



The American Recovery and Reinvestment Act of 2009:
A Guide for State and Local Governments

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Introduction

President Obama signed the American Recovery and Reinvestment Act of 2009 (the ARRA) into law on February 17, 2009, advancing an ambitious plan to revitalize the nation's economy. This \$787 billion package seeks to stimulate economic growth through federal spending on such programs as education, energy, health care, housing, and transportation.

The ARRA provides funds for a wide array of public and private actors, including federal entities. This paper summarizes key opportunities for state, local, territorial, and tribal governments to secure federal support through the ARRA. This includes direct funding as well as opportunities to act as a conduit for funds to constituents. Many of the provisions in the ARRA increase funding for existing programs. This paper summarizes current law where appropriate, but assumes familiarity with such existing programs.

This paper is not intended as a comprehensive guide to any particular program, but is intended as a general summary of the law to help identify funding opportunities for further inquiry. Any organization or entity interested in a specific program or opportunity referenced in this paper should seek additional information from the relevant government agencies, and consult with competent counsel to determine applicable legal requirements in a specific situation.

Time is an important consideration in evaluating opportunities under the ARRA. By 45 days after the date of enactment (April 3, 2009), state governors (or in some cases, state legislatures) must certify that their states will request and use funds and that these activities will create jobs and economic growth. The ARRA emphasizes rapid expenditure by imposing deadlines for application and disbursement and granting priority to projects that can use funds quickly. Therefore, authorities that are able to take quick action will benefit most from the new funding. Any date contained in this paper is either explicitly set forth in the text of the ARRA or is calculated based on the number of calendar days from the enactment thereof. Dates determined by calculating the number of days from enactment of the ARRA are determined without regard to whether the date falls on a weekend or federal holiday and, therefore, are necessarily estimates. Legal counsel should be consulted to determine these dates with certainty.

Many provisions of the ARRA do not provide guidance on the distribution of funds provided therein. In the coming weeks, relevant government agencies will issue guidance regarding application and disbursement of funds under their jurisdiction.

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1. EDUCATION AND FISCAL STABILIZATION

A. Fiscal Stabilization Fund - \$53.6 billion

State Allocations - **\$48.318 billion**
[A.XIV]¹

- The ARRA provides funds, awarded by the Secretary of Education, for grants to states based on their relative populations, for elementary, secondary, and higher education, public safety, and other government services. The Secretary will award 61 percent of the funds to states based on their relative populations of individuals aged 5 through 24, and will award the remaining 39 percent of the funds based on states' relative total populations. The Secretary can reserve up to \$14 million of these funds for administration and oversight of the program.
- **Fiscal Stabilization Funds for Education.** State must dedicate **\$39.5 billion** (81.8 percent) of these funds to elementary, secondary, and higher education. These funds must be used first to restore state support of primary, secondary, and higher education through 2011 to the greater of 2008 or 2009 levels, and also must follow existing formula increases for elementary and secondary fiscal support for 2010 and 2011.
- **General Fiscal Stabilization Funds.** States may use the remaining **\$8.8 billion** (18.2 percent) of the funds to support any public safety or other government service, including education. *States have total discretion in the use of these funds, so long as their use is for some government service and is not otherwise prohibited by law.*
- Funds that are not subgranted or otherwise committed within two years must be returned to the Secretary of Education to be reallocated to the remaining states based on the proportion set forth above.
- If states choose to dedicate a portion of their grants to institutions of higher education, states cannot consider the mission or type of institution in making awards. An institution is eligible so long as it is an "institution of higher education" under the Higher Education Act of 1965 (HEA); 42 U.S.C. §§ 2751 *et seq.*, and if it continues to be eligible to participate in programs under Title IV of that Act.
- Each governor must apply for his or her State's allotment of funds under this program. Applications must describe how the funds will be used and make five required assurances (Allocation Assurances) to the Secretary of Education that, in accordance with various other statutes, the state will: (1) maintain fiscal support of elementary, secondary, and higher education through 2011 at least at 2006 levels; (2) improve teacher effectiveness and equity in teacher distribution;² (3) establish a longitudinal data system;³ (4) enhance academic standards and assessments;⁴ and (5) support struggling schools.⁵

¹ References are to Division, Title, and, where available, Section of the ARRA.

² See Elementary and Secondary Education Act of 1965 (ESEA), § 1111(b)(8)(C); 20 U.S.C. § 6311.

³ See America COMPETES Act, § 6401(e)(2)(D).

⁴ See ESEA, § 1111(b)(3); 20 U.S.C. § 6311; Individuals with Disabilities in Education Act (IDEA),

§ 612(a)(16); 20 U.S.C. § 1412; America COMPETES Act, § 6401(e)(1)(9)(A)(ii); 20 U.S.C. § 9871.

⁵ See ESEA, § 1116(a)(7)(C)(iv), (8)(B); 20 U.S.C. § 6311.

State Incentive Grants/Innovation Funds - \$5 billion
[A.XIV]

- The ARRA provides \$5 billion to fund state incentive grants and an Innovation Fund. Of the total amount, the Secretary of Education may dedicate up to \$650 million to local educational agencies through the Innovation Fund.
- **State Incentive Grants.** The Secretary of Education has discretion to award grants in FY 2010 to states that make significant progress in fulfilling and improving upon the goals identified in Allocation Assurances 2 through 5 made in connection with the state's application for its allocation of funds under this program. State applications for incentive grants must, in addition to satisfying the requirements of applications for state allocations under this program, show how such grants will help the state further meet the goals of Allocation Assurances 2 through 5.
- The Secretary of Education can evaluate applications under Allocation Assurances 2 through 5 and under any other criteria chosen by the Secretary, such as a state's financial need to meet such assurances.
- States that receive incentive grants must give at least 50 percent of the grants to local educational agencies in subgrants based on the local agencies' relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (ESEA); 20 U.S.C. §§ 6301 *et seq.* for the most recent fiscal year.
- **Innovation Fund.** The ARRA provides that the Secretary of Education has discretion to award innovation grants to local education agencies or partnerships between non-profit organizations and local educational agencies or schools, so that grantees can expand their work, partner with private sector and philanthropic community organizations, and document best practices.
- To be eligible for an award, an entity must: (1) have made significant gains in closing the achievement gap as described in section 1111(b)(2) of the ESEA; 20 U.S.C. § 6311(b)(2)(B); (2) have exceeded the state's annual objectives from section 1111(b)(2) of the ESEA for two consecutive years or have increased student achievement for all student groups described in that section through another measure such as those described in 1111(c)(2) of the ESEA; 20 U.S.C. § 6311(b)(2)(C)(v); (3) have made significant improvements demonstrated by data in other areas such as graduation rates or teacher recruitment; and (4) demonstrate partnerships with private sector or philanthropic groups which agree to match the innovation grant funds.
- If a local educational agency cannot meet the above criteria for eligibility, the agency can partner with an eligible philanthropic organization.

Fiscal Stabilization Funds for Outlying Areas - \$268 million
[A.XIV]

- The Secretary of Education will also award grants to outlying areas for educational purposes after consultation with the Secretary of the Interior. There is no specified application process. Grants will be awarded based on each area's respective needs as determined at the discretion of the Secretary of Education.

Fiscal Stabilization General Rules and Restrictions

- These rules and restrictions apply to the Fiscal Stabilization funds, Division A, Title XIV, including the three areas outlined immediately above.
- The Secretary of Education may determine the time, manner, and information required for applications. The governor shall submit all applications on behalf of a state. Each state receiving funds under this title must file annual reports in the manner and containing the information as determined by the Secretary, including the uses of funds, distribution of funds, estimated job creation, estimated tax increases averted, and state progress in specified education initiatives.
- No funds can be used for financial assistance (vouchers) for students to attend private elementary or secondary schools.
- If necessary to relieve fiscal burdens on states and local agencies, the Secretary may waive or modify any requirement of this title relating to maintenance of fiscal effort.

Uses of Funds by Local Educational Agencies

- **Allowed.** Any activity authorized by the ESEA, the Individuals with Disabilities in Education Act (IDEA), the Adult and Family Literacy Act, or the Perkins Act; and modernization, renovation, or repair of public school facilities, including projects consistent with a recognized green building rating system.
- **Prohibited.** Maintenance costs; modernization; renovation, or repair of stadiums; purchasing vehicles; and improvements to stand-alone non-educational facilities.

Uses of Funds by Public Institutions of Higher Education

- **Allowed.** Uses that mitigate the need to raise tuition and fees for in-state students and modernization, renovation, or repair of public school facilities—including projects consistent with a recognized green building rating system.
- **Prohibited.** Increases to an institution's endowment; maintenance of systems, equipment, or facilities; and modernization, renovation, or repair of sports or religious facilities.

B. Other Educational Funds

Education for the Disadvantaged - \$13 billion [A.VIII]

- The ARRA provides:
 - **\$5 billion** in additional funds for targeted grants to local educational agencies under section 1125 of the ESEA, to be distributed as set forth in 20 U.S.C. § 6337. Local educational agencies are eligible to receive targeted grants as set forth in 20 U.S.C. § 6335.

- **\$5 billion** in additional funds for education finance incentive grants to states under section 1125A of the ESEA. See 20 U.S.C. § 6337.
- **\$3 billion** in additional funds for school improvement grants to states under section 1003(g) of the ESEA (20 U.S.C. § 6303(g)) for distribution as subgrants to local educational agencies to assist in school improvements satisfying the requirements set forth in 20 U.S.C. § 6316.
- Local educational agencies receiving funds are required to file with the state educational agency a school-by-school listing of per-pupil expenditures from state and local sources during the 2008-2009 academic year no later than December 1, 2009. In turn, the state educational agency must report that information to the Secretary of Education by March 31, 2010.

Special Education - \$12.2 billion
[A.VIII]

- The ARRA provides additional funding for grants to states to carry out parts B and C of the IDEA: **\$11.3 billion** for section 611 of the IDEA; **\$400 million** for section 619 of the IDEA; and **\$500 million** for part C of the IDEA. See generally 20 U.S.C. §§ 1400 *et seq.*; 34 C.F.R. §§ 300 *et seq.*
- If every state reaches its maximum allocation under section 611(d)(3)(B)(iii) of the IDEA, remaining funds will be proportionally allocated to each state subject to the maximum amounts contained in section 611(a)(2) of the IDEA.
- By July 1, 2009, the Secretary of Education will reserve the amount needed for state Incentive Grants under section 643(e) of the IDEA, with any remaining funds to be allocated to the states in accordance with section 643(c) of the IDEA.
- The total amount, under this and all other acts, available for each of sections 611(b)(2) and 643(b)(1) of the IDEA ("Outlying Areas and Freely Associated States; Secretary of the Interior" under Part B and "Payments to Indians" under Part C) must be equal to the amount available for that section during FY 2008 increased by the amount of inflation as specified in section 619(d)(2)(B) of the IDEA.

School Improvement Programs - \$720 million
[A.VIII]

- The ARRA provides:
 - **\$650 million** in additional funds to states for subgrants to local educational agencies and local entities pursuant to the Enhancing Education through Technology program. See generally ESEA, Title II, Part D, Subpart 1; 20 U.S.C. § 6761 *et seq.*
 - **\$70 million** in additional funds for grants under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act to each state in proportion to the number of homeless students identified by the state during the 2007-2008 school year relative to the number of such children identified nationally during that period. The Secretary of Education must distribute the McKinney-Vento funds to states within 60 days of the date of enactment (by April 18, 2009).

- Each state must award the McKinney-Vento funds as subgrants to local educational agencies no later than 120 days after receiving such funds from the Secretary of Education. State educational agencies must subgrant such funds to local educational agencies on a competitive basis or according to a formula based on the number of homeless students identified by the local educational agencies in the state.

Innovation and Improvement - \$200 million
[A.VIII]

- The ARRA provides \$200 million for distribution to states, local educational agencies, institutions of higher learning and other public and private agencies for educational innovation and improvement pursuant to the Fund for the Improvement of Education. See generally ESEA, Title V, Part D, Subpart 1; 20 U.S.C. §§ 7243 *et seq.* Funds must be expended as directed in the fifth, sixth, and seventh provisos under the heading "Innovation and Improvement" in the Department of Education Appropriations Act, 2008.

Impact Aid - \$100 million
[A.VIII]

- The ARRA provides that the Secretary of Education will make construction payments and will award school facility emergency and modernization grants to local educational agencies as set forth in section 8007 of title VIII of the ESEA. See 20 U.S.C. § 7707. No further details are provided.

Pell Grants - \$15.64 billion
[A.VIII]

- The ARRA provides additional funds to address program shortfalls and increase the maximum grant allowed.

Student Financial Assistance - \$200 million
[A.VIII]

- The ARRA provides funding for grants to institutions of higher education to assist in the operation of work-study programs under the HEA.

Higher Education - \$100 million
[A.VIII]

- The ARRA provides additional funding for teacher quality enhancement grants to states and eligible partnerships on a competitive basis under part A of title II of the HEA. See generally 20 U.S.C. §§ 1021 *et seq.*

NSF Research and Related Activities - \$2.5 billion
[A.II]

- See Technology and Science.

National Institute of Standards and Technology Research Facilities - \$360 million
[A.II]

- See Technology and Science.

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Institute of Education Sciences - \$250 million
[A.VIII]

- The ARRA provides additional funding for competitive grants to state educational agencies for statewide longitudinal data systems as set forth in section 208 of the Educational Technical Assistance Act. See 20 U.S.C. § 9607.
- Funds may be used for statewide data systems that include postsecondary and workforce information, of which up to \$5 million may be used for state data coordinators and for awards to public or private organizations or agencies to improve data coordination.

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