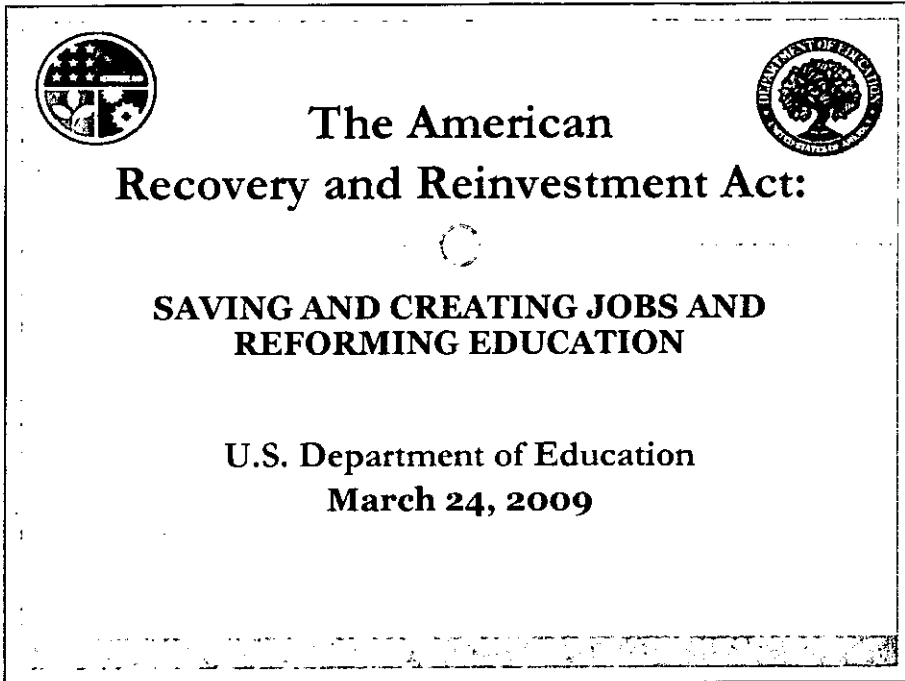


3/25/09

**OVERVIEW:
FEDERAL
STIMULUS
FUNDS FOR
EDUC.**



The American Recovery and Reinvestment Act:
Saving and Creating Jobs and Reforming Education
U.S. Department of Education

Saving and Creating Jobs and Reforming Education

“In a global economy where the most valuable skill you can sell is your knowledge, a good education is no longer just a pathway to opportunity - it is a pre-requisite. The countries that out-teach us today will out-compete us tomorrow.”

- President Barack Obama, 2/24/09



Saving and Creating Jobs and Reforming Education

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Historic, One-time Investment

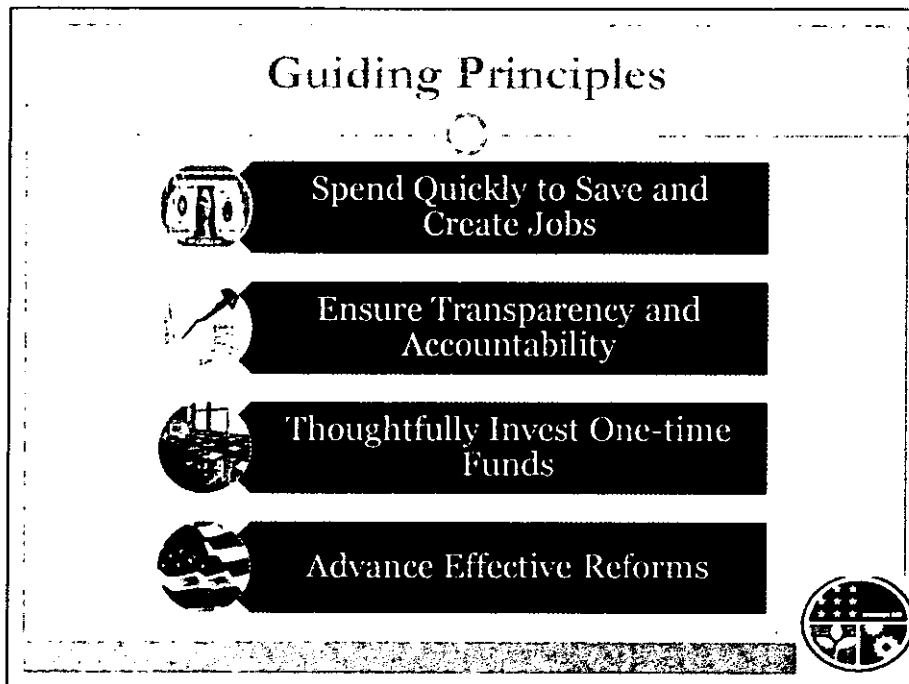
- Over \$100 billion education investment
- Historic opportunity to stimulate economy and improve education
- Success depends on leadership, judgment, coordination, and communication



Historic, One-time Investment

- Over \$100 billion education investment
- Historic opportunity to stimulate economy and improve education
- Success depends on leadership, judgment, coordination, and communication

The success of the education part of the ARRA will depend on the shared commitment and responsibility of students, parents, teachers, principals, superintendents, education boards, college presidents, State school chiefs, governors, local officials, and federal officials. Collectively, we must advance ARRA's short-term economic goals by investing quickly, and we must support ARRA's long-term economic goals by investing wisely, using these funds to strengthen education, drive reforms, and improve results for students from pre-kindergarten through college.



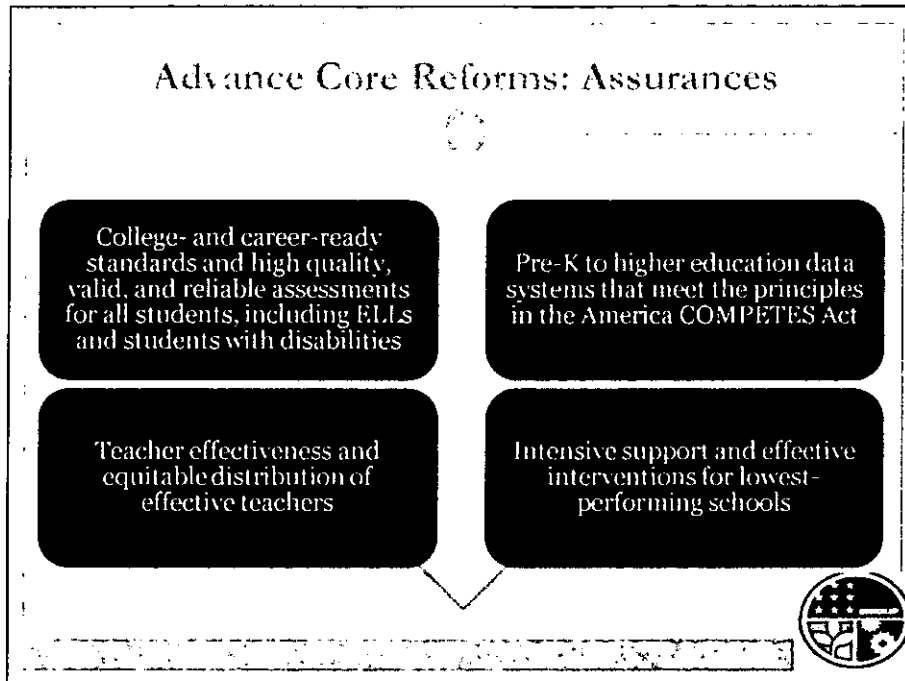
Guiding Principles

The overall goals to stimulate the economy in the short-term and invest wisely, using these funds to improve schools, raise achievement, drive reforms and produce better results for children and young people for the long-term health of our nation.

Four principles guide the distribution and use of ARRA funds:

- **Spend funds quickly to save and create jobs.** ARRA funds will be distributed quickly to States, local educational agencies and other entities in order to avert layoffs, create and save jobs and improve student achievement. States and LEAs in turn are urged to move rapidly to develop plans for using funds, consistent with the law's reporting and accountability requirements, and to promptly begin spending funds to help drive the nation's economic recovery.
- **Ensure transparency, reporting and accountability.** To prevent fraud and abuse, support the most effective uses of ARRA funds, and accurately measure and track results, recipients must publicly report on how funds are used. Due to the unprecedented scope and importance of this investment, ARRA funds are subject to additional and more rigorous reporting requirements than normally apply to grant recipients.
- **Invest one-time ARRA funds thoughtfully to minimize the "funding cliff."** ARRA represents a historic infusion of funds that is expected to be temporary. Depending on the program, these funds are available for only two to three years. These funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires.
- **Improve student achievement through school improvement and reform.** To close the achievement gap and help students from all backgrounds achieve high standards.

Advance Core Reforms: Assurances



Advance Core Reforms: Assurances

States must address four specific areas identified in ARRA that evidence shows make a critical contribution to student results:

- Making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including English language learners and students with disabilities;
- Establishing pre-K-to college and career data systems that track progress and foster continuous improvement;
- Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
- Providing intensive support and effective interventions for the lowest-performing schools.

\$44 Billion Becomes Available to States by the End of March

- State Stabilization - \$32.5 billion (67%)
- IDEA, Parts B & C - \$6.1 billion (50%)
- Title I, Part A - \$5 billion (50%)
- Vocational Rehabilitation - \$270 million (50%)
- Homeless Youth - \$70 million (100%)
- Independent Living - \$52.5 million (100% of formula monies; \$87.5 million in competitive grants to follow)
- Impact Aid - \$40 million (100% of formula monies; \$60 million in competitive grants to follow)



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Additional \$49 Billion Becomes Available between
Summer and Fall 2009

- Pell & Work Study - \$17.3 billion (100%)
- State Stabilization - \$16.1 billion (33%)
- IDEA , Parts B & C - \$6.1 billion in (50%)
- Title I, Part A - \$5 billion (50%)
- Title I School Improvement - \$3 billion (100%)
- Enhancing Education through Technology - \$650 million (100%)
- Vocational Rehabilitation - \$270 million (50%)
- Statewide Data Systems - \$250 million (100%)
- Teacher Incentive Fund - \$200 million (100%)
- Teacher Quality Enhancement - \$100 million (100%)



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Balance Speed and Effectiveness

- Balance speed and stimulus with careful planning and effective reforms
- States should award funds to LEAs as quickly as is prudent and LEAs should use funds expeditiously but sensibly
- LEA obligation timelines:
 - State Fiscal Stabilization Fund (SFSF): must be obligated by September 30, 2011
 - Title I, Part A: in absence of a waiver, 85% by Sept 30, 2010; any remaining by Sept 30, 2011
 - IDEA, Part B: majority during school years 2008/09 and 2009/10 and remainder by September 30, 2011



Balance Speed and Effectiveness

- Balance speed and stimulus with careful planning and effective reforms
- States should award funds to LEAs as quickly as is prudent and LEAs should use funds expeditiously but sensibly
- LEA obligation timelines:
 - SFSF - the Department strongly encourages governors to award or otherwise commit program funds as soon as possible after receipt of their grant awards. However, funds are available for obligation at the State and local levels until Sept. 30, 2011.
 - Title I - the Department encourages States to award Title I, Part A recovery funds to their LEAs as quickly as possible, consistent with prudent management, so that LEAs can begin using the funds. Similarly, an LEA should use its Title I, Part A recovery funds expeditiously but sensibly. Note that, in the absence of a waiver, an LEA must obligate at least 85 percent of its total FY 2009 Title I, Part A funds (including ARRA funds) by Sept. 30, 2010. Any remaining FY 2009 Title I, Part A funds will be available for obligation until Sept. 30, 2011.
 - Similarly, an LEA should use the IDEA recovery funds expeditiously. A State should make the Part B Grants to States and Preschool Grants recovery funds that it receives in March available to LEAs by the end of April 2009. Similarly, an LEA should use the IDEA recovery funds expeditiously. An LEA should obligate the majority of these funds during school years 2008–09 and 2009–10 and the remainder during school year 2010–11. States may begin obligating IDEA, Part B recovery funds immediately upon the effective date of the grant. All IDEA recovery funds must be obligated by Sept. 30, 2011.

Short-term Investments that Produce Lasting Results;
Avoid "The Cliff"

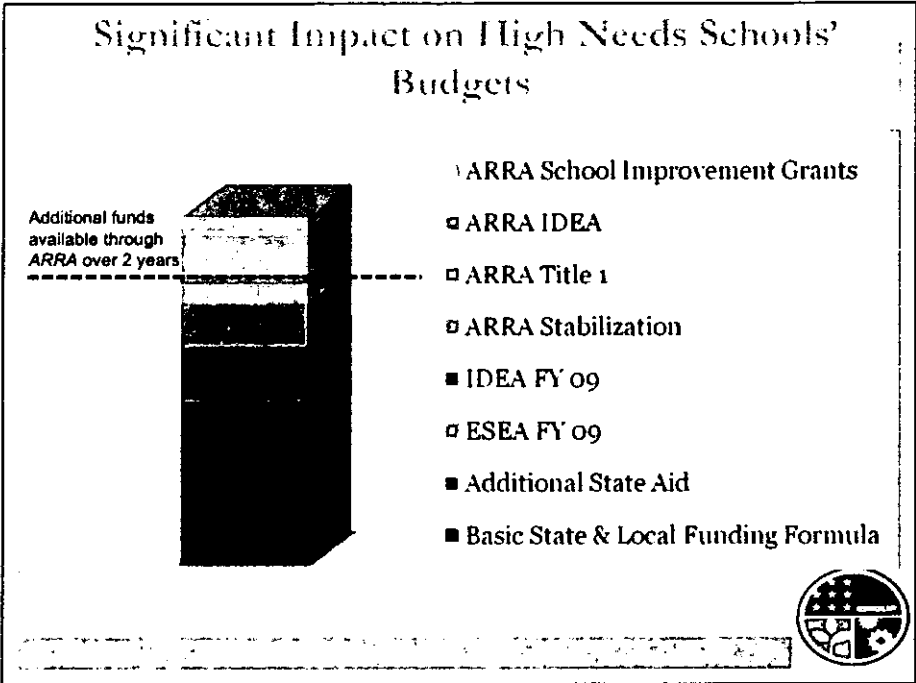
- Maximize short-term investments with lasting results for:
 - students
 - teacher, school, and district capacity for improvement
- Minimize unsustainable ongoing commitments
- Integrate coherent improvement strategies that are aligned with the core reform goals



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 - students
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- Integrate coherent improvement strategies that are aligned with the core reform goals

ARRA represents an historic infusion of funds that is expected to be temporary. Depending on the program, these funds are available for only two to three years. To the maximum extent possible, these funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires.



Significant Impact on High Needs Schools' Budgets

ARRA funds provide significant additional funds to LEA FY 09 budgets
 • This chart shows estimated amounts of funding for a high needs schools' budgets. ARRA represents a potentially substantial supplement to FY 09 budgets though ARRA School Improvement Grants, ARRA IDEA, ARRA Title I, and ARRA Stabilization

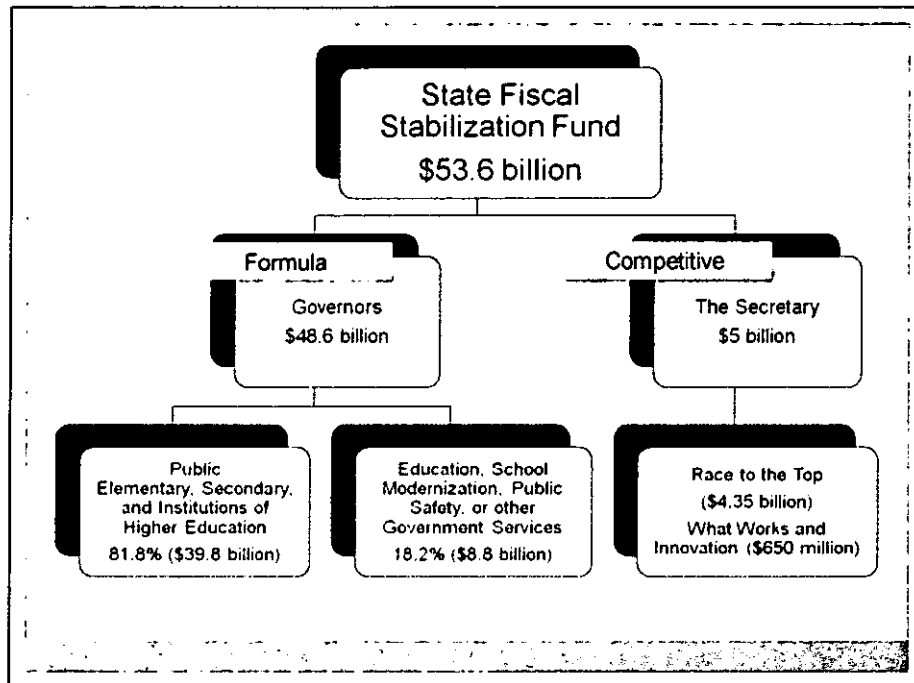
**ARRA Funds Available for School and College
Facilities Over the Next Two Years**

- **SFSF for Education**
 - LEAs have discretion to use for construction, modernization, renovation, and repair under ESEA Impact Aid authority
 - Governor has discretion to make available for IHEs for modernization, renovation, and repair
- **SFSF for Government Services**
 - Governor has discretion to make available
- **Impact Aid**
- **Qualified School Construction Bonds**
- **Qualified Zone Academy Bonds**
- **Consider facilities for early childhood education and the community and should create “green” buildings**



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- **SFSF for Government Services**
 - Governor has discretion to make available
- **Impact Aid - \$100 million**
- **Qualified School Construction Bonds – \$22B – \$11B per year for 2 years – tax credits for construction bonds**
- **Qualified Zone Academy Bonds – \$2.8B – \$1.4B per year for 2 years – can be used for school renovations and repairs as well as other improvements (any use except new construction)**
- **Consider facilities for early childhood education and the community and should create “green” buildings**



The State Fiscal Stabilization Fund (SFSF) program

- Is a new one-time appropriation of \$53.6 billion under the *American Recovery and Reinvestment Act of 2009 (ARRA)*. Of the amount appropriated, the U. S. Department of Education will award governors approximately \$48.6 billion by formula under the SFSF program in exchange for a commitment to advance essential education reforms to benefit students from early learning through post-secondary education.
- These funds will help stabilize State and local government budgets in order to minimize and avoid reductions in education and other essential public services. The program will help ensure that local educational agencies (LEAs) and publicly funded institutions of higher education (IHEs) have the resources to avert cuts and retain teachers and professors. The program may also help support the modernization, renovation, and repair of school and college facilities. In addition, the law provides governors with significant resources to support education (including school modernization renovation, and repair), public safety, and other government services.
- The Department will award the remaining \$5 billion competitively under the "Race to the Top" and "Investing in What Works and Innovation" programs.

State Fiscal Stabilization Fund for Education (1)

- 81.8%; \$39.8 billion
- Streamlined application available by the end of March
- First phase: 67% to States within two weeks of approvable application and in severe economic emergency, up to 90% available
- Application will ask for:
 - Assurances that the State is committed to advancing education reform in four specific areas
 - Baseline data that demonstrate the State's current status in each of the four education reform areas
 - A description of how the State intends to use its Stabilization allocation



State Fiscal Stabilization Fund for Education (1)

•81.8%; \$39.8 billion

•In order to help alleviate the substantial budget shortfalls that States are facing, the Department has developed a streamlined, user-friendly process for expeditiously providing to States SFSF allocations:

•Sixty-one percent of a State's allocations will be on the basis of their relative population of individuals aged 5 to 24, and 39 percent will be based on relative shares of total population.

•The Department will award SFSF funds to governors in two phases. To receive its initial SFSF allocation, a State must submit to the Department an application that provides (1) assurances that the State is committed to advancing education reform in four specific areas; (2) baseline data that demonstrates the State's current status in each of the four education reform areas; and (3) a description of how the State intends to use its stabilization allocation.

•Within two weeks of receipt of an approvable SFSF application, the Department will provide a State with 67 percent of its SFSF allocation.

•If a State demonstrates that the amount of funds it will receive in phase one (67 percent of its total stabilization allocation) is insufficient to prevent the immediate layoff of personnel by LEAs, State educational agencies, or publicly funded institutions of higher education, the Department will award the State up to 90 percent of its SFSF allocation in phase one.

State Fiscal Stabilization Fund for Education (2)

- Second phase: 33%
- Application will ask for:
 - The State's plan detailing its strategies for addressing the education reform objectives described in the assurances
 - A description of how the State is implementing the record-keeping and reporting requirements of ARRA
 - A description of how SFSF and other funding will be used in a fiscally prudent way that substantially improves teaching and learning



State Fiscal Stabilization Fund for Education (2)

• A State will receive the remaining portion of its SFSF allocation after the Department approves the State's plan detailing its strategies for addressing the education reform objectives described in the assurances. This plan must also describe how the State is implementing the record-keeping and reporting requirements under *ARRA* and how SFSF and other funding will be used in a fiscally prudent way that substantially improves teaching and learning.

• In the near future, the Department will issue guidance on the specific requirements that a State must meet to receive its phase two allocation. The Department anticipates that the phase-two funds will be awarded beginning July 1, 2009, on a rolling basis.

State Fiscal Stabilization Fund for Education: Uses of Funds

- Education funds for elementary and secondary must run through State's primary funding formulae
- LEAs may use funds for any activity authorized under ESEA, IDEA, Adult Ed, or Perkins, including modernization of school facilities and salaries to avoid teacher layoffs
- LEAs encouraged to use funds for activities that advance progress on the assurances and drive lasting results without unsustainable recurring costs



State Fiscal Stabilization Fund for Education: Uses of Funds

- States must use 81.8 percent of SFSF funds for the support of public elementary, secondary, and higher education, and, as applicable, early childhood education programs and services.
- States must use their allocations to help restore for FY 2009, 2010, and 2011 support for public elementary, secondary, and postsecondary education to the greater of the FY 2008 or FY 2009 level. The funds needed to restore support for elementary and secondary education must be run through the State's primary elementary and secondary education funding formulae. The funds for higher education must go to IHEs.
- If any SFSF funds remain after the State has restored State support for elementary and secondary education and higher education, the State must award the funds to LEAs on the basis of the relative Title I shares but not subject to Title I program requirements.
- Subject to limited restrictions in *ARRA* as defined in further guidance LEAs may use their share of 81.8% of the SFSF education funds for any activity authorized under the *Elementary and Secondary Education Act of 1965 (ESEA)* (which includes the modernization, renovation, or repair of public school facilities), the *Individuals with Disabilities Education Act (IDEA)*, the *Adult Education and Family Literacy Act (Adult Education Act)*, or the *Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act)*.
- LEAs and IHEs should use funds consistent with the intent and overall goals of *ARRA*: to create and save jobs and to advance the education reforms set forth in the assurances section so as to produce lasting results for students from early learning to college. LEAs and IHEs are also encouraged to consider uses of funds that create lasting results without creating unsustainable recurring costs.
- Any funds that an LEA receives from the 81.8 percent of the SFSF program (whether distributed through the State's primary funding formulae or on the basis of the relative Title I, Part A) may be used for any activity listed in the above paragraph.
- LEAs may use SFSF to pay salaries to avoid having to lay off teachers and other school employees.
- To the extent LEAs use funds for modernization, renovation or repair, they should consider the use of facilities for early childhood education and for the community and should create "green" buildings.

State Fiscal Stabilization Fund for Education: Uses for
IHEs



- IHEs may use education funds for:
 - education and general expenditures
 - mitigating tuition and fee increases for in-State students
 - modernization, renovation, and repair of facilities used for instruction, research, student housing



State Fiscal Stabilization Fund for Education: Uses for IHEs

•Subject to limited restrictions in *ARRA*, IHEs may use program funds for:

- (1)education and general expenditures,
- (2)and in such a way as to mitigate the need to raise tuition and fees for in-State students; or
- (3)the modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing. IHEs may not use funds to increase their endowments.

State Fiscal Stabilization Fund for Government
Services

- 18.2%; \$8.8 billion
- States may use for education, public safety and other government services
- May include modernization, renovation, and repair of public schools and public and private college facilities



State Fiscal Stabilization Fund for Government Services

- 18.2%; \$8.8 billion
- States may use for education, public safety and other government services
- May include modernization, renovation, and repair of public schools and public and private college facilities

State Fiscal Stabilization Fund: Maintenance of Effort Issues

- Each Governor must assure the State will maintain same level of support for education in FY2009-11 as it did in FY2006
- ED may waive under certain conditions
- Must use the allocations to restore support for FY 2009, 2010, and 2011 to the greater of the FY 2008 or FY 2009 level
- With prior approval, State or LEA may count ARRA funds as non-federal funds for maintenance of effort (MOE)



State Fiscal Stabilization Fund: Maintenance of Effort Issues

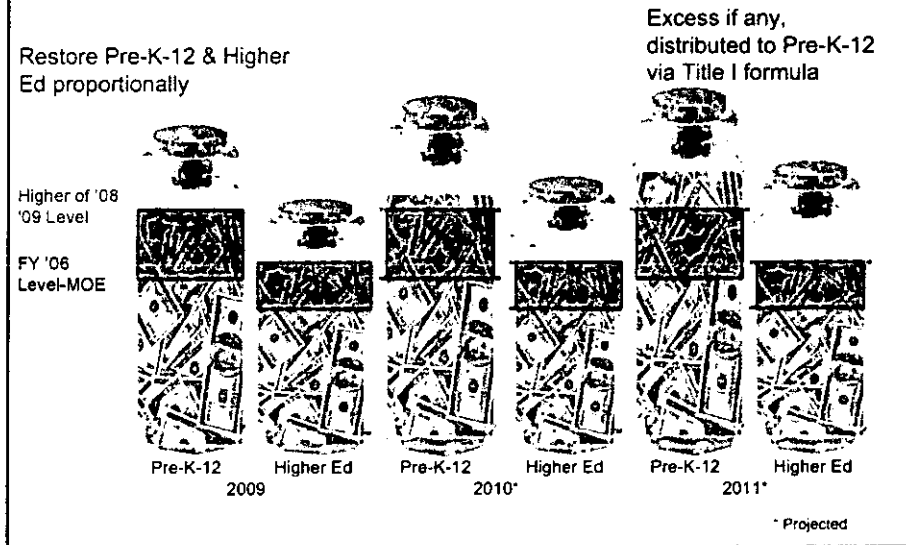
•States must use their allocations to help restore for FY 2009, 2010, and 2011 support for public elementary, secondary, and postsecondary education to the greater of the FY 2008 or FY 2009 level. The funds needed to restore support for elementary and secondary education must be run through the State's primary elementary and secondary education funding formulae.

•The Department strongly encourages Governors to award subgrants or otherwise commit program funds as soon as possible after receipt of their grant awards. However, funds are available for obligation at the State and local levels until September 30, 2011.

•As part of the State's application, each Governor must include an assurance that the State will maintain the same level of support for elementary, secondary, and postsecondary education in FYs 2009 through 2011 as it did in FY 2006. However, the statute authorizes the Department to waive this maintenance-of-effort requirement under certain conditions.

•With prior approval from the Secretary, a State or LEA may count program funds used for elementary or secondary education as non-federal funds to maintain fiscal effort under ED programs that have maintenance-of-effort requirements.

State Fiscal Stabilization Fund: Fiscal Issues



State Fiscal Stabilization Fund: Fiscal Issues

•This chart graphically represents how SFSF Education funds are allocated between Pre-K-12 and higher education. The bottles display budgets for 2009, 2010, and 2011 for Pre-K-12 and higher education in each of these years. The blue lines represent 2006 levels of spending. The red lines represent the higher level of spending for 2008 or 2009. States are to use funds proportionally to restore budgets to fund Pre-K-12 and higher education in each of these three years. The shaded areas represent the difference between 2006 and the higher of 2008 and 2009. If a state is able to fund in all three years both Pre-K-12 and Higher Education to their 2008 or 2009 level (whichever is higher) the remaining funds should be distributed to Pre-K-12 via the Title I formula.

SFSF Incentive Fund: "Race to Top" and "Invest in What Works and Innovation"

- "Race to the Top"- \$4.35 billion competitive grants to States making most progress toward the assurances
- "Investing in What Works and Innovation" - \$650 million competitive grants to LEAs and non-profits that have made significant gains in closing achievement gaps to be models of best practices
- 2010 grant awards will be made in two rounds - late Fall 2009, Summer 2010



SFSF Incentive Fund: "Race to Top" and "Invest in What Works and Innovation"

- Of the amount appropriated for the SFSF, the Department will use at least \$4.35 billion to make competitive grants under the "Race to the Top" fund. These grants will help States to drive significant improvement in student achievement, including through making progress toward the four assurances.
- The Department will use up to \$650 million to make competitive awards under the "Invest in What Works and Innovation" fund. These awards will reward LEAs or nonprofit organizations that have made significant gains in closing achievement gaps to serve as models for best practices.
- 2010 grant awards will be made in two rounds - late Fall 2009, Summer 2010

Title I, Part A – ARRA: Flow of Funds

- \$10 billion under Title I, Part A on top of normal FY2009 allocation
- ED will release 50% before the end of March 2009 without the need for new applications
- Remaining 50% available upon approval of State plan amendment on recordkeeping and reporting requirements
- State must reserve 4% for school improvement, of which at least 95% must be allocated to LEAs



Title I, Part A – ARRA: Flow of Funds

•The Department plans to award 50 percent of each State's Title I, Part A recovery funds by the end of March 2009. These funds will be awarded under each State's existing approved *Elementary and Secondary Education Act of 1965 (ESEA)* Consolidated State Application. No new or amended application will be required to receive this portion of the funds. However, in order to receive the remaining Title I, Part A recovery funds, a State must submit, for review and approval by the Department, an amendment to its Consolidated Application that addresses how it will meet the recordkeeping and reporting requirements of the *ARRA*.

•The Title I, Part A *ARRA* awards will be in addition to the regular FY 2009 Title I, Part A grant awards that the Department plans to make on July 1 and Oct. 1, 2009. Together, these four grant awards (i.e., the two phases of the Title I, Part A recovery funds, and the two phases of the regular FY 2009 Title I, Part A funds) will constitute a State's total FY 2009 Title I, Part A allocation.

•The fact that Title I, Part A recovery funds are FY 2009 funds does not preclude a State from awarding some or all of these funds to an LEA on the basis of existing, approved LEA applications.

•In accordance with the goals of the *ARRA*, the Department encourages States to award Title I, Part A recovery funds to their LEAs as quickly as possible, consistent with prudent management, so that LEAs can begin using the funds. Similarly, an LEA should use its Title I, Part A recovery funds expeditiously but sensibly. Note that, in the absence of a waiver, an LEA must obligate at least 85 percent of its total FY 2009 Title I, Part A funds (including *ARRA* funds) by Sept. 30, 2010. Any remaining FY 2009 Title I, Part A funds will be available for obligation until Sept. 30, 2011.

•A State must reserve 4 percent of its Title I, Part A recovery funds for school improvement activities under section 1003(a) of the *ESEA*. Of this 4 percent of funds, at least 95 percent must be allocated directly to LEAs for school improvement activities.

•Except as noted above concerning the 4 percent reservation, a State would need a waiver to reserve any portion of its Title I, Part A recovery funds for State administration, because section 1004(b) of the *ESEA* limits the amount that a State may reserve for the administration of Title I. As it did last year, the Department will provide a table showing the base each State should use in determining the amount it may reserve for State administration.

Title I, Part A – ARRA: Fiscal Issues and Waivers

- ED will consider requests for waivers for:
 - “Set-aside” requirements in Title I, Part A that apply to the use of funds by LEAs
 - Per-pupil amount for supplemental educational services
 - State may grant LEAs a waiver of carryover limitation
- ED may not waive supplement not supplant requirement but in cases of severe budget shortfalls LEAs may have avenues to demonstrate compliance
 - (<http://www.ed.gov/programs/titleiparta/fiscalguid.pdf>.)
- ED will consider requests to count SFSF funds as non-federal for purposes of MOE



Title I, Part A – ARRA: Fiscal Issues and Waivers

- The Secretary of Education will consider a request for a waiver with regard to the use of ARRA Title I funds:
 - of one or more of the “set-aside” requirements in Title I, Part A that apply to the use of funds by LEAs;
 - to calculate the per-pupil amount (PPA) for supplemental educational services (SES) based on an LEA’s FY 2009 Title I, Part A allocation without regard to some or all of the recovery funds;
 - to allow a State to grant its LEAs a waiver of the carryover limitation in section 1127 of Title I, Part A more than once every three years; or of the Title I, Part A maintenance-of-effort requirement
- ED may not waive supplement not supplant requirement but in cases of severe budget shortfalls LEAs may have avenues to demonstrate compliance
 - (<http://www.ed.gov/programs/titleiparta/fiscalguid.pdf>.)
- ED will consider requests to count SFSF funds as non-federal for purposes of MOE

Title I School Improvement Grants

- \$3 billion to improve lowest performing schools – almost six-fold increase in funding
- Will be made available by Fall 2009
- States will give priority to LEAs that:
 - Serve the lowest-achieving schools
 - Demonstrate the greatest need for such funds
 - Demonstrate the strongest commitment to ensuring that such funds are used to enable the lowest-achieving schools to meet the progress goals in school improvement plans



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- Will be made available Fall 2009
- States will give priority to LEAs that:
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 - Demonstrate the greatest need for such funds
 - Demonstrate the strongest commitment to ensuring that such funds are used to enable the lowest-achieving schools to meet the progress goals in school improvement plans

Potential Uses of Title I Funds that Support
Assurances and Avoid "The Cliff"

• **Examples to consider:**

- Establish a system for identifying and training highly effective teachers to serve as instructional leaders in Title I schoolwide programs and modifying the school schedule to allow for collaboration among the instructional staff
- Provide new opportunities for Title I schoolwide programs for secondary school students to use high-quality, online courseware as supplemental learning materials for meeting mathematics and science requirements
- Develop and expand longitudinal data systems to drive continuous improvement efforts focused on increased achievement in Title I schools



Potential Uses of Title I Funds that Support Assurances and Avoid "The Cliff"

Examples of potential uses of the Title I, Part A recovery funds that are allowable under Title I and consistent with ARRA principles:

- Establish a system for identifying and training highly effective teachers to serve as instructional leaders in Title I schoolwide programs and modifying the school schedule to allow for collaboration among the instructional staff
- Provide new opportunities for Title I schoolwide programs for secondary school students to use high-quality, online courseware as supplemental learning materials for meeting mathematics and science requirements
- Develop and expand longitudinal data systems to drive continuous improvement efforts focused on increased achievement in Title I schools

IDEA, Part B – ARRA: Flow of Funds

- \$11.3 billion under Part B Grants to States and \$400 million under Part B Preschool Grants on top of the normal FY2009 grants
- Release at least 50% before the end of March 2009 without the need for new applications
- Remaining awarded by Oct 1, 2009 upon approval of application amendment on recordkeeping and reporting requirements
- Under the Grants to States program, no increase in the amount a State would otherwise be able to reserve for administration and State-level activities under its regular FY 2009 award



IDEA, Part B – ARRA: Flow of Funds

•The *IDEA* recovery funds are provided under three authorities: \$11.3 billion is available under Part B Grants to States; \$400 million is available under Part B Preschool Grants; and \$500 million is available under Part C Grants for Infants and Families.

•The Department of Education plans to award at least 50 percent of the *IDEA*, Part B Grants to States and Preschool Grants recovery funds to SEAs by the end of March 2009. The remaining funds will be awarded by Oct. 1, 2009. These awards will be in addition to the regular Fiscal Year (FY) 2009 Part B Grants to States and Preschool Grants awards that will be made on July 1 (Grants to States and Preschool Grants) and Oct. 1, 2009 (Grants to States only). Together, these grant awards will constitute a State's total FY 2009 Part B Grants to States and Preschool Grants allocations.

•A State does not need to submit a new application to receive the first 50 percent of the Part B Grants to States and Preschool Grants recovery funds because these funds will be made available to each State based on the State's eligibility established for FY 2008 Part B funds. The assurances in the State's FY 2008 application will apply to these recovery funds. In order to receive the remaining 50 percent of *IDEA*, Part B recovery funds, a State must submit, for review and approval by the Department, an amendment to its FY 2009 application to address the recordkeeping and reporting requirements under the *ARRA*.

•The additional *IDEA* funds provided under the *ARRA* do not increase the amount a State would otherwise be able to reserve for State administration or other State-level activities under its regular grants to States FY 2009 award.

IDEA, Part B and Part C – ARRA: Early Childhood

- **Part B Preschool: \$400 million under Part B Preschool Grants in addition to FY 2009 grants**
 - Release 50% before the end of March 2009 without the need for new applications
 - Remaining 50% awarded by October 1, 2009 upon approval of application amendment on recordkeeping and reporting requirements
- **Part C Early Intervention: \$500 million under Part C Infants and Toddlers with Disabilities Grants in addition to FY 2009 grants**
 - Release 50% before the end of March 2009 without the need for new applications
 - Remaining 50% awarded by October 1, 2009 upon approval of application amendment on recordkeeping and reporting requirements
 - ED will set aside \$71 million of the IDEA, Part C recovery funds for State Incentive Grants to serve children three years of age until entrance into elementary school



IDEA, Part B and Part C – ARRA: Early Childhood

- Part B Preschool: \$400 million under Part B Preschool Grants in addition to FY 2009 grants
 - Release 50% before the end of March 2009 without the need for new applications
 - Remaining 50% awarded by October 1, 2009 upon approval of application amendment on recordkeeping and reporting requirements
- Part C Early Intervention: \$500 under Part B Infants and Toddlers with Disabilities Grants in addition to FY 2009 grants
 - Release 50% before the end of March 2009 without the need for new applications
 - Remaining 50% awarded by October 1, 2009 upon approval of application amendment on recordkeeping and reporting requirements
 - ED will set aside \$71 million of the IDEA, Part C recovery funds for State Incentive Grants to serve children three years of age until entrance into elementary school

IDEA, Part B – ARRA: Fiscal and Waiver Issues

- Under certain circumstances, the LEA may reduce State and local expenditures for special education by up to 50 percent of the amount of the increase in the LEA's IDEA allocation over the prior year, if the freed-up local funds are used for activities that could be supported under the ESEA, which can include early intervening services
- Under certain circumstances, an LEA may use up to 15% of its total Part B grant for early intervening services for children who are not currently identified as children with disabilities
- ED will consider requests:
 - for waivers to State MOE requirements for exceptional circumstances, including unforeseen decline in fiscal resources
 - to count SFSF as non-federal for MOE



IDEA, Part B – ARRA: Fiscal and Waiver Issues

•An LEA may be able to reduce the level of State and local expenditures otherwise required by the *IDEA* LEA maintenance of effort (MOE) requirements. Generally, under section 613(a)(2)(C), in any fiscal year that an LEA's *IDEA* allocation exceeds the amount the LEA received in the previous year, under certain circumstances, the LEA may reduce the level of State and local expenditures by up to 50 percent of the amount of the increase, as long as the LEA uses those freed-up local funds for activities that could be supported under the *ESEA*. If an LEA takes advantage of this provision, the required MOE for future years is reduced consistent with the reduction it took, unless the LEA increases the amount of its State and local expenditures on its own. SEAs should encourage LEAs that can and do take advantage of this flexibility to focus the freed-up local funds on one-time expenditures that will help the State make progress on the goals in the SFSF program, such as improving the equitable distribution of effective teachers and the quality of assessments. SEAs will be expected to collect and report information on the use of the freed-up funds.

•Alternatively, an LEA may (or in some cases must) use up to 15 percent of its total *IDEA*, Part B Grants to States and Preschool Grants for early intervention services for children in grades K through 12 who are not currently identified as children with disabilities, but who need additional academic and behavioral support to succeed in a general education environment. However, an LEA may use only up to 15 percent of its allocation minus any amount (on a dollar-for-dollar basis) by which the LEA reduced its required State and local expenditures under section 613(a)(2)(C).

•State-level MOE may be waived under Part B of the *IDEA* by the Secretary of Education on a State-by-State basis, for a single year at a time, for exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of a State. LEA-level MOE may not be waived.

•With prior approval from the Secretary of Education, a State or LEA may count SFSF (but not *IDEA* recovery funds) under the *ARRA* that are used for special education and related services as non-federal funds for purposes of determining whether the State or LEA has met the *IDEA*, Part B MOE requirements.

Potential Uses of IDEA Funds that Support Assurances and Avoid "The Cliff"

- **Examples to consider:**
 - Provide intensive district-wide professional development for special education and regular education teachers that focuses on scaling-up, through replication, proven and innovative evidence-based school-wide strategies in reading, math, writing and science, and positive behavioral supports to improve outcomes for students with disabilities
 - Develop or expand the capacity to collect and use data to improve teaching and learning



Potential Uses of IDEA Funds that Support Assurances and Avoid "The Cliff"

Some possible uses of these limited-term *IDEA* recovery funds that are allowable under *IDEA* and aligned with the core reform goals for which States must provide assurances under SFSSF include:

- Provide intensive district-wide professional development for special education and regular education teachers that focuses on scaling-up, through replication, proven and innovative evidence-based school-wide strategies in reading, math, writing and science, and positive behavioral supports to improve outcomes for students with disabilities
- Develop or expand the capacity to collect and use data to improve teaching and learning

Non-Public School Student and Teacher Participation

- **Programs included in the stimulus that require equitable participation of non-public school students and teachers include:**
 - Title I, Part A
 - Title II, Part D (Enhancing Education through Technology)
 - IDEA, Part B



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- Title II, Part D (Enhancing Education through Technology)
- IDEA, Part B

Title I and IDEA Administration Provision

- The Secretary intends to issue regulations to allow reasonable adjustments to the limitation on State administration expenditures to help States defray the costs of ARRA data collection requirements.



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Accountability and Transparency

- **All ARRA funds must be tracked separately**
 - Quarterly reports on both financial information and how funds are being used
 - Estimated number of jobs created
 - Subcontracts and sub-grants required to comply with the Federal Funding Accountability and Transparency Act
- **Reporting template being developed for use by States to capture required information**
- **Transparency allows opportunity to quantify/define goals and mobilize support for improving results for all students**



Accountability and Transparency

The President and Congress are committed to ensuring that ARRA dollars are spent with an unprecedented level of transparency and accountability. Therefore, States and LEAs that receive recovery funds should expect to report on how those funds were spent and the results of those expenditures.

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 - Subcontracts and sub-grants required to comply with the Federal Funding Accountability and Transparency Act
- Reporting template being developed for use by States to capture required information
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More Information

- www.ed.gov and www.recovery.gov
 - FAQs, Hot Topics, etc
- Preliminary information about each State's IDEA allocation:
<http://www.ed.gov/about/overview/budget/Statetables/recovery.html>
- Preliminary estimates of Title I, Part A recovery allocations to each State and LEA are available at:
<http://www.ed.gov/about/overview/budget/news.html#ARRA>
- SFSF Questions: State.fiscal.fund@ed.gov
- IDEA Questions: IDEArecoverycomments@ed.gov
- Title I Questions: oese@ed.gov
- Inspector General Questions: rich.rasa@ed.gov
- Independent Living and Vocational Rehabilitation Questions: RSAREcoverActComments@ed.gov



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Items Not Included in the March 19 Economic Stimulus Bill

ARRA Page Ref.	FY	Department	RDU/Component	PFT	PPT	NP	Description	General Funds	Federal Funds	Other Funds	Fund Source	Total Funds
Operating Items												
1 p. 314-316	FY2009 - FY2010 Operating	Administration	Finance				This provides for a federally funded subsidy for COBRA health insurance coverage to assistance eligible individuals (AEIs). AEI is defined as an individual who is involuntarily terminated from employment between September 1, 2008 and December 31, 2009, who elects to receive COBRA coverage and pays 35% of the premium due as of March 1, 2009. The employer pays the remaining 65% of the premium and is reimbursed by the federal government by withholding premiums paid from payroll taxes reported on the quarterly 941 employer tax form.		1,489.0			1,489.0
2 p. 16	FY2009 - FY2010 Operating	Administration	Violent Crimes Compensation Board				Funding will be used to pay claims for assistance received from Alaskans and visitors to Alaska that suffer financial losses that are the direct result of violent crimes. Categories of expenses covered include mental health counseling, medical expenses, lost wages, funeral expenses, and other expenses as authorized by statute.		149.4			149.4
3 p. 70	FY2009 - FY2010 Operating	Commerce	Alaska State Community Services Commission				Funding will provide grants to existing AmeriCorps grantees for performing volunteer programs.		1,500.0			1,500.0
4 p. 67	FY2009 - FY2010 Operating	Education	Student and School Achievement				ESEA Title I-A Grants to LEAs and School Improvement Grants will help school districts mitigate the effect of the reduction in local revenues and State support for education by distributing funding to schools and school districts with a high percentage of students from low-income families, and by providing funding for academic assessment, LEA and school improvement.		40,000.0			40,000.0
5 p. 68	FY2009 - FY2010 Operating	Education	Student and School Achievement				ESEA Title II-D Education Technology Grants will improve student achievement through the use of technology in elementary and secondary schools.		3,210.0			3,210.0
6 p. 68	FY2009 - FY2010 Operating	Education	Student and School Achievement				McKinney Vento Homeless assistance Grants to ensure that homeless children, including preschoolers and youth, have equal access to free and appropriate education.		328.0			328.0
7 p. 68	FY2009 - FY2010 Operating	Education	Student and School Achievement				IDEA Part B (611 and 619) Grants to States, Preschool Grants to provide services to students with disabilities ages three through twenty-one who are enrolled in special education programs. The state will receive the allocation as a grant and pass-through to LEAs based on the number of children with disabilities who are receiving special education and related services. Funding will also be provided for services to children with disabilities ages three through five (and optionally to two-year olds who turn three during the school year). The state will receive the allocation as a grant and pass-through to LEAs based on population, including consideration for the number of children living in poverty.		34,300.0			34,300.0
8 p. 168	FY2009 - FY2010 Operating	Education	Student and School Achievement				State Stabilization Funds (base) will be distributed by the department to LEAs based on their relative share of funding under Title I-A grants for 2009. LEAs may use the funds for activities authorized by ESEA, IDEA, Adult Family Literacy Act, Carl D. Perkins Career and Technology Act, or for the repair, modernization or renovation of public school facilities that is consistent with State law.		93,043.0			93,043.0
9 p. 5	FY2009 - FY2010 Operating	Education	Child Nutrition				Temporary Emergency Food Assistance Program will provide funding for the emergency food assistance program, allocated as a grant to the State distributing agency who then distributes to public or private nonprofit organizations that provide food and nutrition assistance to the needy.		50.0			50.0
10 p. 5	FY2009 - FY2010 Operating	Education	Child Nutrition				National School Lunch Program Grants provides funding to the state for National School Lunch Program equipment assistance in proportion to the State's administrative expense allocation. In turn, the state will provide competitive grants to school food authorities based on the need for equipment assistance in participating schools. Priority given to schools in which at least 50% of the students are eligible for free or reduced priced meals.		286.0			286.0
11 p. 57	FY2009 - FY2010 Operating	Education	Alaska State Council on the Arts				National Endowment for the Arts Funding to provide an additional distribution to State Art Agencies. The Arts Council submitted an application for the additional funds by the March 13, 2009 deadline.		300.0			300.0

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ARRA Page Ref.	FY	Department	RDU/ Component	PFT	PPT	NP	Description	General Funds	Federal Funds	Other Funds	Fund Source	Total Funds
12 p. 369	FY2009 - FY2010 Operating	Health & Social Svcs	Health Care Services/ Medical Assistance Administration	4			This request will allocate funds for Medicaid provider Health Information Technology (HIT) adoption and Electronic Health Records (EHR) payments. Administrative funding is to be used to coordinate with other state or local HIT projects, national standards setting, and coordinate with other agencies to assure interoperability of systems and avoid duplicate provider payments.	40.0	2,000.0			2,040.0
13 p. 61	FY2009 - FY2010 Operating	Health & Social Svcs	Public Assistance/Child Care Benefits				Child Care Development Block Grants - increased funding to improve the quality of child care and provide for the expansion of child care services. These funds cannot be used to supplant state funding. Of this allotment, \$333.7 is targeted for quality expansion and \$193.2 is for improving the quality of infant and toddler care.		3,153.1			3,153.1
14 p. 5	FY2009 - FY2010 Operating	Health & Social Svcs	Public Assistance/Public Assistance Administration			4	Supplemental Nutrition Assistance Program (SNAP) - formerly Food Stamps - funding for increased administrative costs beginning April 1, 2009. This expands the benefit but is not an expansion of the program. Includes funding for 4 non-perm staff to assist with increased caseload, outreach and administrative process revisions for greater efficiency.		462.0			462.0
15 p. 5	FY2009 - FY2010 Operating	Health & Social Svcs	Public Assistance/Women, Infants and Children				Additional funds to support Women, Infants and Children (WIC) operations and establish, improve or administer WIC management information system. Funds are to be used for extension and expansion of programs.		777.7			777.7
16 p. 63	FY2009 - FY2010 Operating	Health & Social Svcs	Public Health/Chronic Disease Prevention and Health Promotion				Increased funding for immunization, prevention and wellness and infection reduction grants. The department assumes that current Health and Human Services (HHS) requirements apply.		2,000.0			2,000.0
17 P. 65	FY2009 - FY2010 Operating	Health & Social Svcs	Children's Services/Infant Learning Program Grants				Expand Infant Learning Program grants established as part of the Individuals with Disabilities Education Act, Part C.. Department will focus on one-time infrastructure improvements; any service expansions are intended to be backfilled with enhanced Medicaid claiming through program changes.		1,000.0			1,000.0
18 p. 62	FY2009 - FY2010 Operating	Health & Social Svcs	Senior and Disabilities Services/ Senior Community Based Grants				Administration on Aging, Home Delivered Meals and Congregate Meals Continue and enhance food security for current eligible groups. These funds are limited to senior meal programs only.		485.0			485.0
19 p. 59-60	FY2009 - FY2010 Operating	Labor	Employment Training Services	8			These funds will be used to hire an additional 8 full time, front-line service delivery staff to assist with the increased volume of labor exchange customers and unemployment insurance claimants. Six Employment Security Specialist II positions (qualified in case management) will provide job search assistance, labor market information, case management, and other reemployment services in the job centers. Two Community Development Specialist positions will provide career support and training services to unemployment insurance claimants who need training to upgrade skills in order to obtain employment. Funding will also be used to support salary and benefit costs of existing staff, travel for trainers, enhancements to the Alaska Labor Exchange System (ALEXsys) and equipment replacement and upgrade to support the federal Stimulus effort. These efforts include continuing to provide front-line employment and reemployment services, and career support and training services, to an increased volume of labor exchange customers. The outcome will be to increase the number of customers receiving staff assisted services by approximately 2,250.		4,304.7			4,304.7
20 p. 59	FY2009 - FY2010 Operating	Labor	Employment Training Services				Funding will support additional training and employment opportunities for unemployed low-income seniors. Grantees will expand the number of Senior Community Service Employment Program (SCSEP) participants assigned to community service work, especially in those growth industries emphasized in the Recovery Act (e.g., health care, child care, education, green jobs, energy efficiency and environmental services) and in expanded public service activities that utilize Recovery Act funds. The funds will be used to provide high quality job training, on-the-job training and employment assistance to an estimated 80 low income older workers and will assist employers that are faced with the challenges of today's workplace.		507.3			507.3

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ARRA Page Ref.	FY	Department	RDU/ Component	PFT	PPT	NP	Description	General Funds	Federal Funds	Other Funds	Fund Source	Total Funds
21 p. 329	FY2009 - FY2010 Operating	Labor	Unemployment Insurance				Funds will be used to upgrade computers on the department's annual replacement schedule, UI tax and benefit program enhancements, software and associated data processing costs, and office equipment. The funds will support a UI claim center phone call routing software package along with licensing and installation charges. They will also purchase a Tax auditing software package; web based Quality Control audit software; software to record and retrieve claim center calls for staff performance review; software for managing UI workflow and documentation processes; and computer enhancements to existing Employment Security Division on-line systems integration.		1,115.7			1,115.7
22 p. 58-59	FY2009 - FY2010 Operating	Labor	Business Services				Additional funding will be utilized to increase workforce development training opportunities in the Workforce Investment Act programs for Adult \$1,679.5, Dislocated Worker \$3,546.4, and Youth \$3,936.1. It will be used for personal services to support existing staff engaged in Stimulus related activities, travel to monitor grantees, commodities and contractual services for normal office and staff related costs, and contractual services and grant funds to provide training. It is estimated to provide training opportunities to an additional 729 Adult, 733 Dislocated Worker and 1,681 Youth participants.		9,161.9			9,161.9
23 p. 69	FY2009 - FY2010 Operating	Labor	Client Services				Funding will provide vocational rehabilitation services and grants to disabled individuals. These services include assessment for determining eligibility for services, job development, orientation and mobility services, and supported employment services.		1,800.0			1,800.0
24 p. 266	FY2009 - FY2010 Operating	Labor	Employment and Training Services				The ARRA reauthorized and permanently expanded the Trade Adjustment Assistance program. Eligibility was expanded to include workers in the services sector. The funds will be utilized to support salary and benefit costs of existing staff to provide employment and case management services to increased participants to include comprehensive and specialized assessment of skill levels and service needs; development of an individual employment plan; information on how to apply for financial aid; information on training available in local and regional areas; short-term prevocational services; individual career counseling; employment statistics information; and information relating to local occupations that are in demand and the earnings potential of such occupations. In addition, the Trade Adjustment Assistance database will need to be upgraded as mandated by new federal regulations. The estimated outcome is 115 participants will utilize Trade Adjustment Assistance program benefits such as job search activities, relocation benefits, training, health care travel credits, and trade readjustment allowances benefits.		350.0			350.0
25 p. 69	FY2009 - FY2010 Operating	Labor	Independent Living Rehabilitation				These funds will be granted to the four Centers for Independent Living (CILs) to support activities that lead to competitive employment, independent living and business ownership by Alaskans with disabilities. Activities include providing home accessibility modifications, adaptive equipment and/or services that allow people to remain in their homes and communities. Funds will also be used to expand independent living services statewide, including rural and remote areas of the state, by encouraging partnerships, collaborative efforts, training and outreach. The funds will also support operations of the State Independent Living Council (SILC), examining the State Plan for Independent Living resource plan to determine if it needs to be updated.		246.2			246.2
26 p. 16	FY2009 - FY2010 Operating	Public Safety	Alaska State Troopers/Special Projects				Funds are to be used to enhance law enforcement's response to online child victimization and child pornography cases. The department will use the funds to cover personal services costs of investigators and associated supplies and equipment. The Anchorage Police Department is the only eligible applicant in Alaska and is expected to subgrant these funds to the department.		50.0			50.0
27 p. 16	FY2009 - FY2010 Operating	Public Safety	Alaska State Troopers/ Narcotics Task Force	6			Justice Assistance Grant (JAG) will be used to cover the personal services costs of new trooper positions, travel, training, supplies and sub-grants to other state agencies and to units of local government to fund projects supporting approved JAG purpose areas.		5,821.0			5,821.0

Items Not Included in the March 19 Economic Stimulus Bill

	ARRA Page Ref.	FY	Department	RDU/ Component	PFT	PPT	NP	Description	General Funds	Federal Funds	Other Funds	Fund Source	Total Funds
28	p. 16	FY2009 - FY2010 Operating	Public Safety	Council on Domestic Violence and Sexual Assault/Council on Domestic Violence and Sexual Assault				Victim compensation and assistance. These federal funds may be used to provide services to victims of criminal violence. The funds will be sub-granted to approved victim services programs to provide immediate safety and support to victims of domestic violence and sexual assault in Alaska.		545.0			545.0
29	p. 15	FY2009 - FY2010 Operating	Public Safety	Council on Domestic Violence and Sexual Assault/Council on Domestic Violence and Sexual Assault				Services Training Officers Prosecutors (STOP) Grant. These funds may be used to provide for law enforcement, prosecution and victim services enhancements such as training public safety and court-related personnel, expanding specialized units and enhancing technology. Funds will be sub-granted to law enforcement and prosecutorial agencies, courts and approved victim services programs.		803.6			803.6
30	p. 335, Sec. 2104	FY2009 - FY2010 Operating	Revenue	Child Support Services Division				The division had originally requested a \$1.9 million fund source change from RSS to GF Match. Neither the House or Senate Finance Subcommittee budgets include that change. The combination of a change in federal policy that now allows federal incentive funds to be used as match and the unexpected level of FY10 carryforward due to high PFD collections now result in just \$400.0 GF Match being required. The \$400.0 GF Match is necessary to collect the federal funds.	400.0	612.5	(1,012.5)	Receipt Supported Services	0.0
31					18	0	4	Operating Items Total	440.0	209,851.1	(1,012.5)		209,278.6
Capital Projects													
32	p. 103		Commerce					Community Development Block Grant Program This program provides grants (not to exceed \$850,000) to municipalities for planning activities, infrastructure projects, and economic development activities which benefit low- to moderate-income individuals.		679.9			679.9
33	p. 65		Commerce					Community Services Block Grant Program The CSBG program is designed to provide a range of services which assist low-income people to attain skills, knowledge and motivation necessary to achieve self-sufficiency. The program may also provide low-income people immediate life necessities such as food, shelter, medicine, etc. As authorized by federal Public Law 97-35, the U.S. Department of Health and Human Services (H&HS) has designated 950 Community Action Agencies (CAAs) -- all of whom may then receive federal funding that passes through their appropriate state agency. Within Alaska the federal H&HS has designated only one CAA. That entity is the non-profit corporation Rural Alaska Community Action Program, referred to as RurAL CAP.		3,960.0			3,960.0
34	p. 56		Environmental Conservation					Air Non-Point Mobile Source Stimulus Projects include diesel emission reduction, increasing the fuel efficiency of stationary source diesel power generation in Alaska villages, coupling use of ultra low sulfur diesel with oxidative catalysts or particulate traps, development and use of fish oil and waste vegetable oil derived biodiesel, and installation of anti-idling technologies. These funds will be managed by the Air Non-Point Mobile Source program.		2,000.0			2,000.0
35			Revenue					AHFC - State Energy Program U.S. Department of Energy (DOE) funds for State Energy Program (SEP) special projects such as building technologies, codes and standards, wind and power technologies, renewable energy for remote areas, or transportation technologies.		28,563.0			28,563.0
36			Revenue					AHFC - Weatherization Program U.S. Department of Energy (DOE) funds to assist low- and moderate-income families attain decent, safe, and affordable housing through the weatherization and rehabilitation of existing homes. Weatherization provides for fire safety through furnace and electrical repairs, education, chimney and woodstove repairs, and egress windows (installed during bedroom window replacements).		18,466.2			18,466.2
37			Revenue					AHFC - Energy Efficiency and Conservation Block Grants U.S. Department of Energy (DOE) funds for energy efficiency and conservation activities for communities, including but not limited to: developing/implementing an energy efficiency and conservation strategy; retaining technical consultant services to assist in the development of such a strategy.		8,500.0			8,500.0
38					0	0	0	Capital Projects Total	0.0	62,169.1	0.0		62,169.1
39					18	0	4	Operating and Capital Combined Total	440.0	272,020.2	(1,012.5)		271,447.7

American Recovery & Reinvestment Act - Department of Education

(\$ in 000s)

Program	Type	Amount	Timing													
			February/March		June/July		Sept/Oct		December		February/March		May/June/July			
			%	\$	%	\$	%	\$	%	\$	%	\$	%	\$		
Federal Pell Grants	Formula	\$15,640	0%	\$ -	100%	\$15,640										
Mandatory Pell		\$ 1,474	0%	\$ -	100%	\$ 1,474										
Federal Work-Study	Formula	\$ 200	0%	\$ -	100%	\$ 200										
				\$ -		\$ 17,314										
Impact Aid Construction	Formula	\$ 100	40%	\$ 40			60%	\$ 60								
Vocational Rehab	Formula	\$ 540	50%	\$ 270			50%	\$ 270								
Independent Living	Formula	\$ 140	100%	\$ 140			0%	\$ -								
Education for Homeless Youth	Formula	\$ 70	100%	\$ 70			0%	\$ -								
Title I	Formula	\$10,000	50%	\$ 5,000			50%	\$ 5,000								
IDEA Part B to States	Formula	\$11,300	50%	\$ 5,650			50%	\$ 5,650								
IDEA Part B Pre-School	Formula	\$ 400	50%	\$ 200			50%	\$ 200								
IDEA Part C for Infants & Families	Formula	\$ 500	50%	\$ 250			50%	\$ 250								
				\$ 6,100			\$ 6,100									
State Fiscal Stabilization Grants	Formula w/ new Apj	\$48,600	67%	\$ 32,562			33%	\$ 16,038	0%	\$ -	0%	\$ -				
School Improvement Grants	Formula*	\$ 3,000			0%	\$ -	100%	\$ 3,000	0%	\$ -	0%	\$ -	0%	\$ -		
Educational Technology State Grants	Formula**	\$ 650			50%	\$ 325	50%	\$ 325	0%	\$ -	0%	\$ -	0%	\$ -		
Statewide Data Systems	Competitive	\$ 250			50%	\$ 125	50%	\$ 125	0%	\$ -	0%	\$ -	0%	\$ -		
Teacher Incentive Fund	Competitive	\$ 200					100%	\$ 200	0%	\$ -	0%	\$ -	0%	\$ -		
Teacher Quality Enhancement	Competitive	\$ 100					100%	\$ 100	0%	\$ -	0%	\$ -	0%	\$ -		
Race To The Top Grants	Competitive	\$ 5,000							30%	\$ 1,500			70%	\$ 3,500		
	Total	\$98,164	45%	\$ 44,182	18%	\$ 17,764	32%	\$ 31,218	2%	\$ 1,500	0%	\$ -	4%	\$ 3,500		
	Direct Reform Related		0%	\$ -	0%	\$ 125	0%	\$ 425	2%	\$ 1,500	0%	\$ -	4%	\$ 3,500		
	Reform Influencing		44%	\$ 43,662	0%	\$ -	31%	\$ 30,138	0%	\$ -	0%	\$ -	0%	\$ -		
	Cumulative Total		45%	\$ 44,182	63%	\$ 61,946	95%	\$ 93,164	96%	\$ 94,664	96%	\$ 94,664	100%	\$ 98,164		
	Direct Reform Related		0%	\$ -	0%	\$ 125	1%	\$ 550	2%	\$ 2,050	2%	\$ 2,050	6%	\$ 5,550		
	Reform Influencing		44%	\$ 43,662	45%	\$ 43,987	76%	\$ 74,450	76%	\$ 74,450	76%	\$ 74,450	76%	\$ 74,450		

* Directed by States to LEAs based on need

** 50% Competitive within States for LEAs

American Recovery and Reinvestment Act of 2009

Teacher Incentive Fund

- \$200 million total
- Fall 2009
- Competitive grants
- LEA.s, states, or partnerships of one or more LEAs or states and at least one non-profit organization
- Ideas promoted include:
 - Performance-based teacher and principal compensation
 - High needs schools (30% of its enrollment low-income)
 - Must consider gains in student achievement
 - Multiple classroom evaluations
 - Incentives for educators to take on additional responsibility
- I.E.S. must evaluate rigorously

Longitudinal Data Systems

- \$250 million (Up to \$5m may be used to fund Data Coordinator for States), FY 09 money
- Fall 2009 (50% June/July, 50% Sept/Oct) – Audio conferences already taking place on first round of RFPs
- Competitive grants to SEAs
- Link P-16, teacher ID linked to student data, and workforce information
- Work toward meeting the America COMPETES act
- Institute of Educational Sciences at USED will Administer

State Fiscal Stabilization Fund (SFSF)

- 48.6 billion total nationally
- 67% upon receipt by USED of States application
- Remaining after approval of application, or fall '09

Assurances that must be agreed upon to accept SFSF –

1. Making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including English language learners and students with disabilities;
2. Establishing pre-K-to college and career data systems that track progress and foster continuous improvement;
3. Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
4. Providing intensive support and effective interventions for the lowest-performing schools.

States application must include;

(1) assurances that the state is committed to advancing education reform in four specific areas (described below);

Assurances

- (a) increase teacher effectiveness and address inequities in the distribution of highly qualified teachers;
- (b) establish and use pre-K-through-college and career data systems to track progress and foster continuous improvement;
- (c) make progress toward rigorous college- and career-ready standards and high-quality assessments; and
- (d) support targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring.

(2) baseline data that demonstrates the state's current status in each of the four education reform areas; and

(3) a description of how the state intends to use its stabilization allocation.

A. Base Stabilization Fund

- 81.8% of the funding – 39.8 billion total nationally
- \$93 million in Alaska

Process

Funds to Restore Support for Education

- States must use 81.8 percent of SFSF funds for the support of public elementary, secondary, and higher education, and, as applicable, early childhood education programs and services.
- States must use their allocations to help restore for FY 2009, 2010, and 2011 support for public elementary, secondary, and postsecondary education to the greater of the FY 2008 or FY 2009 level. The funds needed to restore support for elementary and secondary education must be run through the state's primary elementary and secondary education funding formulae. The funds for higher education must go to IHEs.
- If any SFSF funds remain after the state has restored state support for elementary and secondary education and higher education, the state must award the funds to LEAs on the basis of the relative Title I shares but not subject to Title I program requirements.
- LEA Use: to create and save jobs and to advance the education reforms set forth in the assurances section so as to produce lasting results for students from early learning to college. An LEA can use the funds, while advancing the four assurances required to accept the SFSF money, for the following programs:
 - ESEA
 - IDEA
 - Adult Family Literacy Act
 - Perkins
 - Repair, modernization or Renovation of Public School Facilities

Discretionary Stabilization Fund

- 18.2%
- \$20.7 million in Alaska
- Governor can utilize for education, safety or other government services

B. Incentive Grants

- \$4.35 billion total nationally
- Competitive grants
- Secretary is referring to grants as “Race To The Top” grants
- Fall 2009 (FY 2010) – 30% in December ‘09 and 70% in May/June/July ‘10
- Application
 - Status on assurances
 - How groups not meeting AYP will make progress toward targets
 - Achievement and graduation rates
 - How will funds be used to improve achievement
 - Evaluation plan
- For a state that seeks and receives funding 50% of funding will be provided via grants to LEAs based on Title I-A formula for most recent year
- USED wants to pick 10-15 states or consortia (consortia strongly encouraged)
- USED is looking for states who do something dramatically different

C. Innovative Funds

- \$650 million total nationally
- Fall 2009 and spring 2010
- Expand work and serve as models for best practices; allow work with the private sector; document best practices – and take to scale; invest in What Works and Innovation
- States not eligible
- Eligible applicants include L.E.A.s, other Agencies or Consortia – with strong track records of results
- Application
 - Significantly closing achievement gaps or increase student achievement
 - Exceeding states AMO
 - Significant improvement in other areas, such as graduation rates, recruitment, placement of HQT and school leaders
 - Partnerships with private sector, including philanthropic that will provide match to help bring results

Reporting Requirements under SFSF–

- Annual Report
 - fund distribution
 - jobs saved or created
 - taxes averted
 - states progress on assurances

American Recovery & Reinvestment Act (ARRA)
Education Title I & NCLB Stimulus Overview for Alaska
March 16, 2009

**Title I, School Improvement 1003(g), Education Technology, & McKinney-Vento
Education for the Homeless**

Purpose: The overall goals of the *ARRA* are to stimulate the economy in the short term and invest in education and other essential public services to ensure the long-term economic health of our nation.

All funds under ARRA should be spent according to the following principles:

- a. Spend funds quickly to save and create jobs.
- b. Improve student achievement through school improvement & reform.
- c. Ensure transparency, reporting, & accountability.
- d. Invest one-time ARRA funds thoughtfully to minimize the “funding cliff.” These funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires.

Title I ARRA Funds

- a. About \$29,480,000 to Alaska. This is almost as much as the 2008-2009 allocation to the state which was \$38,846,309. The estimate for regular Title I for Alaska is \$40,130,523.
- b. Distributed based on two parts of the Title I formula – EFIG & Targeted, not all 4 parts.
- c. First distribution to states by end of March (50% of the funding).
- d. Second distribution to be determined, probably early fall, after state revises application to USDOE.
- e. Will be considered as additional funding for 2009-2010 school year. Funds will be available until 9/30/2011.
- f. Formula for district allocations will be generated using regular Title I funding rules, including the 4% state set-aside for School Improvement funds under 1003(a).
- g. Waiting on final guidance from USDOE about possibility of waivers of Title I requirements including 20% for SES/choice, per pupil amount required for SES, and 15% limitation on carryover.
- h. Districts must report a school-by-school listing of per-pupil educational expenditures from state and local sources to EED by December 2009.
- i. EED reviewing ways to distribute the funding, the district will probably be able to apply for the total Title I funding through the NCLB 2009-2010 application, but may need to receive the funding through a separate grant award and create separate budgets for ARRA funds to meet the reporting and accountability requirements.
- j. A district that would like to receive its portion of the Title I ARRA funds prior to July 1 may submit a budget request to EED once EED has received the funding from USDOE. It is anticipated that EED will be able to create a grant award for July 1, 2009 with authority to spend funds during the pre-award period.
- k. District estimated amounts provided based on 2008-2009 data (current data), but *will change* with the actual distribution from USDOE.
- l. Link to the US Department of Education fact sheet for Title I ARRA funds:
<http://www.ed.gov/policy/gen/leg/recovery/factsheet/title-i.html>

School Improvement 1003(g) ARRA Funds

- a. About \$9.8 million to Alaska. This is 6 times more than the \$1,578,096 that Alaska received in 2008-2009. The state is also expected to receive about \$1.6 million for FY 2009-2010 in regular 1003(g) funding.
- b. The state must submit a revised application to the USDOE for these funds. They must be distributed to Title I schools in improvement, corrective action, or restructuring according to the approved state application in amounts of at least \$50,000 per school with a maximum of \$350,000 per school.
- c. Funds will probably be distributed to states in September, 2009. Funds will be available for use until 9/30/2011.

Enhancing Education through Technology (Title IID)

- a. About \$3.2 million to Alaska. This is about 2.5 times the funding that Alaska received in 2008-2009.
- b. The funds will be split 50% through formula funding to districts, 50% through competitive grants.
- c. USDOE is expected to distribute the first half of the funds in June or July and the second half in early fall. The funds will be available for use until 9/30/2011.

McKinney-Vento Homeless Education

- a. No estimate available yet for Alaska, but could be about \$190,000. Alaska received \$177,203 in 2008-2009 and is estimated to receive \$177,939 in 2009-2010 in regular McKinney-Vento funds.
- b. States will distribute funds either through competitive grants or through a formula.
- c. EED is awaiting further guidance on whether these funds can be distributed with the regular funding through the normal competitive grant process.
- d. Funds will be allocated to states based on the number of homeless students reported for 2007-2008. That data was just submitted to USDOE in final form on Friday, 3/13.
- e. Funds will be distributed to states in April, and must be awarded by states within 120 days. The funds will be available for use until 9/30/2011.

Alaska Special Education Funding for 2009-2010 And The American Recovery and Reinvestment Act of 2009

- ❖ Current Federal Funding for Title VI-B and Section 619 Preschool Disabled
 - The Application is on-line
 - DEED provided a “NOTICE of Grant Application” on 3-10-2009
 - Funding amounts are “estimated” at 80% of the district’s 08-09 funding levels.
 - The funding for 09-10 will likely be the same as 08-09
 - Must abide by general assurances.
 - USE OF FUNDS defined by state and federal regulations.

- ❖ Additional funding from the American Recovery and Reinvestment Act (ARRA)
 - The best information available can be found at <http://www.ed.gov/recovery/>
 - This information was provided to district in a 3-11-2009 email from Erik Stimpfle
 - These documents are Preliminary Guidelines by the USDOE regarding the use of ARRA funding.
 - The American Recovery and Reinvestment Act of 2009: Saving and Creating Jobs and Reforming Education (Mar 7, 2009)
 - State Fiscal Stabilization Fund (Mar 7, 2009)
 - Title I, Part A Recovery Funds for Grants to Local Educational Agencies (Mar 7, 2009)
 - Individuals with Disabilities Education Act (IDEA) Recovery Funds for Services to Infants, Toddlers, Children and Youth with Disabilities (Mar 7, 2009)
 - The American Recovery and Reinvestment Act of 2009: Education Jobs and Reform (Feb 18, 2009)
 - Budget Information, Including State Allocations

 - IDEA Funding
 - Likely to be nearly the same as 08-09 funding. *See attached schedules for Title VI-B and Section 619 Preschool Disabled.*
 - Alaska DEED must determine HOW TO Award
 - Notification by USDOE by 3-31-2009
 - Notification by AK DEED to Districts by 4-15-2009
 - Districts will likely add the ARRA funding to the 2009-2010 grant application and award with separate funding codes as appropriate.
 - Districts should be aware of and familiar with the Assurances as noted in the US-DOE guidance documents (above)
 - Districts should be aware of appropriate USE of FUNDS

USE OF FUNDS:

- These ARRA funds constitute a large one time increment in IDEA Part B funding
- Generally these funds should be used for short term investments that have the potential for long term benefits.
- These funds are allowable under IDEA and aligned with the core reform goals that states and LEAs must provide assurances.

Four principles guide distribution of the ARRA funds.

- a. **Spend funds quickly to save and create jobs.** ARRA funds will be distributed quickly to states, LEAs and other entities in order to avert layoffs and create jobs. States and LEAs in turn are urged to move rapidly to develop plans for using funds, consistent with the law's reporting and accountability requirements, and to promptly begin spending funds to help drive the nation's economic recovery.
- b. **Improve student achievement through school improvement and reform.** ARRA funds should be used to improve student achievement, and help close the achievement gap. In addition, the SFSF requires progress on four reforms previously authorized under the bipartisan Elementary and Secondary Education Act and the America Competes Act of 2007:
 1. Making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including English language learners and students with disabilities;
 2. Establishing pre-K-to college and career data systems that track progress and foster continuous improvement;
 3. Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
 4. Providing intensive support and effective interventions for the lowest-performing schools.
- c. **Ensure transparency, reporting and accountability.** To prevent fraud and abuse, support the most effective uses of ARRA funds, and accurately measure and track results, recipients must publicly report on how funds are used. Due to the unprecedented scope and importance of this investment, ARRA funds are subject to additional and more rigorous reporting requirements than normally apply to grant recipients.
- d. **Invest one-time ARRA funds thoughtfully to minimize the "funding cliff."** ARRA represents a historic infusion of funds that is expected to be temporary. Depending on the program, these funds are available for only two to three years. These funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires.

Some possible USE of Funds:

1. Obtain state-of-the art assistive technology devices and provide training in their use to enhance access to the general curriculum for students with disabilities. **Use Assistive Technologies of Alaska (ATLA) or SESA as a resource for these types of materials and interventions.**
2. Provide intensive district-wide professional development for special education and regular education teachers that focuses on scaling-up, through replication, proven and innovative evidence-based school-wide strategies in reading, math, writing and science, and positive behavioral supports to improve outcomes for students with disabilities. **RTI, PBIS, are critical areas of need.**
3. Develop or expand the capacity to collect and use data to improve teaching and learning. **School-Wide Information Systems and systems to do self and focused monitoring.**
4. Expand the availability and range of inclusive placement options for preschoolers with disabilities by developing the capacity of public and private preschool programs to serve these children.
5. Hire transition coordinators to work with employers in the community to develop job placements for youths with disabilities. **Develop stronger coordinated or collaborative effort with DVR.**

From: Larry Persily
Sent: Monday, March 02, 2009 6:30 PM
To: economicstimulus
Subject: Education funding

Education funding

There are several pockets of education funding in the economic stimulus package, totaling at least \$194 million for Alaska that can be spread over state fiscal years 2009, 2010 and 2011.

But the law imposes requirements on states to accept the biggest piece of that money (\$114 million in Fiscal Stabilization Funds for Alaska). States must provide several assurances to get the money. Here is the easy one:

- The state shall maintain its financial support of elementary, secondary and university education through 2011 at least at 2006 levels.
(Considering the steady increase in state aid to education in recent years, this should not be a problem.)

And here are the harder ones. The state must describe in its request for funds how it will use the money to:

- Improve teacher effectiveness and equity in teacher distribution between high- and low-poverty schools (ensuring that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers).
- Establish a "longitudinal data system" (individual student data / progress tracking system) covering students in preschool through four years of college.
- Enhance the quality of academic standards and assessments.
- Support academically struggling schools.

The Education Secretary has stated that education reform is a major focus of the Fiscal Stabilization Funds.

I can't say with certainty whether any changes in state statute and/or regulation will be required to meet the above assurances – I know the state Department of Education is hard at work, analyzing the bill and its implications – but the requirements could impose additional burdens on some school districts. The good news is the economic stimulus bill has grant money available to help meet the requirements.

As for the deadline to provide the assurances, the law provides no specifics – states need to wait for the Education Secretary to provide guidance. The law

states: "The governor of a state desiring to receive an allocation ... shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require."

Here's the breakdown of the \$194 million in education funding:

Fiscal Stabilization Funds: \$113.75 million (calculated on a formula in the law, based on each state's population between the ages 5 and 24 and on total population)

- 81.8% of that pot – about \$93 million – must go to early childhood, K-12 and postsecondary education. Since Alaska does not need to use the money to restore budget cuts of recent years, the law says the state shall distribute the money to local school districts according to the distribution formula of the Title I program (based on the number of students from low-income households).
The funds are available to states immediately and must be spent within two years of receipt by the state. The money can go toward most anything in the schools, including "modernization, renovation or repair" of classrooms and student housing. The money CANNOT go toward maintenance expenses or toward work on athletic facilities that charge an admission fee. The money cannot be spent on school district central office administration or support buildings (that same prohibition does not apply to the university). I'm sorry, but I do not have an estimated breakdown for distribution of the \$93 million. I expect we will see one from the state Department of Education before too long.
- 18.2% of the money – about \$20.7 million – can go toward anything education-related, or public safety-related, or any other government service. The distribution is up to the states. The money can go toward most anything in the schools, including "modernization, renovation or repair" of classrooms and student housing. The money CANNOT go toward maintenance expenses or toward work on athletic facilities that charge an admission fee. And the money cannot go toward school district central office administration or support buildings (that same prohibition does not apply to the university). The funds are available to the state immediately and must be spent within two years of receipt by the state.

Incentive Grants and Innovation Fund grants

The stimulus bill instructs the Education Secretary to reserve as much as \$5.65 billion in stimulus money to award to states to assist in their efforts to meet the assurances required for receiving Fiscal Stabilization Funds (teacher effectiveness, data tracking, enhance academic standards, etc.). The money will be awarded based on a grant selection process, not by formula.

The law states that \$5 billion shall be distributed as State Incentive Grants: "The Secretary shall determine which states receive grants under this section, and the amount of those grants, on the basis of information provided in state applications ... and other such criteria as the Secretary determines appropriate, which may include a state's need for assistance to help meet the objectives (of the Fiscal Stabilization educational aid). ..."

States that receive grants shall distribute at least half the money to local school districts based on the formula in Title I (low-income students).

The law says up to \$650 million shall be distributed nationwide as Innovation Fund Grants to local school districts and partnerships between a nonprofit organization and one or more school districts (these grants do not go to the states). These grants are to assist schools in expanding their "best practices" aimed at closing the achievement gap between students.

Special Education funding: \$36.4 million

This breaks down as \$33 million for K-12 special ed, with \$1.3 million for preschool-age children and \$2.1 million for infants and toddlers. These allocations under the stimulus bill are almost exactly the same dollar amounts as the state received in FY2008 – showing this is a significant boost in funding spread over two years.

The law says the funds will be made available for the 2009-2010 and 2010-2011 school year as grants to states and school districts, but I have not been able to determine a breakdown for the district-by-district funding in Alaska. The law says states shall pass through the money to local school districts based on the number of children with disabilities who are receiving services.

It appears districts may use this new money to supplant other funds, but there are limits. This note from the National Association of School Boards: "There is no clear language in the final bill to ease the supplement / not supplant requirements that school districts must meet currently under No Child Left Behind and the Individuals with Disabilities Education Act. For example, school districts can only supplant ... local funds with federal funding by an amount no greater than 50% of the increase in IDEA funds in a given year. (*All of the special education money in the stimulus bill appears to count as IDEA funding.*) The school boards association will continue to work with Congress and the administration to provide greater flexibility that allows the additional federal funding to offset a greater level of local funding for school districts." The result would be local budget savings rather than increased services that cannot be maintained when the stimulus money runs out in two years.

One warning about the increased aid for special-education services: Some have advised that districts need to be careful if they increase services to individual students, as that higher level of service could become the new standard for that student in subsequent years. I'm no expert at this issue, but I wanted to pass on the cautionary note as worthy of further discussion.



Title I (Disadvantaged) Student Funding: \$39.1 million

This appears to break down as \$29.5 million in grants to local school districts and \$9.6 million available for School Improvement Grants.

The law requires the state to distribute the \$29.5 million to school districts according to Title I funding formulas. The U.S. Department of Education has prepared the following estimated breakdown of these funds for Alaska: <http://www.ed.gov/about/overview/budget/titlei/fy09recovery/alaska.pdf> The funding formula provides higher allocations to districts with increasing numbers and percentages of low-income children. However, you will note that the estimate shows no money for several school districts, including Aleutian Region, Galena, Unalaska and others. I'm told that's in error. The law allows states to use alternate poverty data for small districts, but the Education Department did not factor in that optional method for these estimates. I'm told by Sen. Murkowski's office that state officials would recalculate the district-by-district distributions under the alternate data rules.

The School Improvement Grants will be targeted to help districts that have been indentified as "in need of improvement" under No Child Left Behind. The money (\$9.6 million) will go to the state to distribute as grants to school districts. At least 40% of the money must go toward middle and high schools, and the grants shall be in amounts between \$50,000 and \$500,000, renewable for two years. The state will distribute the grants.

Education Technology Grants: \$3.2 million

The federal money will be distributed to states by formula, with states to distribute the grants.

Vocational Rehabilitation Grants: \$1.8 million

The federal money will be distributed to states by formula, with states to distribute the grants.

Pell Grants

And, separate from increased federal aid for state education efforts and local school districts, the bill includes an estimated \$6.1 million in additional funding over 2008 levels for Pell Grants for Alaska college students. The stimulus bill raises the limit for Pell Grants by as much as \$1,000 per student per year, to about \$5,300. The grants are based on financial need. The Department of Education's estimate of increased financial for Alaska college students is just that; the actual number will depend on the number of qualifying students and their grant amounts.

From: Rep. Paul Seaton
Sent: Sunday, March 22, 2009 3:28 PM
To: Mary Jane Shows
Subject: FW: Legal opinion

From: Larry Persily
Sent: Thursday, March 19, 2009 10:21 AM
To: economicstimulus
Subject: Legal opinion

I have obtained a copy of a March 17 legal opinion from the Congressional Research Service, addressing the issue of legislative acceptance of economic stimulus funds in lieu of a governor rejecting any such funds. I will get you a more complete review soon, but here is the quick summary:

While a Legislature, by concurrent resolution, can request any economic stimulus funds not requested by a governor, there is nothing in the stimulus law to waive or amend any other steps in the process of requesting and accepting specific federal funds to or for the state. Meaning, "the legislature's acceptance ... would have little or no effect on the power of a governor, state or local official to choose whether or not to seek and administer these funds." The key word here is "administer."

What it means is that you could have a situation where the legislature, by resolution, asks for the stimulus funds, but then a governor (or executive branch departments) refuses to fill out the paperwork to apply for, certify and administer a particular pot of money – and there is nothing in the stimulus bill to fix the problem. The Legislature's resolution could become a hollow authority, absent the administration's consent to follow the will of the resolution.

More to come.

Larry

From: Rep. Paul Seaton
Sent: Sunday, March 22, 2009 3:23 PM
To: Mary Jane Shows
Subject: FW: April 3 deadline and governors vs. legislatures

Attachments: Delegation to State Legislature.pdf

From: Larry Persily
Sent: Saturday, March 21, 2009 3:23 PM
To: economicstimulus
Subject: April 3 deadline and governors vs. legislatures

April 3 deadline

The federal Office of Management and Budget this week advised state legislatures wanting to request federal stimulus funds in lieu of a governor's decision that they have sort of an open-ended deadline to make their request. OMB's advice relies on the fact that while the stimulus bill mandates an April 3 deadline for governors to decide whether to request the funds, the act does not provide a deadline or any guidance for a legislative deadline. So rather than administratively make up a deadline for legislatures, OMB has opted to say there is no real deadline – other than specific application deadlines for specific pots of money.

Section 1607 of the stimulus act states:

(a) Certification by Governor - Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

(b) Acceptance by State Legislature - If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

The 45-day deadline for governors is April 3. After several meetings with OMB officials, the National Conference of State Legislatures this week issued the following explanation: "There is no timeline in which the legislature needs to act."

NCSL staff went on to explain that there are certain deadlines for specific pots of money in the act, such as the requirement that half of statewide transportation funds must be obligated by mid-June, and that a legislature must be aware of those deadlines so that its state does not miss out on any funds. The safest bet, of course, is for any legislature considering a resolution in lieu of a governor's decision to adopt its resolution by April 3 and then proceed to the next step, which is putting the federal stimulus funds into an appropriations bill, passing the bill, and directing the administration to start the work of obtaining and spending the money.

It is important to note, however, that the April 3 certification does not mean the state consents to every requirement and every promise of every program in the stimulus bill. It is merely certification that "the state will request the funds and use funds provided by the act to create jobs and promote economic growth," according to NCSL. Consenting to the more precise requirements of individual pots of money comes later, with the application and certification for each particular program.

One other note: The stimulus act does not say where states should send their certification. Federal departments are now advising states that one letter to the director of OMB will be sufficient; states do not need to send a letter to every federal department.

NCSL also pointed out that a legislature can submit its resolution for the funds at any point in time – there is no such thing as too early. This is exactly what the Montana legislature is considering:

Montana Legislative Leaders Defy Governor on Stimulus

HELENA (AP) – Top legislative leaders continue to buck against the governor's deadline for allocating stimulus dollars, promising March 12 to vouch for the federal funds on their own if the governor proves unwilling.

A joint resolution sponsored by Democratic House Speaker Bob Bergren, Republican Senate President Bob Story and Democratic Senate Minority Leader Carol Williams comes in response to the governor's demand that legislators pass a stimulus bill by April 3.

"With this resolution in process, we can focus on our real duty, which is to appropriate the money properly," Story, R-Park City, said.

The NCSL also reminded legislatures that their certification to the federal OMB is just the first step in the process: "This would not change requirements as it relates to the necessary applications that may need to be made by a governor for receipt of ARRA funds. Governors would still need to make these applications."

Which takes us to the legal issues addressed in the March 17 memo from the Congressional Research Service, discussing what happens in those states where the governor declines economic stimulus funds and the legislature decides otherwise.

The memo (attached) clearly states that a legislative resolution accepting stimulus funds "would not otherwise reallocate power within the state." A legislative resolution, according to the legal opinion, does not waive any application or other statutory requirements in the stimulus bill, nor does it trigger any provision in the stimulus act to change the delegation of administrative or appropriation authority between a governor and legislature. To interpret the stimulus act otherwise – that is, to argue that a legislative resolution to accept stimulus funds could grant new powers to a legislature over state agencies or even municipal governments – "would arguably be a commandeering of those entities for a federal purpose," which would violate the U.S. Constitution.

All of which means, even if a legislature requests funds in lieu of a gubernatorial request, there is nothing in the stimulus bill to require a reluctant governor to fill out applications and provide required assurances to federal agencies for compliance with individual programs. The stimulus bill, the legal opinion says, was not "intended to significantly reallocate powers between a state legislature and a state executive branch."

All of which means – to me, at least – that cooperation between a state's governor and legislature is key to successful implementation of the stimulus bill's provisions. Moving in that direction, Alaska OMB Director Karen Rehfeld on Friday directed all state agencies to proceed with filing all pre-applications, applications and other necessary paperwork to ensure that Alaska holds its place in line and does not miss any early deadlines for specific stimulus funds. This was the message from OMB: "Please continue to complete the necessary paperwork and applications to be eligible to receive funds once the policy and appropriations debate is concluded."

So Alaska's place should be protected for any and all stimulus funds while the legislature and the

administration discuss (debate?) the merits of specific pots of money, leading up to a gubernatorial decision by April 3 or a legislative resolution.

Any questions? Please give me a call.

Larry

Direct line 465-6959

Cell 351-8276



MEMORANDUM

March 17, 2009

To: Hon. Lindsey Graham
Attention: Laura Bauld

From: Kenneth R. Thomas
Legislative Attorney
American Law Division

Subject: Analysis of § 1607 of the American Recovery and Reinvestment Act of 2009

This memorandum has been prepared in response to your request to analyze the language contained in §1607 of the American Recovery and Reinvestment Act of 2009 (Recovery Act),¹ which provides that federal funds can be made available to a state by the federal government either after certification by a governor that such money will be requested and spent or after the adoption of a concurrent resolution by a state legislature. You requested an analysis as to whether, under this language, a state legislature can, by concurrent resolution, provide for the acceptance of federal funds.

Background

Section 1607 may be a congressional response to statements by several state governors who indicated a disinclination to have entities in their state seek and receive funds provided under the Recovery Act.² The Act requires that, in order to be eligible for such funds, a governor must first either certify that such funds will be requested, or, if that does not occur, then a state legislature may fulfill the same condition by passing a concurrent resolution (which does not generally require a governor's signature).³ Specifically, § 1607 of the Recovery Act provides that:

¹ Pub. L. 111-5.

² Melinda Deslatter, *Some US governors may turn down stimulus money*, Associated Press Wire (February 19, 2009) ("A handful of Republican governors are considering turning down some money from the federal stimulus package . . .").

³ CRS Report 98-728, *Bills, Resolutions, Nominations, and Treaties: Characteristics, Requirements, and Uses*, by Richard S. Beth at 2. At the federal level, this legislative vehicle is used principally for internal procedural matters such as adjournment sine die, to provide for joint session or joint committee, or to express a "sense of Congress." The exception to this is a concurrent resolution, passed by two-thirds of both houses, which is used to send a constitutional amendment to the states. U.S. Const. Article V. CRS Report 98-706, *Bills and Resolutions: Examples of How Each Kind Is Used*, by Richard S. Beth at 2. It is beyond the scope of the memorandum to survey the use of concurrent resolutions at the state level.

(a) Certification by Governor- Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

(b) Acceptance by State Legislature- If funds provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) Distribution- After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public private entities within the State either by formula or at the State's discretion.

The language of § 1607 contains significant ambiguities, and the terms used may not be easily reconciled with either other portions of the Act or with existing statutory law. Section 1607(a) for instance, requires a governor to, within 45 days, "certify" that the state will, at some unspecified future time, request and use funds provided by this act to create jobs and promote economic growth. The language does not specify to whom such certification shall be made;⁴ nor does it specify whether, in making the certification, the state will be accepting all the funds that the state is eligible for under the Act, or only some portion of the funds. Further, this subsection does not specify whether a governor's office will be the political entity requesting the funds at some time in the future, or whether such a request will come from a state agency, a local government, councils of government, or public private entities within a state.

Section 1607(b) provides that if funds "in any division of the Act" are not "accepted" for use by a governor, then it "shall be sufficient to provide funding to the state" for a state legislature to "accept[]" such funds by a concurrent resolution. However, the term "concurrent resolution" is not defined, and some states do not appear to have this legislative vehicle.⁵ Further, "accepting" funds is not a precise term of art, and it would appear to be a description of only a portion of the process usually used to allocate federal funds. Finally, it is not clear if the language which provides that a concurrent resolution shall "be sufficient" to provide funding to the state is intended only to fulfill the "certification" requirement of § 1607(a), or whether it is intended to be: 1) a waiver of all the requirements for receiving grant monies, such as making a grant application or providing supporting data or required assurances, and 2) a direction to state and local officials to accept and spend these monies.

Finally, section 1607(c) provides that, after the adoption of a state legislature's concurrent resolution, funding to the state "will be for distribution to local governments, councils of government, public entities, and public private entities within the State either by formula or at the State's discretion." Federal funds may be distributed by formula or at a state's discretion, depending upon the criteria specified in federal law governing a particular grant program. It is not clear if this language is intended to supplant existing federal and state law regarding the application for and distribution of federal funds, or merely to indicate that this process may move forward after a state's adoption of a concurrent resolution.

⁴ Certification by the state of Texas was apparently made by a letter from Governor Rick Perry to President Obama, which provided "On behalf of the people of Texas, please allow this letter to certify that we will accept the funds in H.R.1 and use them to promote economic growth and create jobs in a fiscally responsible manner that is in the best interest of Texas." Dave Montgomery & Kevin Lyon, *Perry says Texas will take stimulus money*, Fort Worth Star-Telegram, February 18, 2009 (available at <http://www.star-telegram.com/804/story/1212448.html>).

⁵ Nebraska, for instance, has a unicameral legislature, and consequently is unlikely to have a legislative vehicle referred to as a "concurrent resolution."

Alternative Interpretations

Although many of the terms and phrases used above are imprecise, perhaps the most significant ambiguity is the meaning of the phrase in § 1607(b) that “acceptance . . . shall be sufficient to provide funding.” Without considering the context of the rest of the Act, the language in § 1607(b) might at first appear to authorize the state legislature, by concurrent resolution, to waive all federal requirements which would otherwise need to be followed for a state or local entity to apply for and receive federal funds. As noted, it might even be argued that this language could be interpreted to require state entities to receive and spend such monies consistent with a state legislature’s concurrent resolution. As will be explored below, however, this more expansive interpretation is difficult to reconcile with the rest of the Recovery Act, with canons of statutory interpretation, or with constitutional doctrine.

A more likely interpretation of this language is that an “acceptance . . . [which] shall be sufficient to provide funding” would only trigger the authority of federal agencies to grant federal funds, but would not otherwise reallocate power within the state. Under this interpretation, “acceptance” by a state legislature by concurrent resolution under § 1607(b) is merely the functional equivalent of the “certification” that can be made by a governor under § 1607(a). Either of these actions would appear to be nothing more than preliminary conditions which must be met before a state becomes eligible to apply for and receive federal funds under the Recovery Act. In effect, § 1607(a) gives a governor the opportunity to exercise a veto over receipt of federal funding under the Act by failing to make such certification within 45 days, but then § 1607(b) gives the state legislature the opportunity to act to negate the effect of this veto.

The problems with the more expansive interpretation of the phrase “acceptance . . . [which] shall be sufficient to provide funding” become more clear when the language is considered in conjunction with other provisions of the Recovery Act. Provisions of the Act which would be useful to analyze would include those where: 1) funds allocated by a formula are to be made available only upon application of a governor, 2) discretionary state grant funding is available only upon application of a governor, and 3) local grant funding is made available upon application by a subordinate government agency.

Authority under Title § 14001(d) To Receive Allocated Stabilization Funds

For instance, one can evaluate how the broader interpretation of the phrase “acceptance . . . [which] shall be sufficient to provide funding” would be reconciled with Title XIV of the Recovery Act. Under § 14001(d) of the Act, the United States Department of Education is given authority over a “State Fiscal Stabilization Fund” (Stabilization Fund) of \$53.6 billion. After providing for certain reserve funds, the Secretary of Education is directed to determine how much of these funds will be allocated to each state based on a population-related formula.⁶

Section 14005(a) & (b) provide that, in order for a state to receive its allocation from the Stabilization Fund, a state governor must do, among other things, the following:

⁶ The formula for allocation is (1) 61 percent on the basis of their relative population of individuals aged 5 through 24, and (2) 39 percent on the basis of their relative total population. Recovery Act, § 14001.

- Submit an application to the Department of Education, containing such information as the Secretary of the Department may reasonably require.⁷ In that application, a governor shall provide assurances regarding “maintenance of effort” for elementary and higher education schools,⁸ address the issue of inequitable distribution of high quality teachers,⁹ establish a longitudinal data system,¹⁰ and enhance the quality of academic assessments.¹¹
- Provide baseline data that demonstrates the state’s current status in each of the areas described in such assurances;¹²
- Describe how the state intends to use its allocation, including whether the state will use such allocation to meet maintenance of effort requirements under the Elementary and Secondary Education Act¹³ and Individuals with Disabilities Act¹⁴ and, in such cases, what amount will be used to meet such requirements.

Thus, the question arises as to whether, under the broader interpretation of the phrase “acceptance by the State legislature . . . shall be sufficient to provide funding to such State” would give a state legislature the authority to “accept” the allocations from the Stabilization Fund, even if a governor did not make the necessary application complying with the statutory requirements.¹⁵ The term “acceptance” does not appear to be defined in the statute, nor does it appear to be a term of art in the context of federal funding. Under contract law, however “acceptance” is generally considered to be the final approval necessary to make a binding contract after a completed offer has been made. By analogy, the meaning of the term would suggest that under Title XIV, a state legislature, without the cooperation of a governor, would be allowed to accept a completed offer by the federal government of federal funds.

Under this interpretation, a completed offer of funds to be allocated under the Stabilization Fund will be made by passage of the Recovery Act and by the Secretary’s determination of a state’s allocation. Under this interpretation, the phrase “acceptance by the state legislature . . . shall be sufficient to provide funding to such State” would have to be interpreted as waiving both the application requirements and other

⁷ Recovery Act, § 14005(a).

⁸ Recovery Act, § 14005(b) & (d)(1) require that states “maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006” and “maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.”

⁹ “The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. § 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.” Recovery Act, § 14005(b) & (d)(2).

¹⁰ This data system must include the elements described in section 6401(e)(2)(D) of the America COMPETES Act, 20 U.S.C. § 9871. *Id.* at § 14005(b) & (d)(3).

¹¹ *Id.* at § 14005(b) & (d)(4).

¹² Recovery Act, § 14005(b)(2).

¹³ 20 U.S.C. § 6301, *et. seq.*

¹⁴ 20 U.S.C. § 1400, *et. seq.*

¹⁵ It should be noted that nothing in Title XIV appears to authorize a Governor to “accept” its allocation from the “Stabilization Fund.” Rather, Title XIV speaks to a relatively elaborate application process which must be completed prior to federal funds being disbursed. Thus, a Governor who does not wish to receive Title XIV funds would not generally refuse to “accept” funds - rather, he would just not apply. It is unclear, under the more expansive interpretation of §1607, when the state legislature’s power (which can be implemented only after a Governor refuses funds) could be exercised.

statutory conditions and requirements such as the provision of necessary data and assurances.¹⁶ While it may be possible to make this argument in instances where funds have already been allocated, this interpretation becomes more unlikely under other provisions of the Recovery Act where monies are not allocated ahead of time.

Authority under § 14006 To Receive State Incentive Grants

The Secretary is directed, under § 14001(c), to reserve certain funds from the Stabilization Fund for "State Incentive Grants" to the states. In order to receive a state incentive grant, a governor must submit an application which documents the status of the state's progress in a variety of different areas.¹⁷ A governor must also describe the status of the state's progress in implementing various existing federal standards.¹⁸ Finally, a governor must submit a plan for evaluating the state's progress in closing achievement gaps.¹⁹ At that point, the Secretary will determine which states receive grants and the amount of those grants on the basis of information provided by the states and such other criteria as the Secretary determines appropriate.²⁰

The argument that the term "acceptance by the State legislature . . . shall be sufficient to provide funding to such State" actually means "waiver of the application and other statutory conditions and requirements" appears less likely in this context. For instance, it is not clear how grants could be made when the Secretary only has the authority to make grants based on specified criteria and assurances to be provided by a governor. Absent a governor making a grant application, the Secretary would have no basis under which it could distribute the state incentive grants. So, the ability of a state legislature to "accept" funds could not logically mean "waiver of the application and other statutory conditions and requirements," since those requirements must be fulfilled in order for the Secretary to make a determination of the amount of funds to be made available to the states.

¹⁶ Another possible interpretation would be that any concurrent resolution passed by a state legislature will include a completed grant application and all supporting data, which is required to be provided to the federal government. This does not appear to be a reasonable interpretation § 1607(b), as the phrase "shall be sufficient to provide funding to the state" would seem to imply that the federal agency will have no discretion in allocating these funds. Consequently, any application and supporting documentation provided in the concurrent resolution would be superfluous, and thus this interpretation would disfavored.

¹⁷ These areas include, under §§ 14005(c) and 14006, "maintenance of effort," inequitable distribution of high quality teachers, development of a longitudinal data system, and the quality of academic assessments.

¹⁸ For instance, the Governor must ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. § 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards; describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C. § 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. § 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards; and describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies.

¹⁹ Recovery Act, Section 14005(c)(5).

²⁰ Recovery Act, Section 14006(b).

Authority under § 14007 To Receive Innovation Fund Awards

Finally, in some instances, an expansive interpretation of the language in § 1607 would appear to run counter to existing facts. For instance, § 1607(b) envisions exercise of the state legislature's authority regarding "any division of this Act . . . not accepted for use by the Governor." However, a governor does not appear to have underlying authority to "not accept" funds under all divisions of the Act. For instance, under § 14007 the Secretary is given the authority to reserve up to \$650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards. These awards may only go to a local educational agency or a partnership between a nonprofit organization and either one or more local educational agencies or a consortium of schools.²¹ These awards will go to entities that have made gains in closing certain specified achievement gaps.²²

Although this section does not specify an application process, it would not appear that a governor of the state would either make the application for, or provide supporting data to justify, such awards. Further, it may be the case that, under state law, a governor has no role in determining whether the local education agency will apply for or accept such awards.²³ Only under § 1607(b) does a governor appear to have the authority to control, through certification, whether federal funds would be provided under this portion of the Act. Since the authority of the state legislature to accept funds under "all divisions" would seem to only be possible if a governor had the power to reject the funds in "all divisions" (a power only found in § 1607(a)), the expansive interpretation of § 1607 would again be disfavored.

Tenth Amendment Concerns

Even if the term "acceptance by the state legislature . . . shall be sufficient to provide funding to such State" were to be interpreted broadly as to provide for a waiver of requirements regarding applications and other statutory conditions, this might not be effective in providing that the federal monies actually be spent by a state. For instance, in some cases, a governor might have direct control over the administrative apparatus under which a federal grant might be administered, and might decline to spend any monies received. In other instances, a governor may have significant indirect control over many aspects of state agencies, mostly exercised by his power to appoint or dismiss persons of authority in the Executive Branch, by which he could dissuade state officials from spending such monies. Finally, many local governments, councils of government, public entities, and public private entities which accept and utilize federal funds might have independent authority to decline to spend any monies received.

In order for the state legislature to actually force these entities to spend federal monies, one would need to interpret the phrase "acceptance . . . shall be sufficient to provide funding to such state" to essentially authorize the state legislature, by concurrent resolution, to direct the activities of local governments, councils of government, public entities, and public private entities. On its face, § 1607(b) is not consistent with such an interpretation, as the language addresses "provid[ing] funding" (which is done by federal agencies), not spending monies (which would be done by state entities). But even more importantly, an

²¹ Recovery Act, § 14007(a)(1).

²² Recovery Act, § 14007(b).

²³ Cynthia Dickers, *Stimulus Plan Ties the Hands of Reluctant Governors*, *MinnPost.com* (available at http://www.minnpost.com/stories/2009/02/19/6785/stimulus_plan_ties_the_hands_of_reluctant_governors) (noting that some federal programs allow cities to apply directly for federal money).

interpretation of § 1607 which provided that a state legislature could, by concurrent resolution, direct the activities of a governor, state, and local entities would appear to violate the Tenth Amendment.

The Tenth Amendment provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” In *New York v. United States*,²⁴ Congress had attempted to regulate in the area of low-level radioactive waste. In a 1985 statute, Congress provided that states must either develop legislation on how to dispose of all low-level radioactive waste generated within the state, or the state would be forced to take title to such waste, which would mean that it became the state’s responsibility. The Court found that although Congress had the authority under the Commerce Clause to regulate low-level radioactive waste, it only had the power to regulate the waste directly. Here, Congress had attempted to require the states to perform the regulation, and decreed that the failure to do so would require the state to deal with the financial consequences of owning large quantities of radioactive waste. In effect, Congress sought to “commandeer” the legislative process of the states. In the New York case, the Court found that this power was not found in the text or structure of the Constitution, and it was thus a violation of the Tenth Amendment.

A later case presented the question of the extent to which Congress could regulate through a state’s Executive Branch officers. This case, *Printz v. United States*,²⁵ involved the Brady Handgun Act. The Brady Handgun Act required state and local law-enforcement officers to conduct background checks on prospective handgun purchasers within five business days of an attempted purchase. This portion of the act was challenged under the Tenth Amendment, under the theory that Congress was without authority to “commandeer” state executive branch officials. After a historical study of federal commandeering of state officials, the Court concluded that commandeering of state executive branch officials was, like commandeering of the legislature, outside of Congress’s power, and consequently a violation of the Tenth Amendment.

In the instant case, if the statutory language in question were interpreted to mean that state or local public entities could be directed by the state legislature to accept and utilize federal funds, this would arguably be a commandeering of those entities for a federal purpose, which would violate the principles of the cases cited above. One might argue that since the directions were not coming from the federal government, but from the state legislature, that federalism concerns were diminished. However, this distinction would not appear relevant if the power being exercised by the state legislature arose out of the Recovery Act, and not state law.²⁶ If Congress does not have the power to require a state to spend federal funds in furtherance of a federal program, then it would not appear to have the authority to delegate such power to others.

Statutory Interpretation

As noted, a broad interpretation of the phrase “acceptance by the State legislature. . . shall be sufficient to provide funding to such State” might imply that Congress intends that all statutory requirements for the receipt of federal funds, such as submitting an application and complying with grant conditions, can be

²⁴ 505 U.S. 144 (1992).

²⁵ 521 U.S. 898 (1997).

²⁶ Generally, a legislature would not be authorized by a state constitution to exercise significant legislative authority by a concurrent resolution.

waived by a state legislature. The Recovery Act, however, provides funding both in the forms of funds allocated by formula and by the application of state grants.²⁷ As noted above, the phrase under consideration could only logically be implemented in the case of allocated funds, since waiving the requirement of application and provision of necessary data in the context of discretionary grants would leave no basis for funds to be allocated. Thus, in order for the language of § 1607 to take on the broader meaning in the context of allocated funds, the language “shall be sufficient to provide funding under this Act” would have to mean something different in relation to state grants. However, under general rules of statutory construction, the same words of a statute cannot not interpreted differently in different contexts.²⁸

Instead, a statute should be read as a harmonious whole, with its various parts being interpreted within their broader statutory context in a manner that furthers statutory purposes.²⁹ As noted, the narrower interpretation suggested for § 1607(b) appears to complement the gubernatorial certification scheme established in § 1607(a). Further, this interpretation would allow the terms in question (“acceptance,” “sufficient to provide funding”) to take on a natural meaning closer to apparent meaning of the terms used.

And finally, to the extent that one interpretation of a statute were to raise constitutional concerns, this interpretation would generally be disfavored.³⁰ An interpretation of § 1607(b) that authorized a state legislature to use federal law to commandeer state or local entities to administer federal funds would appear to violate the Tenth Amendment. Consequently, such an interpretation would be unlikely to be adopted by a court.

Conclusion

Section 1607(a) of the Recovery Act provides that, in order for a state to be eligible for the federal funds in the Recovery Act, a governor must certify that (1) a state will request and use funds in the future, and (2) the funds will be used to create jobs and economic growth. This language does not appear to bind a

²⁷ Section § 1607 specifically provides that the language of § 1607(b) shall apply to “funds provided to any State in any division of this Act.”

²⁸ Where the same term is used several places in statutory text, it is generally presumed to have the same meaning in every instance, *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). See also *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995); *Wisconsin Dep’t of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 225 (1992). This presumption is particularly strong when the term is used within the same sentence, *Brown v. Gardner*, 513 U.S. 115, 118 (1994); *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 329-30 (2000), and this conclusion seems inevitable when the different meanings are sought in the same word.

²⁹ *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (“Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme — because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” (citations omitted)). *United States v. Boisdoré’s Heirs*, 49 U.S. (8 How.) 113, 122 (1850) (opinion of Court) (“In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy”). A related canon of statutory construction is that statutes should be construed “so as to avoid rendering superfluous” any statutory language. *Astoria Federal Savings & Loan Ass’n v. Solimino*, 501 U.S. 104, 112 (1991). See, e.g., *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting word “law” broadly could render word “regulation” superfluous in preemption clause applicable to a state “law or regulation”).

³⁰ Under the doctrine of constitutional doubt, courts will construe statutes, “if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.” *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916).

governor to request or accept any particular level of governmental funding, nor does it appear that the certification must be based on the governor's future acceptance of funds, as such request or acceptance can sometimes be made by state or local officials.

Forty-five days after passage of the Recovery Act, if a governor has not provided the necessary certification, then § 1607(b) would appear to provide a state legislature the authority to step in to "accept" state funds by concurrent resolution, achieving the same result as would have been achieved by the certification. However, it seems clear that such acceptance, while "sufficient" to trigger the availability of federal funds under the Recovery Act, does not free a state from any other conditions of receiving funds, such as filling out applications, justifying needs, and providing assurance of compliance with program requirements.

Although the language of § 1607 is arguably ambiguous, it does not appear likely that it was intended to significantly reallocate powers between a state legislature and a state executive branch. Thus, once either a governor's certification or the legislature's acceptance has been made, § 1607 would have little or no apparent effect on the power of a governor, state or local official to choose whether or not to seek and administer these funds. The language of § 1607(b), while adding an additional requirement to the federal funding process, does not otherwise appear to supplant or replace existing federal requirements, nor does it appear to change the allocation of power within a state to make decisions regarding the application, acceptance and use of such federal funds. Any interpretation of this language which did provide authority to a state legislature, by concurrent resolution, to direct the acceptance and spending of federal monies, would likely raise Tenth Amendment issues. Consequently, such an interpretation would be disfavored.