GUIDANCE

Funds for Part B of the Individuals with Disabilities Education Act

Made Available Under

The American Recovery and Reinvestment Act of 2009

April, 2009
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U.S. Department of Education
Office of Special Education and Rehabilitative Services

Purpose of the Guidance

The purpose of this guidance is to provide information related to Part B of the Individuals with Disabilities Education Act funds made available under the American Recovery and Reinvestment Act of 2009. The guidance provides the U.S. Department of Education's interpretation of various statutory provisions and does not impose any requirements beyond those included in the American Recovery and Reinvestment Act of 2009 and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

The Department will provide additional or updated program guidance as necessary. If you are interested in commenting on this guidance, please send your comments to IDEARecoveryComments@ed.gov.

Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)

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Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) appropriates significant new funding for programs under Parts B and C of the Individuals with Disabilities Education Act (IDEA). Part B of the IDEA provides funds to state educational agencies (SEAs) and through them to local educational agencies (LEAs) to help them ensure that children with disabilities, including children aged three through five, have access to a free appropriate public education to meet each child's unique needs and prepare each child for further education, employment, and independent living. Part C of the IDEA provides funds through the Grants for Infants and Families program to each state lead agency designated by the Governor to implement statewide systems of coordinated, comprehensive, multidisciplinary interagency programs and make early intervention services available through early intervention service (EIS) programs to infants and toddlers with disabilities and their families.

The IDEA ARRA funds will provide an unprecedented opportunity for states, LEAs, and EIS programs to implement innovative strategies to improve outcomes for infants, toddlers, children, and youth with disabilities while stimulating the economy. Under the ARRA, the IDEA Part B ARRA 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. Preliminary information about each state's allocation is available at: http://www.ed.gov/about/overview/budget/statetables/recovery.html.

This document provides guidance related to the Part B IDEA ARRA funds; separate documents provide guidance related to Part C IDEA ARRA funds at http://www.ed.gov/policy/gen/leg/recovery/guidance/idea-c.pdf and State Fiscal Stabilization Funds under the ARRA at http://www.ed.gov/programs/statestabilization/guidance.pdf.

A. Timing and Eligibility

A-1. How and when will IDEA Part B ARRA funds be allocated by the Department of Education (Department) to state educational agencies (SEAs)?

The Department awarded 50 percent of the IDEA, Part B Grants to States and Preschool Grants ARRA funds to SEAs on April 1, 2009. The other 50 percent will be awarded by September 30, 2009, after each state submits, for review and approval by the Department, additional information that addresses how the States will meet the accountability and reporting requirements in section 1512 of the ARRA. These awards will be in addition to the regular fiscal year (FY) 2009 Part B awards that will be made on July 1, 2009 (Grants to States and Preschool Grants) and October 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-2. What must an SEA do to receive IDEA Part B ARRA funds?

A state did not need to submit a new application to receive the first 50 percent of the IDEA Part B Grants to States and Preschool Grants ARRA funds because these funds were made available to each state based on the state's eligibility established for FY 2008 Part B funds and its provision of the certification required by section 1607 of the ARRA. The assurances in the state's FY 2008 application, as well as the requirements of the ARRA, apply to these ARRA funds. In order to receive the remaining funds, each state will need to submit, for review and approval by the Department, additional information that addresses how the state will meet the accountability and reporting requirements in section 1512 of the ARRA. The second half of the awards will be made by September 30, 2009 upon approval of the state's recordkeeping and reporting submission. The Department will issue specific guidance for preparing and submitting this recordkeeping and reporting information and other guidance governing ARRA funds in the coming weeks.

A-3. How and when are the IDEA Part B ARRA funds for the Grants to States and Preschool Grants programs to be allocated by the SEAs to the LEAs?

The Department awarded 50 percent of the IDEA Part B ARRA funds on April 1, 2009, and will award the regular Grants to States and Preschool Grants for FY 2009 funds on July 1, 2009, the rest of the regular FY 2009 Grants to States funds on October 1, 2009, and the rest of the ARRA funds by September 30, 2009. However, because the formula for making allocations to LEAs under the IDEA was designed to allocate one lump sum per fiscal year, the LEA allocations, for both Grants to States and Preschool Grants, must be calculated using the sum of IDEA Part B ARRA funds and the regular IDEA FY 2009 allocation for each of these programs. By calculating LEA allocations on the basis of both IDEA Part B ARRA funds and IDEA regular FY 2009 state allocations, it is possible to get the total allocation for each LEA for each program, which then must be divided into "ARRA" and "regular" amounts for the LEA allocations. States and

LEAs must know the amount of regular and ARRA funds in order to account separately for how those funds are spent. To receive these amounts, states must do the following:

Step 1: Make its set-aside decisions, under sections 611(e) and 619(d) of the IDEA, for administrative and other state-level activities. (The impact of IDEA Part B ARRA funds on the amount that may be set-aside is addressed in question B-1.) A state must determine whether the set-asides will be deducted from the IDEA regular or ARRA allocations. For ease of recordkeeping, we advise states to reserve the set-aside amounts from the IDEA regular allocation. (States that choose to set aside any amount for state-level activities from its ARRA allocation cannot use the steps described here to determine LEA allocations.)

Step 2: Deduct the amount of the reserved funds from that state's FY 2009 regular IDEA allocations.

Step 3: Determine the total allocation level for each of its LEAs by calculating allocations based on the sum of available FY 2009 IDEA Part B ARRA funds and regular allocations.

Step 4: Determine each LEA's regular allocation by calculating allocations based ONLY on the FY 2009 IDEA regular state allocation amount (after set-asides are subtracted). Each LEA's ARRA allocation is then the difference between the total allocation and the regular allocation.

A-4. May an LEA refuse to accept IDEA funds, including ARRA funds, and if so, does the state reallocate the funds to other LEAs?

An LEA may refuse to accept IDEA, Part B funds, but what the state may do with those funds will depend on the specific circumstances.

a. If an LEA refuses to accept IDEA funds, and the SEA determines that the children in that LEA are not receiving a free, appropriate public education (FAPE), then the SEA must use funds that would have gone to the LEA to provide special education and related services directly to children with disabilities in the jurisdiction of that LEA. 34 CFR §300.227.

b. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that LEA with state and local funds, the SEA may either reallocate those funds to other LEAs that are not adequately providing special education and related services to all children with disabilities within their jurisdictions, or the SEA may retain those funds for use at the state level to the extent that the state has not reserved the maximum amount of funds it is permitted to retain for state-level activities. 34 CFR §§300.705(c) and 300.817, 73 Fed. Reg. 73006, 73028-9 (December 1, 2008).

c. The SEA also may use those funds to develop and implement a state policy to provide early intervention jointly with the lead agency under Part C of IDEA. Any SEAs implementing such a policy should note that the early intervention services must include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills, in accordance with Part C to children with disabilities who are eligible for services under section 619 of the Act and who previously received services under Part C until the children enter, or are eligible under state law to enter, kindergarten, or elementary school as appropriate. 34 CFR §300.704(f).

A-5. What is the period of availability for the IDEA Part B ARRA funds?

States and LEAs must obligate all IDEA Part B ARRA funds by September 30, 2011. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.707. In accordance with the goals of the ARRA, a state should obligate IDEA Part B ARRA funds to LEAs as soon as possible, consistent with prudent management, so that LEAs can begin using the funds. Similarly, an LEA should use the IDEA Part B ARRA funds expeditiously, but sensibly. States may begin obligating IDEA Part B ARRA funds immediately. Costs are allowable beginning February 17, 2009, the effective date of the grants.

B. Set-Asides and Indirect Costs

B-1. What is the impact of the IDEA Part B ARRA funds on the amount(s) that an SEA may set aside under IDEA sections 611(e) and 619(d)?

The additional IDEA Part B ARRA funds do not increase the amount a state would otherwise be able to reserve under IDEA section 611(e) for state administration or other state-level activities under its regular FY 2009 award for Part B Grants to States. However, the additional IDEA Part B ARRA funds do result in an increase in the amount a state would otherwise be able to reserve for state administration and other state-level activities under IDEA section 619(d) for Part B Preschool Grants.

B-2. Will an updated Excel Interactive (Use of Funds) spreadsheet be available to SEAs for FY 2009?

Yes. The Department will provide an FY 2009 Excel Interactive (Use of Funds) spreadsheet that includes maximums and minimums for state-level administration and other state-level activities under the Part B Grants to States program.

B-3. May LEAs set aside up to 15 percent of their IDEA Part B ARRA funds for coordinated early intervening services (CEIS) under IDEA section 613(f)?

Yes. See D-2.

B-4. Will LEAs with significant disproportionality based on race and ethnicity be required to set aside 15 percent of the IDEA Part B ARRA funds plus the IDEA regular FY 2009 funds for comprehensive CEIS under IDEA section 618(d)?

Yes. States are required to collect and examine data to determine if LEAs have significant disproportionality based on race and ethnicity in the identification of children as children with disabilities, the identification of children with specific impairments, the placement in particular education settings, and the incidence, duration, and type of disciplinary actions. States must require an LEA with significant disproportionality to utilize 15 percent of the LEA's total amount of IDEA Part B funds for comprehensive CEIS. The 15 percent is calculated based on the aggregate of the Grants to States and Preschool Grants amounts for both the regular IDEA awards and the IDEA ARRA awards. (See OSEP Memo 07-09, April 24, 2007 and OSEP Memo 08-09, July 28, 2008 for further information on funds for CEIS when significant disproportionality exists at http://www.ed.gov/policy/speced/guid/idea/letters/2007-2/index.html) LEAs that are required to use the full 15 percent for CEIS will not be able to take advantage of any of the flexibility for local MOE reduction that would otherwise be available under IDEA section 613(a)(2)(C).

B-5. How do IDEA Part B ARRA funds apply to a state's high cost fund (or risk pool in section 611(e)(2)(A) of the Act, and described in 34 CFR §300.704(c))?

The availability of IDEA Part B ARRA funds does not affect a state's high cost fund. The maximum amounts for administration and for other state-level activities are increased by inflation in each fiscal year in accordance with section 611(e)(2)(A) of IDEA.

States choosing to use 10 percent of the funds reserved for state-level activities (not including administration) for an LEA risk pool, as described in IDEA section 611(e)(3), will have a maximum set aside level for non-administrative state-level activities of 10 percent or 10.5 percent of their FY 2006 allocation, increased by inflation, depending on the amount reserved for administration.

B-6. Do restricted indirect cost rates apply to the IDEA Part B ARRA funds?

Yes. States should calculate their restricted indirect costs on the IDEA Part B ARRA funds in the same way as they calculate indirect costs on their IDEA regular grant award.

B-7. How might the ARRA funding affect indirect cost recoveries by grantees?

In order to obtain indirect cost recoveries, grantees are allowed to apply their currently negotiated indirect cost rate to expenditures incurred under the ARRA. The negotiated indirect cost rate for the current fiscal year is based on actual cost information from a prior fiscal year. Therefore, applying the currently negotiated indirect cost rate to the increased funding under ARRA (which was not considered in the rate calculation)

could result in an over-recovery of indirect costs in the current period. Such an over-recovery will be adjusted in a future fiscal year, thereby reducing indirect cost recoveries during that future period. In order to avoid a future compounding effect of less program dollars and reduced indirect costs, we recommend grantees closely monitor the potential impact of the ARRA on their indirect cost recoveries and consider making appropriate adjustments during the current periods. Such adjustments will lessen the dollar impact in future years and allow for stability in future budgets. Adjustments to indirect cost recoveries should first be discussed with the cognizant Federal agency.

C. Waivers

C-1. Does the ARRA provide any additional authority for the Secretary to grant waivers for state and local maintenance of effort (MOE) and supplement not supplant requirements under IDEA?

No. The Secretary does not have any additional authority, beyond the authority that already exists in IDEA section 612(a)(17)(C) and (18), to grant waivers for state or local MOE and supplement not supplant requirements under IDEA.

C-2. Under what circumstances can the Secretary waive the state-level supplement not supplant requirements?

Under IDEA section 612(a)(17)(C), the Secretary has authority to grant a waiver of the state-level supplement not supplant requirement if the state provides clear and convincing evidence that all children with disabilities in the state have FAPE available. The standards for applying for this waiver are spelled out in 34 CFR §300.164.

C-3. Under what circumstances can the Secretary waive the state-level MOE requirements?

Under IDEA section 612(a)(18) the Secretary has authority to grant waivers for the MOE requirement that applies to states under the Grants to States program. However, the Secretary may only grant waivers to individual states, for one fiscal year at a time, after determining that granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the state, or the state otherwise meets the standard in IDEA section 612(a)(17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the IDEA. The state's level of effort in future years reverts to the level that would have been required in the absence of a waiver.

C-4. What must states do to obtain a waiver under IDEA, section 612(a)(18)?

If a state determines that it will not be able to satisfy the Grants to States state-level MOE requirement, and wants to request a waiver or modification, it must submit a written request and supporting documentation justifying the request to the Secretary.

The request should specify the amount of required non-Federal expenditures that the state wishes to have waived or modified.

The state should submit the waiver or modification request as soon as it determines that it does not expect to be able to meet the MOE requirement. States that are considering submitting a waiver application under IDEA, section 612(a)(18) are encouraged to review previous guidance developed by the Secretary for the purpose of granting waivers (using a similar statutory standard) to State Vocational Rehabilitation Agencies at: http://www.ed.gov/policy/speced/guid/rsa/tac-02-02.doc

C-5. What authority does the Secretary have to grant waivers of MOE to LEAs?

Although the Secretary does not have any additional authority to grant waivers to LEAs, LEAs may be eligible to reduce the total state and local expenditures otherwise required by the LEA MOE provisions of IDEA using the flexible authority contained in IDEA, section 613(a)(2)(C). For more information on the flexibility available to certain LEAs under this provision, see D-6 and D-7 in this document.

C-6. What is the difference between the LEA supplement not supplant provisions at section 613(a)(2)(A)(ii) (34 CFR §300.202(a)(3)) and the LEA MOE provisions at section 613(a)(2)(A)(iii) (34 CFR §300.203(a))?

Under IDEA, section 613(a)(2)(A)(iii) (34 CFR §300.203(a) and (b)), an LEA must not use funds provided under Part B of the IDEA to reduce the level of expenditures for the education of children with disabilities made by the LEA from local, or state and local, funds below the level of those expenditures for the preceding fiscal year. The standard for determining whether the MOE requirement has been met is that the LEA actually expends, in total or per capita, an equal or greater amount of local, or state and local, funds in each subsequent year. If an LEA fails to meet MOE and cannot justify the failure under 34 CFR §§300.204 or 300.205, the SEA must pay the Department, from funds for which accountability to the Federal Government is not required, the difference between the amount of local, or state and local, funds the LEA should have expended and the amount that it did.

Under IDEA, section 613(a)(2)(A)(ii) (34 CFR §300.202(a)(3)) (supplement/not supplant), Part B funds must be used to supplement state, local and other Federal funds (used for providing services to children with disabilities). If the LEA maintains (or exceeds) its level of local, or state and local, expenditures for special education and related services from year to year, either in total or per capita, then the Part B funds are, in fact, supplementing those local, or state and local, expenditures and the LEA has met its MOE and supplement/not supplant requirements.[1]

[1] Prior to 1992, the Part B regulations also included a "particular cost test" for determining whether supplanting occurred. This requirement meant, for example, that if an LEA spent Part B funds to pay for a teacher's salary that was previously paid for with state or local funds, a supplanting violation would occur, even though the total amount of state and local funds spent on special education is greater than the amount spent the previous year. At that time, an LEA could maintain effort but still violate the supplement/not supplant provision. The "particular cost test" was

C-7. To what extent may a state or LEA use Stabilization funds to meet the MOE requirements of the IDEA, Part B program?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers.

The Secretary will permit a state or an LEA to treat Stabilization funds as non-Federal funds for MOE purposes of other Federal programs only if the following criteria are met:

- The state first demonstrates to the Department, on the basis of auditable data, that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA; and

- The state or LEA has available for inspection auditable data demonstrating that the portion of its Stabilization funds that it seeks to treat as non-Federal funds to meet the MOE requirements of other Federal programs was spent in such a manner that had the Stabilization funds been non-Federal funds, the Stabilization funds would have been permitted to be used in determining the state's or LEA's compliance with the MOE requirement of that other program.

In addition, the Secretary will be concerned if a state reduces the proportion of total State revenues that are spent on education, and will take that into consideration in deciding whether to allow a state or LEA to treat Stabilization funds as non-Federal funds for MOE purposes of other Federal programs. If a state did reduce the proportion of total state revenues spent on education, the Secretary will consider whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases, the extent of the decline in available financial resources, and any changes in demand for services.

The Department intends to issue further guidance on the process for obtaining the Secretary's "prior approval" to use Stabilization funds to meet the MOE requirements of other programs.

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removed from the regulations by an amendment published in the Federal Register on August 19, 1992 (37 FR 37652) and that became effective on October 3, 1992. Therefore, no requirement currently exists related to supplanting "particular costs" and if an LEA maintains local, or state and local, effort, it will not violate the supplement/not supplant requirements of the IDEA.

D. Authorized Uses of IDEA Part B ARRA Funds

D-1. What provisions of the EDGAR and the General Education Provisions Act (GEPA) apply to use of the IDEA ARRA funds?

All provisions of EDGAR and GEPA, as well as those in IDEA, that currently apply to IDEA funds apply to the IDEA Part B ARRA funds. An LEA must use IDEA Part B ARRA funds only for the excess costs of providing special education and related services to children with disabilities, except where IDEA specifically provides otherwise.

D-2. May IDEA funds, including IDEA Part B ARRA funds, be used for coordinated early intervening services (CEIS)?

Yes. LEAs may choose to use up to 15 percent of the total of the LEA's regular and ARRA Part B Grants to States and Preschool Grants awards to implement CEIS to students in kindergarten through grade 12 who have not been identified as needing special education and related services, but who need additional academic and behavioral support to succeed in a general education environment. The funds set aside for CEIS may be used by the LEA in FY 2009 or in both FYs 2009 and 2010, as long as the FY 2009 funds are obligated by September 30, 2011. If an LEA seeks both to set aside funds for CEIS and to take advantage of the flexibility to reduce its local expenditures for special education under section 613(a)(2)(C), the LEA must ensure that the amount it uses for CEIS does not exceed the maximum amount that could be set aside for CEIS (i.e., 15 percent of the total of its Part B allocations) minus the amount by which it seeks to reduce its MOE. Alternatively, the LEA may choose to take full advantage of the flexibility to reduce its MOE and use the freed-up local funds for early intervening services for children at risk of school failure without additional support. See D-6 through D-11 for more information on the use of the flexible authority to reduce local expenditures.

D-3. May IDEA funds, including IDEA Part B ARRA funds, be used for construction or alteration of facilities?

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA funds, including IDEA Part B ARRA funds, for construction or alteration of facilities if the Secretary determines that the program would be improved by allowing funds to be used for those purposes. In general, to be able to use IDEA funds for these costs, states will need to obtain prior approval from the Department; and LEAs will need to obtain prior approval from the state. (See 2 CFR Part 225, Appendix B, 15.b.) Any construction or alteration of facilities must comply with Appendix A to part 36 of title 28, Code of Federal Regulations, the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities" or Appendix A of subpart 101-19.6, of title 41, Code of Federal Regulations the "Uniform Federal Accessibility Standards." (34 CFR §300.718) States and LEAs also must comply with requirements in 34 CFR Part 76

regarding construction, including the requirements in 34 CFR §§75.600-75.617 that are incorporated by reference in 34 CFR §76.600.

Additionally, if a state or LEA uses IDEA Part B ARRA funds for construction, it must comply with specific requirements relating to the use of American iron, steel and manufactured goods used in the project (ARRA section 1605), as well as the wage rate provisions of ARRA section 1606. Also, ARRA section 1604 prohibits the use of any ARRA funds, including IDEA Part B ARRA funds, for any casino, or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D-4. May IDEA funds, including IDEA Part B ARRA funds, be used to purchase equipment?

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA funds for the acquisition of equipment if the Secretary determines that the program would be improved by allowing funds to be used for these purposes. In general, to be able to use IDEA funds for these costs, states will need to obtain the prior approval of the Department for the state's use of IDEA funds for these costs; and LEAs will need to obtain the prior approval of the state for the LEA's use of IDEA funds for these costs. (See, 2 CFR Part 225, Appendix B, 15.b.) For purposes of these prior approval requirements, "equipment" is defined to mean an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5,000. (See 2 CFR Part 225, Appendix B, 15.a)

D-5: What additional rules apply to using IDEA funds, including IDEA Part B ARRA funds, for construction or alteration of facilities or for the acquisition of equipment?

Under OMB Circular A-87 (2 CFR Part 225), the following general criteria must be met in order for a cost to be allowable under any Federal award. The cost must --

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
b. Be allocable to Federal awards under the provisions of OMB Circular A-87 (2 CFR Part 225).
c. Be authorized or not prohibited under state or local laws or regulations.
d. Conform to any limitations or exclusions set forth in OMB Circular A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
g. Except as otherwise provided for in OMB Circular A-87, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
i. Be the net of all applicable credits.
j. Be adequately documented.

D-6. May LEAs use the flexible authority available under IDEA, section 613(a)(2)(C) (34 CFR §300.205) to reduce their local, or state and local, expenditures for special education and related services? If so, how?

Under certain circumstances, in accordance with IDEA section 613(a)(2)(C), in any fiscal year that an LEA's subgrant allocation exceeds the amount that the LEA received in the previous fiscal year, that LEA may reduce the level of local, or state and local, expenditures otherwise required by the LEA MOE requirements (in IDEA, section 613(a)(2)) by up to 50 percent of the increase in the LEA's subgrant allocation. (See D-7 through D-12 for more information.) The LEA must spend the 'freed-up' local or, state and local, funds on activities that are authorized under the Elementary and Secondary Education Act (ESEA) of 1965.

D-7. How can an LEA determine that it is eligible to reduce its state and local effort by up to 50 percent of the increase in its subgrant allocation? (Revised April 13, 2009)

The first step for an LEA that is considering taking advantage of this flexibility is to compare the total Federal subgrant allocation the LEA received under the Part B Grants to States program in FY 2008 with the total subgrant Grants to States allocation they expect to receive in FY 2009 (including both the regular Part B LEA Grants to States subgrant allocation *and* any Part B IDEA Grants to States ARRA funds that the LEA receives). If the total Federal subgrant allocation under the Part B Grants to States program received by an LEA in FY 2009 exceeds the amount received by that LEA in FY 2008 under that program, the LEA may be eligible to reduce the level of local, or state and local, special education expenditures otherwise required, by up to 50 percent of this increase.

There are other provisions of the IDEA that limit whether an LEA may reduce local effort under IDEA section 613(a)(2)(C) (34 CFR §300.205). Under IDEA section 616(a) (34 CFR §300.600(a)(2)), SEAs are required to make determinations annually about the performance of each LEA using the following categories: Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention. Under 616(f) (34 CFR §300.608(a)), if in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B, including meeting targets in the state's performance plan, the SEA *must* prohibit that LEA from reducing its MOE under IDEA section 613(a)(2)(C) for any fiscal year. Therefore, an SEA must prohibit an LEA from taking advantage of the MOE reduction under IDEA section 613(a)(2)(C) if the LEA's determination is Needs Assistance, Needs Intervention, or Needs Substantial Intervention.

Also, IDEA section 613(a)(2)(C)(iii) requires an SEA to prohibit an LEA from reducing its MOE if the SEA has taken responsibility for providing a FAPE in the LEA because the LEA is unable to establish and maintain programs of FAPE, or the SEA has taken action against the LEA under IDEA section 616. Finally, an LEA that is required to use 15 percent of its IDEA Part B allocation on CEIS because the SEA identified the LEA as having significant disproportionality under 34 CFR §300.646, will not be able to reduce local MOE under IDEA section 613(a)(2)(C).

D-8. What are the allowable uses of the "freed up" state and local funds for LEAs that can reduce their state and local effort?

LEAs utilizing the flexibility in IDEA section 613(a)(2)(C) (34 CFR §300.205) must use any funds that otherwise would have been used for special education and related services to support activities that are authorized under the Elementary and Secondary Education Act of 1965. One allowable use of those state and local funds would be to provide early intervening services to children at risk of school failure without additional support.

D-9. If an LEA opts to utilize the flexibility available under IDEA section 613(a)(2)(C) (34 CFR §300.205) to reduce its MOE in the current fiscal year, what effect would this reduction have on the LEA's expected level of MOE in future years?

If an LEA chooses to utilize the flexibility available under IDEA section 613(a)(2)(C) to reduce the level of local, or state and local, expenditures otherwise required in the current fiscal year, in subsequent fiscal years the LEA would be required to maintain effort at the reduced level -- except to the extent that an LEA increases the level of expenditures for the education of children with disabilities made by that LEA above the level of expenditures in FY 2009, using local, or state or local funds. In other words, an LEA choosing to take advantage of this flexibility may reduce the required MOE level in subsequent years, until that LEA increases the level of special education expenditures, using state or local funds, on its own.

D-10. What is an example of how the provision in IDEA section 613(a)(2)(C) (34 CFR §300.205), authorizing LEAs to reduce their MOE "up to 50 percent" operates, in light of the IDEA Part B ARRA funds?

The FY 2009 IDEA Part B ARRA funds will significantly increase LEAs' IDEA FY 2009 allocations over their FY 2008 allocations. Some LEAs will be able to take advantage of this flexibility to reduce MOE. For an eligible LEA to determine the 50 percent reduction amount, the LEA should first aggregate both distributions of its ARRA Grants to States (IDEA section 611) funds and its total regular Grants to States FY 2009 allocation. From that total, subtract the total FY 2008 Grants to States allocation. Fifty percent of the remainder (the increase in the LEA's Grants to States FY 2009 allocation over its FY 2008 allocation) represents the amount by which the LEA may, under certain circumstances, be able to reduce its local, or state and local, effort. For example, if the LEA received $500,000 in FY 2008 and its IDEA Part B

ARRA Grants to States and regular FY 2009 Grants to States allocation is $1,200,000, the increase is $700,000 and the LEA may reduce its local, or state and local, effort by $350,000 (50 percent of $700,000).

The LEA, however, must spend the full amount by which it reduces local, or state and local, effort for special education and related services under this provision on activities that could be supported with funds under the ESEA - regardless of whether the LEA is using funds under the ESEA for those activities. This includes any activities allowed under Title I, Impact Aid, and other ESEA programs. An LEA could use these funds to pay for activities that are currently being funded with other state or local funds or for new activities.

As discussed in question D-8 above, an LEA choosing to take advantage of this flexibility is only required to maintain expenditures at the reduced MOE level in subsequent years, until that LEA increases the level of special education expenditures, using state or local funds, on its own. For example, if the LEA expended $2,000,000 of local and state funds on special education and related services in FY 2008 and lowered that amount by $350,000 (from the example above) in FY 2009, the LEA must expend at least $1,650,000 in state and local funds on special education and related services in FY 2010 to meet the MOE requirement in 34 CFR §300.203. In FY 2009, the year the LEA took the MOE reduction, it also must ensure that $350,000 is expended on activities allowable under the ESEA. In FY 2010 and subsequent years, the LEA does not have to continue to separately "track" the $350,000 expended for ESEA activities.

D-11. How does taking advantage of the 50 percent MOE reduction under the IDEA, and using a comparable amount of state and local funds for ESEA activities affect an LEA's ESEA MOE level?

Many (but not all) ESEA programs include a MOE requirement, which is described under 34 CFR §299.5. Under this MOE requirement, each LEA must demonstrate that, during the prior fiscal year, it expended at least 90 percent of the amount expended in the second preceding fiscal year. This MOE amount is calculated based on the LEA's expenditures from state and local funds for free public education, including expenditures for administration, instruction, attendance and health services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. The LEA may NOT include the following in its calculation: any expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster or any expenditures made from funds provided by the Federal Government.

We would expect that local and state funds used to provide special education and related services would be included in the calculation of state and local funds expended for a free public education. Therefore, shifting local and funds from special education activities to ESEA activities should have no appreciable effect on the LEA's overall expenditures for a free public education under 34 CFR §299.5.

D-12. Are there other provisions that would allow an LEA to reduce MOE?

Aside from the 50 percent reduction potentially allowed to LEAs under section 613(a)(2)(C) (34 CFR §300.205), LEAs may reduce their level of local, or state and local expenditures below amounts expended in the prior year under 34 CFR §300.204 if such a reduction is attributable to any of the following:

1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
2) A decrease in the enrollment of children with disabilities;
3) The termination of the obligation of the agency, consistent with Part B, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child: (a) has left the jurisdiction of the agency; (b) has reached the age at which the obligation of the agency to provide FAPE to the child has termination; or (c) no longer needs the program of special education;
4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and/or
5) The assumption of cost by the high cost fund operated by the SEA under 34 CFR §300.704(c).

E. Transparency, Accountability, and Reporting

E-1. Are states required to track IDEA Part B ARRA funds separately from IDEA regular funds?

Yes. ARRA requires that recipients of funds made available under that Act separately account for, and report on, how those funds are spent. The Department has assigned a new CFDA number to the IDEA Part B ARRA funds in order to facilitate separate accounting for the funds. Recipients will need to maintain accurate documentation of all ARRA expenditures to ensure that the data reported is accurate, complete, and reliable. States will be expected to monitor sub-grantees to help ensure data quality and the proper expenditure of ARRA funds. Further information on ARRA reporting instructions will be provided shortly at www.FederalReporting.gov .

E-2. Are there rules that govern the amount of IDEA, Part B ARRA funds that an SEA or LEA may draw down at any one time?

Yes. An SEA must have an effective system for managing the flow of funds that ensures that it and its LEAs are able to draw down funds as needed to pay program costs but that also minimizes the time that elapses between the transfer of the funds and their disbursement by the SEA or LEA, in accordance with U.S. Department of the Treasury regulations at 31 CFR Part 205. (See 34 CFR §80.21(b).) An SEA and LEA must promptly, but at least quarterly, remit to ED interest earned on advances. (34

CFR §80.21(i)) The Department will take appropriate actions against grantees and subgrantees that fail to comply with this requirement.

E-3. What information is a state required to include in its quarterly reports under the ARRA?

A state is required to submit reports containing the information required under section 1512(c) of the ARRA. These reports must be submitted not later than 10 days after the end of each calendar quarter. OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

E-4. What are our shared responsibilities for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?

All ARRA funds must be spent with an unprecedented level of transparency and accountability. Accordingly, SEAs and LEAs must maintain accurate, complete, and reliable documentation of all IDEA, Part B ARRA expenditures. The ARRA contains very stringent reporting requirements and requires that detailed information on the uses of funds be available publicly on www.recovery.gov .

An SEA has important oversight responsibilities and must monitor grant and subgrant activities to ensure compliance with all applicable Federal requirements. If an SEA or LEA fails to comply with requirements governing the use of IDEA, Part B funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or in part, IDEA, Part B funds or recovering misspent funds following an audit.

The ARRA establishes the Recovery Act Accountability and Transparency Board, which is responsible for coordinating and conducting oversight of spending under the ARRA to prevent fraud, waste, and abuse. The Department's Office of Inspector General (OIG) will conduct comprehensive audits of ARRA implementation activities. In addition, Department program offices will closely monitor these activities.

Any instances of potential fraud, waste, and abuse should be promptly reported to the OIG hotline at 1-800-MIS-USED or oig.hotline@ed.gov . Moreover, SEAs and LEAs are reminded that significant new whistleblower protections are provided under section 1553 of the ARRA.

In the coming weeks, the Department will provide additional information on how to help prevent instances of fraud, waste, and abuse.

F. Parentally-Placed Private School Students

F-1: How will the ARRA funds be included in the calculation for proportionate share of IDEA funds for services to parentally-placed private school children?

In calculating the proportionate share required under IDEA section 612(a)(10)(A)(i)(I), an LEA must first aggregate the FY 2009 funds received under the Grants to States regular and ARRA awards and apply the formula outlined in 34 CFR §300.133 to the aggregated amount. Similarly, for children aged 3-5, the proportionate share is based on the total FY 2009 funds received under the Preschool Grants regular and ARRA awards.

F-2: If an LEA has completed its consultation required under IDEA section 612(a)(10)(A)(iii), will the LEA have to conduct additional consultation because the IDEA ARRA funds will increase the amount available for equitable services to parentally-placed private school children?

Under section 612(a)(10)(A)(iii), timely and meaningful consultation must occur during the design and development of special education and related services. The consultation process must include discussions of "how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process may meaningfully participate in special education and related services." An LEA may be able to use the mechanisms developed for the ongoing consultation process to work with representatives of the private schools located in the area served by the LEA and representatives of parents of parentally-placed private school children with disabilities in determining how the proportionate share of IDEA ARRA funds will be expended. In any case, an LEA must ensure that it has engaged in consultation with the private school representatives and representatives of parents of parentally-placed private school children with disabilities about how the additional funds available for services for parentally-placed private school children with disabilities will be used.

F-3. May an LEA spend part of the proportionate share of the IDEA Part B ARRA funds on children with disabilities parentally-placed in private schools in school year 2009-2010 and part in school year 2010-2011?

Yes, subject to certain conditions. Under 34 CFR §300.133(a), each LEA is required to spend a minimum amount of its subgrants under Part B Grants to States and Preschool Grants programs on children with disabilities parentally-placed in private elementary and secondary schools. The ARRA provides a substantial increase in FY 2009 IDEA, Part B funds. As provided in 34 CFR §300.133(a)(3), if an LEA has not expended all of the proportionate share of its Part B subgrant by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services to children with disabilities parentally-placed in private schools during a carry-over period of one additional year. An LEA must consult with private school representatives and parents of parentally-placed private school students in designing and developing the special education and related services that the LEA will provide for parentally-placed private school children. (34 CFR §300.134) As part of this consultation, the LEA, private school representatives and parents of parentally-placed private school students must consider how the proportionate share of IDEA funds (including the regular and ARRA IDEA Part B funds) should be spent. One

option for spending those funds would be to spend some in school year 2009-2010 and some in school year 2010-2011.

G. Civil Rights Obligations

G-1. Does the receipt of IDEA Part B ARRA funds require recipients to comply with civil rights laws?

Yes. The receipt of Federal funds obligates recipients to comply with civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability and age. For additional information see: http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html .

H. Treating Stabilization Funds as State or Local Funds for Purposes of Meeting the IDEA, Part B MOE Requirements (Section H added July 1, 2009)

State-level MOE

H-1. What is the IDEA, Part B state-level MOE requirement?

The IDEA, Part B state-level MOE requirement (Section 612(a)(18) of the IDEA and 34 CFR §300.163) provides that a state is eligible to receive Part B funds as long as "[t]he State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year."

Under the IDEA, Part B state-level MOE requirement, states identify the amount of state funds that are expended by the state, including the SEA and other state agencies for the education of children with disabilities, including for special education and related services, and state funds that are made available to local educational agencies (LEAs) for the education of children with disabilities. For state funds that are made available to LEAs, states identify the amount of state funding, if any, that is distributed through formulae to LEAs for the education of children with disabilities.

H-2. What Stabilization funds may be treated as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement?

Stabilization funds are provided to states as Education Stabilization funds and Government Services Stabilization funds.

With respect to funds that are provided to states as Education Stabilization funds, with prior approval, a state may treat as state support for purposes of meeting the IDEA state-level MOE requirement, those Education Stabilization funds that are being used to replace state support for special education provided through primary funding formulae.

The proportion of Education Stabilization funds that the state distributes through the state's primary funding formulae for elementary and secondary education must be the same as the proportion of the state's primary funding formulae for elementary and secondary education it generally treats as state support for special education for purposes of the IDEA state-level MOE requirement. Similarly, with prior approval, Education Stabilization funds that are being used to replace state support for special education provided through a special education funding formula could be treated as state support for the IDEA MOE requirement. States may not consider Education Stabilization funds that are distributed to LEAs on the basis of their proportionate share of funding under Title 1, Part A, Subpart 2 of the ESEA to be state support for the education of children with disabilities, because those funds do not replace state support for the education of children with disabilities.

With respect to funds that are provided to states as Government Service Stabilization funds, for purposes of the IDEA, Part B state-level MOE requirement, a state, with prior approval, may treat as state support for the education of children with disabilities any Government Services Stabilization funds that it uses for the education of children with disabilities, whether provided to LEAs or to other agencies.

H-3. What criteria will the Department apply in determining whether to give prior approval to a state's request to treat Stabilization funds as state funds for purposes of the IDEA, Part B state-level MOE requirement?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers. (See H-4 below for information related to "prior approval.")

The Secretary will permit a state to treat Stabilization funds, in the amounts described in question H-2, as state funds for meeting the IDEA, Part B state-level MOE requirement only if the following criteria are met:

1. The state maintains auditable data to demonstrate that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA;

2. The state maintains auditable data to demonstrate that it needs Education Stabilization funds to restore support for elementary and secondary education, or that it is using only Government Services Stabilization funds to meet state-level MOE;

3. The state maintains auditable data to demonstrate that the percentage of total state revenues available to the state that is used to support education for children with disabilities does not decrease from one year to the next;

4. The state maintains auditable data to demonstrate that the percentage of total state revenues available to the state that is used to support elementary, secondary and higher education combined does not decrease from one year to the next; and

5. To provide for proper accounting of Stabilization funds, the state identifies to each LEA the amount of Stabilization funds that it distributes to that LEA that the state is treating as state funds for the purposes of meeting the state-level MOE requirement.

H-4. Must a state apply to the Secretary for prior approval to treat Stabilization funds as state funds for meeting the IDEA, Part B state-level MOE requirement?

No. The Secretary grants prior approval to a state to treat Stabilization funds as state funds for purposes of IDEA, Part B state-level MOE so long as a state meets the criteria in H-3. In other words, if a state meets the criteria in H-3, it has prior approval from the Department to treat Stabilization funds as state funds for purposes of meeting IDEA, Part B state-level MOE. If a state does not meet the criteria in H-3, and has not received specific prior approval from the Department under the circumstances described in H-5, it does not have prior approval and may not treat Stabilization funds as state funds for purposes of meeting the IDEA, Part B state-level MOE requirement.

H-5. If the percentage of total state revenues used to support education has decreased from one year to the next, is it still possible for a state to treat Stabilization funds as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement?

Because the state would not meet criterion #4 described in the response to question H-3, it would not have prior approval from the Department by virtue of meeting those criteria. However, in this circumstance, a state, by letter to the Department, could specifically request prior approval to treat Stabilization funds as state funds for the purpose of meeting IDEA, Part B state-level MOE. The request must address whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases, the extent of the decline in available financial resources, and any changes in demand for educational services.

Only if the Department grants specific prior approval based on the state's request, would a state in this circumstance be able to treat Stabilization funds as state funds for the purpose of meeting the IDEA, Part B state-level MOE requirement.

Local-level MOE

H-6. What is the IDEA, Part B local-level MOE requirement?

The IDEA, Part B local-level MOE requirement (Section 613(a)(2)(A)(iii) of the IDEA and 34 CFR §300.203) is that the LEA must budget, for the education of children with disabilities, at least the same total or per capita amount from either of the following

sources as the LEA spent for that purpose from the same source for the most recent prior year for which the information is available:

- local funds only or
- state and local funds.

Reductions in local-level MOE may be taken for voluntary departures and departures for just cause of special education or related services personnel; decreases in the enrollment of children with disabilities; termination of the obligation of the agency to provide an exceptionally costly special education program to a particular child under specific circumstances; termination of costly expenditures for long-term purchases such as costly equipment or construction of school facilities; and assumption of cost by a state's high cost fund. (See 34 CFR §300.204.) Reductions in local-level MOE may also be possible as described in D-6 through D-10.

H-7. What Stabilization funds may be treated as local funds for the purpose of meeting IDEA, Part B local-level MOE?

An LEA may treat as local funds for the purpose of meeting local-level MOE any Education Stabilization funds, including Stabilization funds distributed under the Title I, Part A formula, that are provided to it and that it uses for the education of children with disabilities, except for Education Stabilization funds that the state has identified as funds that it is treating as state funds for meeting the state-level MOE requirement. (As specified above, a state is required to identify to each LEA any Stabilization funds the LEA receives that the state is treating as state funds for purposes of state-level MOE.) An LEA may also treat as local funds Government Services Stabilization funds that it receives and uses for the education of children with disabilities, unless those funds have been identified by the state as Stabilization funds that the state is treating as state funds for state-level MOE purposes.

An LEA may not treat as local funds for local-level MOE purposes Stabilization funds that the state is treating as state funds for state-level MOE purposes. However, an LEA may include these funds in its calculation of local-level MOE, to the extent that the calculation is based on state and local funds.

H-8. Must an LEA maintain documentation demonstrating that any Stabilization funds that it is treating as local funds for purposes of the IDEA, Part B local-level MOE requirement are, in fact, spent on the education of children with disabilities?

Yes. An LEA must maintain documentation that the Stabilization funds that it is treating as local funds for purposes of local-level MOE in fact were spent on the education of children with disabilities. If the LEA is basing local-level MOE on the combination of state funds and local funds, the LEA must maintain documentation that the Stabilization funds that it is treating as local funds for purposes of local-level MOE as well as any Stabilization funds that the state has identified to it as funds that the state

is treating as state funds for purposes of state-level MOE were, in fact, spent on the education of children with disabilities.

H-9. Under what circumstances will the Department give prior approval to an LEA's treating Stabilization funds as local funds for purposes of the IDEA, Part B local-level MOE requirement?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state or LEA may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers.

The Department gives LEAs prior approval to treat Stabilization funds that are provided to the LEA and that the LEA uses for the education of children with disabilities (except for Stabilization funds that the state is treating as state funds for meeting the IDEA, Part B state-level MOE requirement) as local funds for purposes of local-level MOE if:

1. The state demonstrates to the Department, on the basis of auditable data, that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA; and

2. The LEA maintains auditable data to demonstrate that it separately accounts for Stabilization funds that the state treats as state funds for meeting state-level MOE, if any, and Stabilization funds that the LEA treats as local funds for meeting local-level MOE, including that those funds were spent on the education of children with disabilities. A state may request additional information from an LEA to ensure that it properly maintains auditable data.

H-10. Must an LEA apply to the Secretary for prior approval to treat Stabilization funds as local funds for meeting the IDEA, Part B local-level MOE requirement?

No. The Secretary grants prior approval to an LEA to treat Stabilization funds as local funds for purposes of the IDEA, Part B local-level MOE requirement so long as the state and LEA meets the criteria in H-9, including any additional information that the state may require to ensure that the LEA properly maintains auditable data concerning the use of its Stabilization funds. LEAs should contact their SEAs to determine whether they meet the criteria for prior approval. If the criteria in H-9 are met, an LEA has prior approval from the Department, and may treat Stabilization funds as local funds for purposes of meeting the IDEA, Part B local-level MOE requirement. If the criteria are not met, the LEA does not have prior approval and may not treat Stabilization funds as local funds for purposes of meeting the IDEA, Part B local-level MOE requirement.

States may choose to advise LEAs that choose to treat Stabilization funds as local funds for purposes of meeting local-level MOE to submit any necessary information with any amendments to the LEA's application for IDEA, Part B funds.

H-11. Must an LEA obtain prior approval if the only Stabilization funds that it is including in meeting local-level MOE are those that the state has identified as funds the state is treating as state funds for purposes of the IDEA, Part B state-level MOE requirement?

No. If the only Stabilization funds that an LEA includes in its calculation of local-level MOE are funds that the state identified as state funds for purposes of state-level MOE, an LEA does not need any additional prior approval, as the state would already have received prior approval from the Department to treat the Stabilization funds as state funds for IDEA, Part B MOE purposes. Of course, the LEA would still be required to maintain documentation that those Stabilization funds were actually spent on the education of children with disabilities.

H-12. How does treating Stabilization funds as state or local funds for IDEA, Part B MOE purposes affect how an LEA demonstrates that it is meeting local-level MOE?

- If the state is not treating Stabilization funds as state funds for the purpose of state-level MOE, but the LEA is treating Stabilization funds as local funds for the purpose of local-level MOE, the LEA may base local-level MOE on either the local funds only (including those Stabilization funds), or local (including those Stabilization funds) and state funds. The LEA would have to maintain documentation that the Stabilization funds that are being used to meet local-level MOE in fact were spent on the education of children with disabilities.

- If the state is treating some Stabilization funds as state funds for the purpose of state-level MOE, and the LEA is treating other Stabilization funds as local funds for the purpose of local-level MOE, the LEA may base local-level MOE on either the local funds only (including the Stabilization funds the LEA is treating as local funds for MOE purposes), or local (including the Stabilization funds the LEA is treating as local funds for MOE purposes) and state (including the Stabilization funds the state is treating as state funds for the purpose of state-level MOE and has distributed to the LEA) funds. The LEA would have to maintain documentation that the Stabilization funds that are being used to meet local MOE, as local funds and as state funds, if any, in fact were spent on the education of children with disabilities.

H-13. Does treating Stabilization funds as state or local funds for IDEA, Part B MOE purposes reduce the level of effort that a state or LEA must demonstrate in future years?

No. If a state or LEA treats Stabilization funds as state or local funds for purposes of meeting the state-level or local-level IDEA, Part B MOE requirements, it does not reduce the state's or LEA's MOE in any future year.