

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (H.R.1, P.L. 111-5)

SUMMARY OF INITIAL U.S DEPARTMENT OF EDUCATION GUIDANCE

The U.S. Department of Education (USED) today issued initial guidance on education provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"). A copy of the guidance is attached. The guidance addresses the broad purposes of the law; key principles for its implementation; and the general process and timelines for applications and grants under each of the education programs funded by the law. The guidance does not provide very specific information on many interpretive and implementation issues that have been raised by education stakeholders, but invites interested parties to submit follow-up questions to the Department and promises to provide additional information as it becomes available.

In summary, the approach taken by USED is to harmonize and implement the dual purposes of the law—

- to spend funds quickly and save jobs; and
- to advance education reform and long-lasting results, particularly in the areas of rigorous college- and career-ready standards and aligned assessments; pre-K to college and career data systems consistent with the America COMPETES Act; improvements in teacher effectiveness and equitable distribution of effective teachers; and effective supports and interventions for the lowest performing schools.

To these ends, the guidance provides for funding in two stages for the largest programs in the law; with initial awards based on previously submitted applications (in the case of Part A of Title I of the Elementary and Secondary Education Act (ESEA) and Part B of the Individuals with Disabilities Education Act (IDEA)) or on initial simplified applications (in the case of the State Fiscal Stabilization Fund (SFSF)); and with subsequent applications under these programs required with more substantial information related to state education reform efforts and the uses of these funds for those purposes, particularly in the areas of ARRA assurances. In addition, the guidance provides for competitive grants that recognize progress in key reform areas and support expansion of that progress to be awarded between Fall 2009 and Spring 2010, following development of applications and criteria by the Department. These programs include The "Race to the Top" State Incentive Grants; the "What Works and Innovation Fund;" the Teacher Incentive Fund; the State Data Systems grant program; and Teacher Quality Enhancement grants. The guidance also indicates that USED will announce opportunities to compete for non-ARRA programs in the coming months and that the priorities for these programs will be aligned with the reform goals of the Race to the Top grants and will recognize states and local educational agencies that optimize the use of ARRA funding streams.

More specifically:

SFSF Funds (\$48.6B):

- By late March 2009, USED will provide states a simplified application that must include statutory assurances, baseline data related to the assurances, and basic information on how the

funds will be used for submission by the Governors. USED will release 67% of SFSF funding to the state within two weeks after receiving a completed application.

- If a state demonstrates that the 67% phase 1 level is insufficient to prevent the immediate layoff of personnel by school districts, public institutions of higher education, or state or local agencies, USED will award the state up to 90% of its SFSF funding in phase 1.
- The remainder of SFSF funds ("Phase 2") will be provided to states on a rolling basis during the period July 1 to September 30, 2009, based on the submission of a plan detailing the state's strategies for addressing the education reform objectives described in the required assurances included in the initial application, including developing college and career ready standards and aligned assessments; data systems that include the required elements in the America Competes Act; improving teacher effectiveness and equitably assigning effective and experienced teachers; and providing required supports and interventions to schools identified for corrective action or restructuring. The plan also must describe how the state and its LEAs will use SFSF funds and other funding in a fiscally prudent way that substantially improves teaching and learning.
- The guidance encourages Governors and Chief State School Officers to work closely with other state and local officials in planning how SFSF funds will be used and reporting systems.
- USED expects to issue guidance shortly on the specific requirements to receive these phase 2 SFSF funds.
- SFSF funds are available for obligation at the state and local levels through September 30, 2011, although under the law, the Governor must return funds to the Secretary that are not awarded as subgrants or otherwise committed within two years of receipt from USED, and the guidance encourages the Governors to award subgrants or otherwise commit the funds as soon as possible.
- The guidance provides that to the extent local educational agencies use SFSF funds for modernization, renovation, or repairs, they should consider use of facilities for early childhood education and for the community and the creation of green buildings.

Part A of Title I, ESEA (\$10B) and Part B, IDEA (\$11.7B):

- By late March, 2009, USED will release 50% of funds under Part A of Title I, ESEA and under Part B, IDEA to state educational agencies, based on previously submitted and approved state applications.
- The remainder of these funds will be awarded during the period July 1 to October 1, 2009, based on amendments that the state will be required to make to its Consolidated State application (for Title I funds) and its FY 2009 IDEA, Part B application (for IDEA, Part B funds) that address how the state will meet the recordkeeping and reporting requirements of the ARRA.
- The initial and phase 2 Title I awards, together with the regular FY 2009 Title I awards to be made July 1 and October 1, 2009, will constitute the state's FY 2009 allocation. Absent a waiver, 85% of these funds must be obligated by each LEA by September 30, 2010, and the

remaining funds must be obligated by September 30, 2011. The guidance indicates that IDEA, Part B funds should be awarded to LEAs by the end of April 2009, and will remain available for obligation at the state and local levels through September 30, 2011.

- Four percent of the Title I funds are reserved for school improvement activities under section 1003(a) of ESEA. These are in addition to the separate school improvement program authorized under section 1003(g), for which \$3B are appropriated in the ARRA.
- Although funds generally are not provided under the ARRA for state administrative expenses in administering these increased appropriations for Title I and IDEA, the guidance indicates the possibility of waivers to increase use of Title I funds for state administration, and also expresses an intent to issue regulations to permit reasonable adjustments to limitations on state administrative costs in both Title I and IDEA to defray the costs of ARRA data collection requirements.
- The guidance stresses that funds provided for Part A of Title I, ESEA and Part B of IDEA are an excellent opportunity to improve education for at risk students and close achievement gaps and to improve outcomes for infants, toddlers, children, and youths with disabilities.
- The guidance notes congressional intent that some Title I funds be used for early childhood education programs and indicates that additional guidance will be provided in the coming weeks on these opportunities.
- The guidance encourages LEAs to focus use of these funds on short-term investments with the potential for long-term benefits, rather than making unsustainable, ongoing commitments, and provides examples of appropriate short-term investments for both Title I-A, ESEA and Part B of IDEA.
 - The Title I examples include establishing 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 facilitate collaboration among instructional staff; year-long training for all teachers and the principal in a Title I school in corrective action or restructuring focused on an intensive academic instructional program or building teachers' capacity to address academic achievement problems that caused the school to be identified; providing resources to align early childhood education with elementary school standards and, subject to a plan for sustainability, expanding Title I early childhood education programs; developing core infrastructure in technology in Title I schoolwide programs, including obtaining software and equipment and providing teacher training in the use of technology; providing opportunities for Title I secondary school programs to use high quality on-line coursework as supplemental learning materials for meeting math and science curriculum requirements; using longitudinal data systems to drive continuous improvement efforts focused on achievement in Title I schools and training teachers in Title I schools on the use of data to inform and improve instruction for Title I eligible students; using reading or math coaches to provide professional development for teachers in Title I schools; and establishing or expanding extended learning activities for Title I eligible students, including before or after school, summer, and extended school years, with consideration of how to sustain these activities beyond the two years of ARRA funding.

- The IDEA examples include hiring transition coordinators to work with employers to develop job placements for youth with disabilities; obtaining state-of-the-art assistive technology devices, and training in their use, to enhance access of students with disabilities to the general curriculum; intensive district-wide professional development for special education and regular education teachers that focuses on scaling up, through replication, innovative, evidence-based strategies in academic subjects and behavioral supports to improve outcomes for students with disabilities; improving capacity for collecting and using data to improve teaching and learning; and expanding inclusive placement options for preschool children with disabilities by developing the capacity of public and private preschool programs to serve them.
- With regard to the Title I funds, the guidance indicates that the Secretary will consider requests for waivers relating to the use of ARRA Title I funds concerning set-asides in Title I; per pupil amounts for supplemental educational services; the limit on how often a state may grant a waiver of the carryover limit; and the maintenance of effort requirement.

State Incentive Grants ("Race to the Top" Program) (\$4.35B):

- The guidance indicates that these competitive grants to states will be made in two rounds: the fall of 2009 and the spring of 2010.
- Guidelines and applications for the competition will be developed by USED and posted on its website.
- The program will reward states that have made the most progress toward the standards and assessments, data systems, teacher quality, and school support goals addressed in the SFSF assurances taking into consideration use of ARRA funds by the state.

Innovation Fund ("What Works Innovation Fund") (\$650M):

- The guidance indicates that these competitive grants to local educational agencies, or partnerships of non-profit agencies and LEAs or school consortia, with a strong record of education results will be made in two rounds: the fall of 2009 and the spring of 2010.
- Guidelines and applications for the competition will be developed by USED and posted on its website.

Teacher Incentive Fund (\$200M):

- Competitive grants will be awarded in fall 2009.
- Guidelines for this competition will be posted shortly by USED.

Statewide Data Systems (\$250M):

- Competitive grants will be awarded in fall 2009.

- Guidelines for this competition will be posted shortly by USED.

Pell Grants (\$17B):

- The guidance indicates that these funds will be available beginning July 1.
- The funds increase the maximum Pell Grant from \$4,850. to \$5,350.

Other Programs: The USED guidance does not provide specific information on other education programs funded by the ARRA, apart from indicating timing for the availability of funds. The timelines for education funding under the ARRA are summarized in the attached chart prepared by EducationCounsel LLC.

Other Core ARRA Principles

The guidance also stresses two other core principles in the ARRA:

- transparency as to how funds are used under the Act, including extensive reporting requirements for fund recipients. The guidance indicates that the Administration will post reports on ARRA expenditures on the Recovery.gov website;
- the need to invest ARRA funds thoughtfully so as not to create unsustainable continuing commitments after ARRA funding expires.

EducationCounsel LLC provided prior summary guidance on February 18, 2009 on how ARRA funds may be distributed and used within states under applicable statutory provisions. If you have questions about the ARRA, please contact Scott Palmer at scott.palmer@educationcounsel.com or (202) 245-2916; Reg Leichty at reg.leichty@educationcounsel.com or (202) 545-2918; or Steve Winnick at steve.winnick@educationcounsel.com or 9202) 545-2913.