

**ARRA State Fiscal Stabilization Fund
USED Final Notice:
Requirements, Definitions, and Approval Criteria/Application Package**

**SUMMARY ANALYSIS AND "BLUEPRINT" FOR STATE PLANNING AND DEVELOPMENT
NOVEMBER 17, 2009**

U.S. Secretary of Education Arne Duncan issued on November 9, 2009, a notice of final requirements, definitions, and approval criteria for Phase 2 of the State Fiscal Stabilization Fund (SFSF), authorized by the American Recovery and Reinvestment Act of 2009 (ARRA). The notice was published in the *Federal Register* on November 12, 2009, and will take effect on January 11, 2010. *Further, a separate USED notice published in the Federal Register on November 17, 2009, establishes a deadline for state submission of SFSF-2 applications of January 11, 2009, at 4:30 pm ET, though states may request extensions.*

Two-thirds of the SFSF Education Allocation funds (~\$26 billion) and all of the SFSF Government Services funds (~\$9 billion) have already been released to the states in Phase 1 based on an initial, streamlined application. The proposed requirements, definitions, and approval criteria in this notice govern grants to states for the remaining one-third of the SFSF Education Allocation (~\$13 billion). Secretary Duncan also issued an application package for states to file for Phase 2 funding under the SFSF. Note that final requirements for the separate Race to the Top (RTTT) competitive grant program require states to have U.S. Department of Education (USED) approval of SFSF Phase 1 and 2 applications to be eligible to receive RTTT funds, and all SFSF funds must be allocated by USED by September 2010 (though states and USED will want to finalize SFSF-2 awards as soon as possible).

The SFSF-2 final notice presents some substantial new requirements on states as a consequence of receiving SFSF-2 funds.¹ **In sum, the notice requires states receiving SFSF-2 funds to publicly report (on the internet) a number of “indicators and descriptors” that are meant to demonstrate state commitment and progress on each of the four statutory ARRA reform assurances: standards and assessments; teacher effectiveness and equitable distribution of teachers; improved collection and use of data; and supports for struggling schools. If states can currently fully collect and publicly report the required data and information, then they must link to them in their applications. Where states cannot presently collect and report those data and information, then states must submit a plan by which they will be able to collect and report the data and information by September 30, 2011.** State plans must include clear milestones and timelines for collection and reporting; any obstacles that must be addressed; how often the state will report to the public on its progress, and the amount of funds the state will use to comply.

¹ In fact, the SFSF-2 final notice includes an estimate from USED that compliance could cost states, districts, and institutions of higher education more than \$45 million, and USED generally underestimates the costs of compliance with federal requirements.

The fundamental approach taken by USED in its SFSF-2 notice is to prescribe detailed requirements for the collection and public reporting of data and information. The theory of action is that the public accessibility of key measures will ensure that states, districts, and schools will be accountable for education reform to their communities and stakeholders. There are generally not express requirements that states take action with regard to specific reforms other than building the capacity to collect and report the required data and information. **However, there are two key exceptions where the SFSF-2 notice requires states to take significant action with regard to education reforms as a consequence of receiving SFSF-2 funds:**

1. **State Data Systems:** With respect to the state's data assurances, the requirements go beyond collecting and reporting data. The state must develop and implement a statewide longitudinal data system with each of the 12 elements required by Section 6401(e)(2)(D) of the America Competes Act. If the State is unable to indicate in the application that this requirement is met, it must include a process and timeline to develop and implement a data system that includes all 12 elements by no later than September 30, 2011.
2. **State Reports on Student Growth and Teacher Impact:** The state is required to provide timely, annual student growth data *and* individual teacher impact reports to reading/language arts and math teachers in grades that are subject to state assessments. If the state is unable to meet these requirements, it must include in its application a process and timeline for doing so no later than September 30, 2011.

The State application also must meet general requirements, including describing the state agency or agencies responsible for development, execution, and oversight of the plan (including the infrastructure and capacity relating to these tasks); the agencies or organizations providing technical assistance; the budget for the development, execution, and oversight of the plan; the process used by the state to verify the required data; and the processes used to ensure that personally identifiable data are not improperly made available to the public. State applications will be subject to peer review and approval by USED, and the notice includes specific criteria for approving the Phase 2 SFSF application: quality of the application with respect to its clarity and accuracy in describing the State's ability to collect and report the required data; for States unable to fully comply at the current time, reasonableness and sufficiency of the timeline to collect and report the required information; whether the reported obstacles justify a delay in complying with the requirement; and the accessibility and adequacy of public reports on progress toward compliance with the data requirements. The criteria also examine the adequacy of the State's plan, including considering institutional infrastructure and capacity; adequacy of funding; processes for verifying accuracy of the data; and processes to ensure non-disclosure of personally identifiable information to the public.

Finally, the SFSF-2 final notice maintains the same focus as the proposed notice, with a few changes of note:

- **Reporting (Definitions Section):** Public reporting is implemented through a requirement that the state maintain a web-site that makes publicly available information required under the indicators and descriptors.
- **Teacher Distribution:** The notice adds an indicator to confirm whether the state's teacher equity plan fully reflects state steps to ensure equitable distribution of teachers; revises descriptors to require states to describe the use of teacher and principal evaluation results in decisions on teacher development, compensation, promotion, retention, and removal; and revises descriptors to indicate whether teacher evaluation systems include student achievement outcomes or student growth data as an evaluation criterion.

- **Data Systems:** The notice adds new indicators on whether data are provided to teachers of reading/language arts and mathematics in grades subject to state assessments on the growth of their current and prior year students in a timely manner that informs instruction and on individual teacher impact.
- **Standards and Assessments:** Proposed indicators relating to state activities to enhance assessments have been removed, and the notice modifies indicators relating to postsecondary education so that states provide data on student enrollment in institutions of higher education *within 16 months of receiving a regular high school diploma* and on progress toward a postsecondary degree *only for students who attend a public postsecondary institution within the state.*²
- **Supporting Struggling Schools:** The notice includes several revisions to the indicators for this category, including reporting on average overall and disaggregated statewide school gains; providing a state definition of persistently lowest-achieving schools; reporting on the number and identity of the persistently lowest achieving secondary schools eligible for (but not receiving) Title I funds and Title I schools identified for interventions, as well as the number and identify of such secondary schools and Title I schools that have been turned around, restarted, closed, or transformed in the last year; reporting on the progress of charter schools on state assessments in reading/language arts and math and on charter schools closed within each of the last five years.

Further, the notice adopts a new concept of "persistently lowest-achieving schools." It defines persistently lowest-achieving schools to include—

- the lowest-achieving 5% of Title I schools in improvement, corrective action, or restructuring (or the lowest-achieving 5 such schools in the state, whichever number is higher) and the lowest-achieving 5% (or 5) of secondary schools in the state that are eligible for, but do not receive, Title I funds, taking into account both the achievement in the "all students" group on the state's assessments in reading/language arts and mathematics and the lack of progress over a number of years in the "all students" group; and
- high schools with a graduation rate of less than 60% over a number of years (if they also are Title I schools in improvement, corrective action, or restructuring, or are eligible for, but do not receive, Title I funds).

The notice also includes new or revised definitions of the four intervention models: turnaround, restart, school closure, and transformation. The effect of these provisions under SFSF is to define the data that must be collected and reported with regard to struggling schools and interventions in these schools. However, the final notice also indicates that these new definitions of the persistently lowest-achieving schools and intervention models will also apply under the Race to the Top Fund and the School Improvement Grants (SIG) program – to ensure alignment among these programs – and the notice analyzes public comments submitted on these issues in response to the notices of proposed requirements and definitions under both the SIG and SFSF programs.

² Note that for these two revised postsecondary indicators, the state plan need address only development of the *capacity* to collect and publicly report these data by September 30, 2011, not necessarily implementation and public reporting of these indicators.

Blueprint on SFSF-2 State Application and Planning

The following chart provides a simple blueprint on the SFSF-2 final requirements, to help guide state planning and action. In general, with regard to each indicator and descriptor below, the state must either (1) indicate that it can fully collect and publicly report the required information or (2) include a detailed plan with milestones, timeline, obstacles, and funds by which it will be able to collect and report by September 30, 2011. Further, with regard to indicators (b1), (b2), and (b3) regarding data systems and state reports on student growth and teacher impact, states must either indicate that they fully meet the requirements or provide detailed plans for how they will implement those reforms by September 30, 2011.

SFSF-2 Indicators (I) and Descriptors (D)		State Status and Next Steps
Assurance A. Achieving equity in teacher distribution		
I (a) (1)	Confirm for the State the number and percentage of core academic courses taught, in high and low-poverty schools, by HQTs.	
I (a) (2)	Confirm for the State: whether the state's Teacher Equity Plan fully reflects state steps to ensure that low income and minority students are not taught at higher rates by inexperienced, unqualified, or out-of-field teachers.	
D (a) (1)	Describe for each LEA the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal.	
I (a) (3)	Indicate for each LEA whether the systems used to evaluate the performance of teachers include student achievement outcomes as an evaluation criterion.	
I (a) (4)	Provide for each LEA the number and percentage of teachers rated at each performance rating or level (for those whose teachers receive performance ratings or levels through an evaluation system).	
I (a) (5)	Indicate for each LEA whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage of teachers rated at each performance rating or level are available for the LEA in a manner easily accessible and a format easily understandable by the public.	
D (a) (2)	Describe for each LEA the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	
I (a) (6)	Indicate for each LEA whether the systems used to evaluate the performance of principals include student achievement outcomes as an evaluation criterion.	
I (a) (7)	Provide for each LEA the number and percentage of principals rated at each performance rating or level (for those whose principals receive performance ratings or levels through an evaluation system).	
Assurance B. Improving collection and use of data		
I (b) (1)	Indicate which of the 12 America COMPETES Act elements are included in the State's longitudinal data system.	<i>Note that the state plan must speak to building the required data system.</i>
I (b) (2)	Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with student growth data on their	<i>Note that the state plan must speak to providing the student growth data.</i>

SFSF-2 Indicators (I) and Descriptors (D)		State Status and Next Steps
	current and prior year students in a manner that is timely and informs instructional programs.	
I (b) (3)	Indicate whether the State provides to such teachers reports of individual teacher impact on student achievement on those state assessments.	<i>Note that the state plan must speak to providing the teacher impact reports.</i>
Assurance C. Standards and assessments		
I (c) (1)	Confirm the approval status, as determined by USED, of the State’s assessment system under ESEA in reading/language arts, mathematics, and science assessments.	
I (c) (2)	Confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that are approved by USED.	
I (c) (3)	Confirm whether the State’s alternate assessments for students with disabilities , if approved by USED, are based on grade level, modified, or alternate academic achievement standards.	
I (c) (4)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments.	
I (c) (5)	Confirm the number and percentage of students with disabilities who are included in State reading/language arts and mathematics assessments.	
I (c) (6)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments.	
I (c) (7)	Confirm whether the State provides native language versions of State assessments for limited English proficient students that are approved by USED.	
I (c) (8)	Confirm the number and percentage of limited English proficient students who are included in State reading/language arts and mathematics assessments.	
I (c) (9)	Confirm the State’s annual State Report Card contains the most recent available State reading and mathematics NAEP results.	
I (c)(10)	Provide for the State, each LEA, each high school, at each of these levels, by student subgroup the number and percentage of students who graduate from high school using a four-year adjusted cohort graduation rate.	
I (c)(11)	Provide for the State, each LEA, each high school, at each of these levels, by student subgroup, of the students who graduate from high school (using the four-year adjusted cohort rate), the number and percentage who enroll in an institution of higher education (IHE) , as defined in sec. 101(a) of the HEA, within 16 months of receiving a regular high school diploma.	<i>Note that the state plan must speak only to the capacity to collect and report these data.</i>
I (c)(12)	Provide for the State, each LEA, each high school, at each of these levels, by student subgroup, of the students who graduate from high school (using the four year adjusted cohort rate), who enroll in a public IHE in the State within 16 months of receiving a regular high school diploma, the number and percentage who complete at least one year’s worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	<i>Note that the state plan must speak only to the capacity to collect and report these data.</i>
Assurance D. Supporting struggling schools		
I (d) (1)	Provide for the State the average statewide school gain in the all students category and for each subgroup on State assessments in reading/language arts.	
I (d) (2)	Provide for the State the average statewide school gain in the all students category and for each	

SFSF-2 Indicators (I) and Descriptors (D)		State Status and Next Steps
	subgroup on State assessments in mathematics.	
D (d) (1)	Provide the definition of "persistently lowest-achieving schools" that the State uses, consistent with the definition in the notice, to identify such schools.	
I (d) (3)	Provide for the State the number and identity of Title I schools in improvement, corrective action, or restructuring that are identified as persistently lowest achieving schools.	
I (d) (4)	Provide for the State, of the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year (as defined in the notice).	
I (d) (5)	Provide for the State the number and identity of secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	
I (d) (6)	Provide for the State, of the persistently lowest-achieving schools that are secondary schools eligible for, but that do not receive, Title I funds , the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year (as defined in the notice).	
I (d) (7)	Provide for the State the number of charter schools that are currently permitted to operate under State law (and if applicable, provide for each LEA as well).	
I (d) (8)	Confirm for the State and for each LEA in the state the number of charter schools currently operating.	
I (d) (9)	Provide for the State and for each LEA in the State that operates charter schools the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year.	
I (d)(10)	Provide for the State and for each LEA in the State that operates charter schools the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year.	
I (d)(11)	Provide for the State and for each LEA in the State that operates charter schools the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years.	
I (d)(12)	Indicate for each charter school that has closed within the last five years, whether the closure of the school was for financial, enrollment, academic, or other reasons.	

EducationCounsel provides education strategy, policy, advocacy, and legal support to state and national education leaders across the country. Our goal is to help transform education policies to help dramatically improve student achievement and close achievement gaps. This summary and analysis is provided for policy planning purposes, and does not constitute specific legal advice. If you have questions about USED's ARRA RTTT notice, or other ARRA issues, please contact **Scott Palmer**, Managing Partner, at scott.palmer@educationcounsel.com or (202) 545-2916; **Reg Leichy**, Partner, at reg.leichy@educationcounsel.com or (202) 545-2918; or **Steve Winnick**, Senior Counsel, at steve.winnick@educationcounsel.com or (202) 545-2913. www.EducationCounsel.com