



MEMORANDUM

TO: Chief State School Officers
FROM: Gene Wilhoit, Executive Director
DATE: February 18, 2009
RE: Summary of the Education Provisions of the American Recovery and Reinvestment Act (H.R.1, P.L.111-__)

This memorandum summarizes the major education provisions of the American Recovery and Reinvestment Act of 2009 ("Recovery Act"), signed by President Obama on February 17, 2009. The \$787.2 billion spending and tax package includes: over \$100 billion for elementary, secondary, and postsecondary education; \$4.1 billion for early education and care; and \$26 billion in education tax incentives. Section I of the memorandum provides a broad overview of the bill's direct funding for education and a description of the law's education related tax incentives. Section II provides a more in depth review of the State Fiscal Stabilization Fund, which represents the only wholly new education initiative funded by the Recovery Act. This memorandum will be updated as appropriate to reflect Department of Education Action.

SECTION I.

A. APPROPRIATIONS PROVISIONS

1. Funding for Existing Elementary and Secondary Programs

Education for the Disadvantaged - \$13 billion. The Recovery Act includes \$13 billion to carry out Title I-A, ESEA programs through three funding streams: (1) \$5 billion for Targeted Grants under section 1125; (2) \$5 billion for Education Finance Incentive grants under section 1125A; and (3) \$3 billion for School Improvement Grants under section 1003(g).

Part 1 and 2: Title I-A Targeted Grants and Education Finance Incentive Grants (\$10 billion) Title I funds are allocated to states, and sub allocated to LEAs, through four statutory formulas that are based primarily on census poverty estimates and the cost of education in each state: (1) Basic Grants; (2) Concentration Grants; (3) Targeted Grants; and (4) Education Finance Incentive Grants (EFIGs). The Recovery Act funds the latter two formulas. Under the Targeted Grants formula, data are weighted so that LEAs with higher numbers or higher percentages of poor children receive more funds. The EFIGs distribute funds to states based on factors that measure: (a) a state's effort to provide financial support for education compared to its relative wealth as measured by its per capita income and (b) the degree to which education expenditures among LEAs within the state are equalized. The Joint Explanatory Statement (non-legally binding) indicates an intent to make these funds

available during school year 2009-10 and 2010-2011 and states that the congressional conferees expect States to use some of this funding for early childhood programs and activities.

Part 3: School Improvement Grants (\$3 billion). These funds are to be used by states to assist elementary and secondary schools identified for improvement, corrective action, and restructuring. Funds are used for the purpose of strengthening the capacity of LEAs by providing resources to support school improvement activities, including the development and implementation of effective school improvement plans. The Joint Explanatory Statement includes (non-legally binding) language directing USED to encourage states to use 40% of their school improvement allocation for middle and high schools.

Students with Disabilities - \$12.3 billion. The Recovery Act includes \$12.3 billion for students with disabilities through three funding streams: (1) \$11.3 billion for Part B State Grants; (2) \$400 million for Part B preschool grants; and (3) \$600 million for Part C Infant and Toddlers Grants.

Part 1: IDEA, Part B (\$11.3 billion). Part B funds generally are allocated to the states and sub-allocated by the SEA to LEAs by statutory formula. The Recovery Act includes special provisions regarding the allocations of these funds when certain maximum levels in the IDEA are reached by all states. Under the IDEA, a state may receive a grant only if it submits a state plan with assurances that it has in effect policies to provide a free appropriate public education (FAPE) to children with disabilities in the state between the ages of 3 and 21, and to meet many other requirements related to due process, how these students are served, and how the federal grant funds are used.

Part 2: IDEA Preschool Grants under Part B (\$400 million). Preschool grants under Section 619 of IDEA are allocated to states that are eligible to receive Part B funds and that make a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the state. At the local level, funds typically are used for salaries of special education teachers and costs associated with related services, including, but not limited to, speech-language pathology services, physical and occupational therapy, psychological services, parent counseling and training, and social work services in schools.

Part 3: Part C, IDEA – Infants and Toddlers (\$600 million). Part C, IDEA provides federal funds to States to maintain and implement statewide, comprehensive, interagency systems to make available early intervention services for all infants and toddlers with disabilities (from birth to age three) and their families in the state, including child find activities for underserved populations of infants and toddlers. "Infant or toddler with a disability" is defined in the law as an individual under 3 years of age who needs early intervention services because the individual is experiencing developmental delays in cognitive, communication, physical, social or emotional, or adaptive development; has been diagnosed with a physical or mental condition that has a high probability of resulting in developmental delay; or, at the state's discretion, may also include at-risk infants and toddlers. The statewide system must comply with detailed requirements in the law, including a written individualized family service plan developed by a multi-disciplinary team for each infant or toddler with a disability.

Education Technology (Title II-D, ESEA) - \$650 million. The principal goal of the Education Technology Program is to improve student achievement through the use of technology in elementary and secondary schools. Additional goals include helping all students become technologically literate by the end of the eighth grade and, through the integration of technology with both teacher training and curriculum development, establishing research-based instructional methods that can be widely implemented. The Recovery Act does not impose new program elements or other requirements on the program.

Title VII-B of the McKinney-Vento Homeless Assistance Act - \$70 million. Among other things, the McKinney-Vento program supports an office for coordination of the education of homeless children and youths in each state, which gathers comprehensive information about homeless children and youths and the impediments they must overcome to regularly attend school. These grants also help SEAs ensure that homeless children, including preschool-aged homeless children, have equal access to free and appropriate public education (FAPE) and receive services under the Act. States must review and revise laws and practices that impede such equal access. States are required to have an approved plan for addressing problems associated with the enrollment, attendance, and success of homeless children in school. The Recovery Act does not impose new program elements or other requirements on the program.

Impact Aid - \$100 million. The Recovery Act includes \$100 million for section 8007, ESEA, which authorizes competitive grants for emergency repairs and modernization of elementary and secondary schools in eligible LEAs that receive Impact Aid based on their services to federally connected children, including children of members of the uniformed services, children who live on Indian lands, children who live on federal property or federally subsidized low rent housing, and children whose parents work on federal property.

Teacher Incentive Fund - \$200 million. The Recovery Act provides \$200 million to fund grants for teacher incentive projects, including a national evaluation of these programs. Competitive grants are made by USED under this program to LEAs, states, or partnerships of one or more LEAs or states and at least one non-profit organization. The purpose of the grants is to develop and implement performance-based teacher and principal compensation systems in high-need schools, defined to mean a school with more than 30% of its enrollment from low-income families. Funded performance-based compensation systems must consider gains in student achievement as well as multiple classroom evaluations and provide incentives for educators to take on additional responsibilities.

The Recovery Act also requires the Institute for Education Sciences to conduct a rigorous national evaluation of TIF to assess the impact of performance-based teacher and principal compensation systems.

State Longitudinal Data Systems - \$250 million. The Recovery Act directs this funding for administration by the Institute for Education Sciences. Up to \$5 million of the funding may be used for state data coordinators and for awards to public or private agencies or organizations to improve data coordination (i.e. the State Education Data Center). Most of the funds are awarded competitively to state educational agencies to design, develop, and implement statewide longitudinal data systems to manage, analyze, disaggregate, and use individual student data. As described above, states that take fiscal stability funds must ensure their longitudinal data system includes the prescribed elements in the America COMPETES Act, including having linked P-16 systems; a teacher identification system that can be linked

to students; college readiness test scores; postsecondary remedial course work data, and a data audit system.

Vocational Rehabilitation Services (adults) - \$680 million. The Recovery Act specifies that \$540 million of this allocation is designated for Vocational Rehabilitation State grants, which are designed to help individuals with disabilities prepare for and engage in gainful employment. The Federal share of the costs of vocational rehabilitation services provided with these funds is 100 percent, which eliminates the program's state match in this specific context. The Act allocates the \$140 million for Independent Living programs as follows: (1) \$18.2 million for Independent Living State Grants; (2) \$87.5 million for Independent Living Centers; and \$34 million for Services for Older Blind Individuals.

2. Stabilization Funding

State Fiscal Stabilization Fund -- \$53.6 billion. Congress designed the State Fiscal Stabilization Fund to prevent reductions in critical education and other services. The Recovery Act divides that funding into three parts: (1) \$48.6 billion for basic stabilization funds; (2) \$4.35 billion for State incentive grants; and (3) \$650 million for local education agency innovation grants. Governors must divide their state's allocation of the fund total between education (81.8%) and other government services, which can include education (18.2%). The designated education allocation must *first be used* to restore support for K-12 and postsecondary education to the greater of the (state) FY 08 or FY09 level. The Governor may use the remaining 18.2% of funding for public safety and other government services, which may include education assistance and modernization, renovation, and repair of school buildings.

Incentive grants will be competitively awarded to states that have made significant progress in meeting objectives for achieving equity in teachers distribution; improving state data systems; enhancing standards and assessments; and providing interventions for schools in corrective action or restructuring status.

Innovation grants or "academic achievement awards" will be competitively awarded to LEAs or partnerships to recognize those entities for significantly closing achievement gaps or increasing student achievement; exceeding the state's AMOs for performance on state assessments; making significant improvement in other areas, such as graduation rates or recruitment and placement of high-quality teachers and school leaders.

A more detailed analysis of the State Fiscal Stabilization Fund follows in Section II, beginning on page 7.

3. Funding for Existing Higher Education Programs

Teacher Quality Partnerships (HEA Title II) - \$100 million. The Teacher Quality Partnership program is designed to fundamentally reform and improve teacher preparation programs. The Department's grant activities focus on increasing teachers' academic content preparation; integrating research-based teaching methods into the education curriculum; providing sustained pre-service clinical or field experiences; and creating opportunities for professional development activities that improve content knowledge and strengthen teaching skills. The Recovery Act does not create new requirements or obligations related to distribution of these funds.

Pell Grants (Discretionary and Mandatory) - \$17.1 billion. The Pell Grant program provides need-based grants to qualified undergraduates and certain graduate students to promote access to postsecondary education. The Recovery Act's Pell Grant funding will support a \$4,860 maximum Pell Grant award for the 2009-2010 award year.

Work Study - \$200 million. The Work Study Program provides funds to help students with higher education costs. These are earned by students through part-time employment. The Recovery Act does not create new requirements or obligations related to distribution of these funds.

Student Aid Administration - \$60 million: The Recovery Act's student aid administration allocation is designated for U.S. Department of Education costs associated with managing the Federal Family Education Loan program, Work Study program, Perkins Loan program and Federal Direct Student Loan program.

4. Funding for Existing Early Learning & Care Programs (HHS)

Head Start and Early Head Start - \$2.1 billion (HHS). The Recovery Act provides \$1 billion for Head Start (allocated according to the current statutory formula) and \$1.1 billion for Early Head Start (competitive grants). Congress directs the Department of Health and Human Services (HHS) to work with Head Start grantees in order to manage the Head Start resources in order to sustain FY 2009 awards through FY 2010.

Child Care Development Block Grants - \$2 billion (HHS). CCDBG is designed to help low income families and families receiving public assistance, and those families transition from public assistance in obtaining child care. The Recovery Act set aside \$255 million of the total allocation for program quality improvement activities of which \$93.5 million must be used to improve the quality of infant and toddler care.

5. Funding for Existing National Science Foundation Programs

National Science Foundation – Education and Human Resources Directorate - \$100 million. The mission of NSF's Education and Human Resources Directorate is to "achieve excellence in U.S. science, technology, engineering and mathematics (STEM) education at all levels and in all settings (both formal and informal) in order to support the development of a diverse and well-prepared workforce of scientists, technicians, engineers, mathematicians and educators and a well-informed citizenry that have access to the ideas and tools of science and engineering." The Recovery Act specifies that this funding is to be allocated as follows: (1) \$60 million for the Robert Noyce Scholarship Program; (2) \$25 million for math and science partnerships; (3) \$15 million for professional science masters programs.

B. TAX PROVISIONS

American Opportunity Tax Credit The ARRA creates a new "American Opportunity" tax credit of up to \$2,500 of the cost of tuition and related expenses paid during taxable years 2009 and 2010. Taxpayers will receive a tax credit based on one hundred percent (100%) of the first \$2,000 of tuition and related expenses (including books) paid during the taxable year and twenty-five percent (25%) of the next \$2,000 of tuition and related expenses paid during the taxable year. Forty percent (40%) of the credit would be refundable. This tax credit will be subject to a phase-

out for taxpayers with adjusted gross income in excess of \$80,000 (\$160,000 for married couples filing jointly). Estimated cost \$13.907 billion/10 years.

Computers as Qualified Education Expenses in 529 Plan The ARRA classifies computers and computer technology as qualified education expenses under Section 529 Education Plans. The estimated cost is \$6 million over 10 years.

Qualified School Construction Bonds The ARRA creates a new category of tax credit bonds for the construction, rehabilitation, or repair of public school facilities or for the acquisition of land on which a public school facility will be constructed. There is a national limitation on the amount of qualified school construction bonds that may be issued by State and local governments of \$22 billion (\$11 billion allocated initially in 2009 and the remainder allocated in 2010). There is a national limitation on the amount of qualified school construction bonds that may be issued by Indian tribal governments of \$400 million (\$200 million allocated initially in 2009 and the remainder allocated in 2010). The estimated Cost is \$9.877 billion over 10 years.

Qualified Zone Academy Bonds ("QZABs") The ARRA grants an additional \$1.4 billion of QZAB issuing authority to State and local governments in 2009 and 2010, which can be used to finance renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy. In general, a qualified zone academy is any public school (or academic program within a public school) below college level that is located in an empowerment zone or enterprise community and is designed to cooperate with businesses to enhance the academic curriculum and increase graduation and employment rates. QZABs are a form of tax credit bonds which offer the holder a Federal tax credit instead of interest. The estimated cost is \$1.045 billion over 10 years.

SECTION II.

State Fiscal Stabilization Fund Detailed Overview

As described in Section I above, the State Fiscal Stability Fund includes three core components: (1) \$48.6B for basic stabilization funds; (2) \$4.35B for State incentive grants; and (3) \$650M for local education agency innovation grants. A more detailed description of each of these subprograms, including an overview and discussion of the application process, follows below.

A. Basic Stabilization Funds

Basic Stabilization Funds are allocated to States to Help Avert Cuts in State spending, particularly for education. To receive these funds, Governors need to submit applications that commit to education reforms related to equitable distribution of high quality teachers; data systems; academic assessments; standards; and school improvement.

Overview: Basic Stabilization Funds (BSF) are available for federal obligation immediately and are allocated by formula to states based on relative total and 5-to-24 year old populations. Governors must divide their state's allocation between education (81.8%) (the "education allocation") and other government services (18.2%). The Governor may use the latter government services allocation for public safety and other government services, which may include education assistance and modernization, renovation, and repair of school buildings.

The BSF education allocation must *first be used* by the state to restore support for K-12 and postsecondary education to the greater of the state's Fiscal Year 2008 or 2009 funding level. If funds are inadequate to restore state support for K-12 and postsecondary education to these levels (for Fiscal Years 2009, 2010, and 2011), the funds must be allocated by the state between K-12 and postsecondary education in proportion to the relative shortfalls. Any remaining amounts must be used by the Governor for subgrants to local educational agencies (LEAs) under the existing Title I-A formula.

LEAs receiving these subgrants may use BSF for any activity authorized by the ESEA, the IDEA, the Adult and Family Literacy Act, the Perkins Career and Technical Education Act, or for modernization, renovation, and repair of public school facilities. No express provision is made for retaining the education allocation at the state level. However, the 18.2% of funds reserved for other government services may be used without restriction for state level administration, oversight, and leadership activities.

Application: To qualify their states for BSF, Governors must submit an application to the U.S. Secretary of Education ("the Secretary") that includes assurances that the state will:

1. Maintenance of state effort. Maintain state support for elementary and secondary education in each of FYs 2009, 2010, and 2011 at the level of such support provided by the state for FY 2006. (This requirement may be waived by the Secretary, and there are separate provisions that authorize a state, if approved in advance by the Secretary, to treat stabilization funds as state funds for purposes of separate maintenance of effort requirements in other laws such as ESEA and IDEA. The application needs to include this request) (similar provisions apply at the higher education level);
2. Teacher Effectiveness & Distribution. Take actions to improve teacher effectiveness and comply with Title I requirements to address inequities in the distribution of high quality teachers between low and high poverty schools and to ensure that low-income and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers;
3. Data Systems. Establish a longitudinal data system that includes prescribed elements in the America COMPETES Act, including among others having linked P-16 systems; a teacher identification system that can be linked to students; college readiness test scores; postsecondary remedial course work data, and a data audit system;
4. Academic Assessments. Enhance the quality of academic assessments used under Title I, ESEA through activities such as collaboration with higher education, use of multiple measures, and development of performance and technology-based assessment instruments and meet Title I requirements for the inclusion of students with disabilities and LEP students in these assessments, through development of assessments for these students and provision of appropriate accommodations;
5. Standards. Take steps to improve state academic content standards and student achievement standards consistent with provisions in the America COMPETES Act, which provides for aligning standards with the knowledge and skills needed for success in credit-bearing postsecondary course work, 21st Century jobs, and the Armed Forces, without remediation; and
6. School Improvement. Ensure compliance with provisions in Title I, ESEA related to implementation of corrective action and restructuring options for schools identified for these interventions.

The application also must provide baseline data on the state's status with regard to each of the assurances and information on how the state will use its allocation. States should take care in addressing each of the assurance areas in the applications, in particular since their opportunity for incentive grants in 2010 will turn on their progress and needs related to these areas.

(Principal Authorities: Sections 14001-14003, 14005, 14012 of the Recovery Act)

B. Incentive Grants

Competitive grants will be made in FY 2010 to states that most aggressively pursue higher academic standards, quality assessments, robust data systems, teacher quality initiatives, and efforts to raise achievement levels and close achievement gaps.

Overview: Incentive grants will be awarded by the Secretary on a discretionary basis to states that have made significant progress in meeting the objectives to achieve equity in teacher distribution; improve state data systems; enhance standards and assessments; and provide interventions for schools in corrective action or restructuring status, consistent with the assurances in the state's application for basic stabilization funds.

Application: To qualify for incentive grants, Governors must submit an application to the Secretary describing:

1. the state's status in each of the areas addressed by the assurances in the application for the BSF;
2. the strategies the state is using to ensure that students in any subgroup that has not met the state's proficiency targets under Title I, ESEA will continue to make progress toward meeting state standards;
3. the achievement and graduation rates of public elementary and secondary school students in the state;
4. how the grant funding will be used to improve student academic achievement in the state, including how it will allocate funds to give priority to high-need LEAs (defined to mean LEAs that serve at least 10,000 children from families below the poverty line or for which not less than 20% of the students they serve are below the poverty line); and
5. a plan to evaluate the state's progress in closing the achievement gaps.

Although the law is not explicit on this point, it appears to contemplate that applications for incentive grants will be filed subsequent to the initial state application for the basic stabilization grants. The Secretary will determine which states receive grants and the amounts of the grants based on information in the application, other criteria developed by the Secretary, and the state's need for assistance to carry out the objectives addressed by the assurances.

Local Education Agency Suballocation: A state that receives an incentive grant must use at least 50% of the grant to provide grants to LEAs based on their Title I-A shares for the most recent year. The Act does not prescribe how the remaining funds are to be distributed, which would appear to provide broad discretion to the state to retain the remaining funds for state-level activities or otherwise distribute them to carry out the purposes of the program.

(Principal Authorities: Sections 14005(a), 14006 of the Recovery Act)

C. Innovation Fund

Competitive grants will be made to LEAs or partnerships of LEAs and non-profit organizations with strong records of improving student achievement to help them make further progress in pursuing education reforms and bringing their results to scale

Overview: Direct grants are made by the Secretary to LEAs or partnerships including one or more non-profits organizations, LEAs, or consortia or schools. States are not eligible for these awards. The purpose of the awards is to allow eligible entities to expand their work and serve as models for best practices; allow them to work with the private sector; and document best practices and take them to scale.

Application: Awards can be made as soon as the funds are appropriated, but the U.S. Department of Education is expected to issue funding criteria and announce a formal application process. The grant awards are designated as "academic achievement awards," to recognize eligible entities for:

- significantly closing achievement gaps or increasing student achievement;
- exceeding the state's measurable objectives for performance on state assessments;
- making significant improvement in other areas, such as graduation rates or recruitment and placement of high-quality teachers and school leaders; and
- demonstrating that they have established partnerships with the private sector, including philanthropic organizations, and that the private sector will provide matching funds to help bring results to scale.

(Principal Authority: Section 14007 of the Recovery Act)

Further Information

States also need to be aware of reporting and accountability provisions under the law. A state that receives a grant under the Stability Fund must submit an annual report to the Secretary on the uses of funds and how they were distributed; estimates of the number of jobs saved or created; estimates of averted tax increases; the state's progress on each of the assurances included in the state's application; a description of each school modernization, renovation, and repair project funded, and other information at the postsecondary level. Also, the Recovery Act includes broad provisions applicable to all its programs on transparency and accountability and on access of Offices of Inspector General and a new Recovery Accountability and Transparency Board to grantee and contractor records. There are also provisions for evaluations of the Incentive Fund and Innovation Grants programs by the Government Accountability Office.

Additional information regarding the Stability Fund is available on the U.S. Department of Education's web-site at <http://www.ed.gov/policy/gen/leg/recovery/> If you have follow-up questions, please feel free to contact Reg Leichty at reg.leichty@educationcounsel.com or (202)545-2918 or Steve Winnick at steve.winnick@educationcounsel.com or (202)545-2913.