for the purposes of affected appropriations from those originally fixed by Congress when passing the appropriations act.

While appropriations acts often provide transfer authority, typically that authority is to make nonexpenditure transfers. Moreover, nonexpenditure transfers more directly reorder congressional spending priorities. Courts might thus interpret an appropriations act limitation like Section 512 to constrain only the type of transfer authority typically provided in appropriations acts to ensure that agencies do not alter the spending levels established in those acts unless using transfer authority provided in those acts. On this reading, Section 512 would not apply to expenditure transfers authorized under the Economy Act, which do not similarly reorder congressional spending priorities. In somewhat analogous situations, the Comptroller General has interpreted Economy Act transfers as not counting for purposes of appropriations act provisions that capped the amount of funds that could be transferred to an appropriation. The transfers at issue did not augment performing agency appropriations for performing agency purposes. Rather, the IAAs paid the performing agency for its work on behalf of another agency.

Though Congress has enacted Section 512-like language in more than 40 statutes beginning in 2002, CRS could not locate any judicial decisions construing it, nor could CRS locate any Comptroller General or DOJ published opinions examining its scope. There is scant legislative history concerning such provisions. When the House Appropriations Committee first proposed Section 512-like language for Department of Agriculture (AG) appropriations in 2002, the Committee referenced then-President George W. Bush's proposal to establish a Department of Homeland Security and transfer an AG agency and AG facilities to the new department. While the Committee claimed its bill included "no action to facilitate or prevent this transfer," it nonetheless recommended Section 512-like language. Given the lack of prior interpretations of Section 512-like language, whether Congress intended Section 512 to apply to all transfer authority or only to nonexpenditure transfer authority and similar actions is unclear.

Another legal question that the IAAs raise is whether, in substance, an IAA would transfer an ED statutory function to a performing agency. This analysis depends on the tasks carried out by a performing agency as well as those retained by ED. The IAAs state that the performing agencies will provide "services supporting the administration" of various ED programs, including performing recipient monitoring visits and supervising their drawdown of funds. The IAAs reserve relatively higher-level functions for ED. It will continue to be responsible for formulating budget requests, clearing policy and grant documents, issuing annual grant awards, and various program accountability tasks, among others.

Whether the IAAs represent orders of services or transfers of statutory functions is unclear. Prior Comptroller General decisions have required ordering agencies to retain final decisionmaking authority and accountability for statutory programs that are the subject of an Economy Act order. ED's functions under the IAAs arguably resemble such tasks. For example, ED commits to resolving all "matters requiring the exercise of final and conclusive authority that has been assigned by statute to the Secretary of Education." At the same time, the IAAs do not specify the tasks that performing agencies will perform to provide generally worded "services supporting the administration" of an ED function.

These and other legal issues concerning the IAAs are currently the subject of litigation before the U.S. District Court for the District of Massachusetts. The district court is presiding over consolidated cases filed in March 2025 by school districts and labor organizations (school district plaintiffs) and states (state plaintiffs), respectively. In late November 2025, the school district plaintiffs filed an amended complaint that seeks to have the IAAs enjoined on constitutional and statutory grounds. The state plaintiffs filed a similar amended complaint in early January 2026. Both sets of plaintiffs argue that Section 512 prohibits the IAAs' funds transfers. They also argue that ED lacks statutory authority to transfer program functions implicated in the IAAs. Further, they argue that the IAAs are part of a broader plan to "close the Department," alongside other executive actions, like ED staff firings, that the cases also challenge. As of the date of this Sidebar, the federal defendants have not responded to the amended complaints.

Congress has a range of options for responding to the IAAs. It can enact legislation to transfer ED statutory functions to a performing agency. The DEOA itself transferred statutory functions vested with various agencies to the newly created Department of Education. Conversely, Congress could impose limitations on Economy Act authority by (for example) specifying program implementation tasks that may not be the subject of an Economy Act agreement. Congress could also deny Economy Act authority (or the other cited DEOA and GEPA authorities) for certain agencies (e.g., ED) or certain programs (e.g., those authorized by the ESEA). Congress could revisit Section 512-like language in the annual appropriations acts. It could decide to omit Section 512-like language or, conversely, enact an amended form of the limitation that either expressly bars or expressly allows (as with the DOE transfer limitation) covered agencies to transfer discretionary funds using expenditure transfer authority that was not provided in an appropriations act. The explanatory statement that accompanies the CAA, 2026, directs ED and its IAA partner agencies to brief the Appropriations Committee on a biweekly basis concerning IAA implementation.

Author Information

Sean Stiff
Legislative Attorney

Jared P. Cole
Legislative Attorney

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