May 19, 2009

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Secretary,

On April 30th, the Center on Education Policy (CEP), a national non-profit organization that serves as an independent advocate for public education and for more effective public schools, held a forum to discuss the impact of the economic stimulus funds on the federal role in elementary and secondary education.

The forum heard presentations from a diverse panel of leading education policy experts from the American Association of School Administrators (AASA), the Council of Chief State School Officers (CCSSO), the Council of Great City Schools (CGCS), the National Governors Association (NGA) and the National School Boards Association (NSBA). Both a written transcript and an audio file of the forum are available on our Web site: http://www.cep-dc.org/index.cfm?fuseaction=Page.viewPage&pageId=530.

Based on the forum, I want to share with you the concerns that were expressed about implementation of the education programs in the American Recovery and Reinvestment Act (ARRA), as well as some suggestions for improving the implementation of this very important Act.

All of the organizations represented on the panel expressed appreciation for the unprecedented influx of education funds for the public schools. As you know, public schools will receive the large majority of funds from the $53.6 billion State Fiscal Stabilization Fund, as well as over $27 billion from ARRA funds provided for Title I, Title I School Improvement Grants, the Individuals with Disabilities Education Act (IDEA), Enhancing Education Through Technology State Grants, the Teacher Incentive Fund, Impact Aid Construction, and state data systems. Clearly, without those funds, the
nation’s schools and students would have been forced to layoff hundreds of thousands of teachers and other employees, as well as cut back or eliminate a broad range of programs and services that benefit children. In addition, based on comments at our forum, ARRA appears to be fostering increased collaboration between governors and chief state school officers on education policy and programs.

You and your staff are to be commended for the incredible job you have done in moving quickly, efficiently and transparently on implementation of ARRA. In less than three months you have distributed or made available for distribution approximately half of the ARRA funds, issued detailed guidance for most of the programs, provided the application for the State Fiscal Stabilization Fund and approved several states’ applications, provided fact sheets and slide shows and a guide to local uses of funds, and held numerous meetings and briefings for the education community.

However, what we learned at the forum, as well as from other conversations with educators and news reports, there is still much confusion and anxiety over use of the ARRA funds.

**Complexity and Confusion**
Much of this confusion arises from the fact that ARRA provides funds for a number of existing programs while at the same time creating a new program (the State Fiscal Stabilization Fund) that is now the largest federal source of funds for K-12 education.

States, school districts, schools, and educators have to contend with:
- multiple programs, each with its own set of allowable uses and fiscal rules such as “supplement not supplant” and maintenance of effort;
- multiple time frames for distribution of funds from the federal government to states and from states to school districts;
- multiple decision-makers (the U.S. Department of Education, governors, state legislatures, chief state school officers, local school boards and administrators, and, in some cases, local governments);
- multiple years during which the money can be spent;
- the first time use of existing state funding formulae to distribute federal education funds;
- wide variations in state budgets, both their fiscal situation and how states fund elementary and secondary education;
- continued deterioration of most state budgets; and
- new, and as of yet, undetermined fiscal and other reporting requirements.

As a result of all this, according to Jeff Simering of CGCS, “...school districts are not absolutely sure how much money they’re necessarily going to get and what is the range of use that they’re going to be allowed to do with those dollars. There’s an amazing amount of mixed messages being sent ... about the stimulus dollars and about the stimulus programs.”
At another recent forum on the ARRA education funds held by the Brookings Institution, CGCS CEO Mike Casserly stated, "...the vast number of school districts at the local level have not actually seen a dime of this money... But it's also very clear that, in a number of states, local school districts won't actually see a lot of the state stabilization money, and frankly, a lot of the big city school districts have given up on the possibility that they're likely to see large portions of the stabilization money.”

Conflicting Purposes of ARRA Funds
Another major challenge in implementation is tension, and possible conflict, among the four principles you set forth that guide the use of ARRA funds, and the broad uses of the funds. Several panelists raised concerns about how ARRA funds can simultaneously be spent quickly to create and save jobs, thoughtfully to avoid the funding cliff, and, at the same time, to advance key education reforms.

The concern about using funds to achieve the reforms outlined in the ARRA policy assurances is heightened by the fact that states continue to face enormous budget deficits. According to recent reports by the National Conference of State Legislatures (NCSL) (http://www.ncsl.org/programs/press/2009/pr042309SBU09.htm) and the Council of State Governments (CSG) (http://www.slearlanta.org/Publications/FAGO/Fiscal_Miami_FL.pdf), states are expected to see cumulative budget deficits in fiscal year 2010 between $121 and $145 billion, while fiscal year 2011 projected deficits may approach $180 billion. According to Dane Linn from NGA who spoke at the forum, 49 states now have budget deficits. CSG also found that 26 states have cut spending this year on elementary and secondary education, while 32 have done so for higher education.

As Gene Wilhoit, executive director of CCSSO, stated at our forum, “So what we’re going to get out of this first stimulus money I believe, is an emphasis on the first part of this, the recovery part of the initiative. Not so much on the reform in those states. They simply are just trying to survive.”

Sustainability of Services and Reforms
Another concern expressed is how school districts will be able to sustain programs, services, and reforms they implement with ARRA funds, since the officials at the U.S. Department of Education and the White House have repeatedly stressed the one-time nature of these funds. This may be a particular problem with IDEA. According to Mary Kusler of AASA, "...school districts cannot use the IDEA money to expand services, to create a higher level of services that they financially are not going to be able to keep going after the stimulus money disappears. Because then they would have created a higher level of services and be subject to liability when they'd have to cut back those services.”
Supplanting
As you are well aware, there is deep concern about both states and local governments reducing their spending for education below the required maintenance of effort levels. According to AASA, “...we have an increasing category of states that are absolutely positively, I will not take any explanations otherwise, supplanting their efforts in education with this money.” CGCS confirmed this concern, “...we are seeing or at least it’s being threatened to happen over and over and over again.”

There have also been reports that where counties or other local governments control school districts' budgets, such as in Virginia, that local supplanting is also taking place.

IDEA 50 Percent Flexibility
After enactment of ARRA many school districts were hoping to take advantage of the provision in IDEA (Section 613) that allows local school districts to reduce their share of spending on special education from local or state and local sources by up to 50% of any increase in federal IDEA funding. Especially since the State Fiscal Stabilization Fund will only restore state support for education, local districts facing reduced revenues from local sources, were hoping to be able to use the “freed-up” local funds for other educational purposes.

However, as both AASA and CGCS pointed out at the forum, due to another provision in IDEA (Section 616(f): State Enforcement.--If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year), large numbers of school districts are finding they will be prohibited from utilizing this 50 percent flexibility. According to CGCS, “...we’ve got interpretations by the Department, we have state accountability and performance system that are so elaborate that they may prevent us from doing that kind of thing.”

RECOMMENDATIONS
Based on the forum CEP would like to offer you several suggestions to improve implementation of ARRA:

- The U.S. Department of Education should acknowledge that states and school districts are continuing to face serious budget cuts and that ARRA funds can and should be used to prevent layoffs and programs cuts. As Vice President Biden stated in his first report to President Obama on ARRA implementation, “The primary purpose of the Recovery Act is to create and retain jobs by promoting sound economic recovery.”
- The Department should continue to make clear that it will not tolerate states and local governments to circumvent the intent of ARRA by reducing spending below the maintenance of effort levels.
- Weekly conference calls or webinars should be initiated between the U.S. Department of Education and the broad range of stakeholders involved in ARRA implementation in order to provide updates, hear concerns from the field and respond to questions.
- The U.S. Department of Education should bring together representatives of both the education community and state policymakers (such as NGA, NCESL, CSG, NASBO) for discussions on ARRA implementation.
- States should be encouraged to bring together on a regular basis representatives of the various stakeholders with the state. This is already occurring in some states, as was pointed out by NGA at the forum.
- The U.S. Department of Education’s ten regional offices should hold regional forums and briefings on ARRA.
- The U.S. Department of Education should work with the education community to review the rules on the limitations on local school districts utilizing the IDEA 50% flexibility to try in order to address the concerns expressed at the forum without diminishing services for students with disabilities.
- The Department should provide ARRA guides targeted to practitioners at the local level, including classroom teachers and school principals.
- Officials in the Obama Administration should make clear that the President is committed to further increases above the pre-ARRA FY ’09 levels for IDEA and Title I. Doing so will help alleviate some of the anxiety over the funding cliff. You may want to highlight this statement from the FY 2010 Department of Education Justifications of Appropriation Estimates to the Congress. “The President’s 2010 budget, announced in February, assumes significant increases in overall discretionary funding for Department of Education programs in fiscal years 2011-2014. Title I Grants to LEAs will likely share in those increases, particularly once the program is reauthorized to reflect the Administration’s priorities.” http://www.ed.gov/about/overview/budget/budget10/justifications/aedfc03.pdf
- To the maximum extent possible, the U.S. Department of Education should expedite the issuance of the remaining guidance documents, the metrics to be used in the phase 2 stabilization fund allocations, and the documentation that states and districts will need to provide to receive the second half of their IDEA and Title I funds.
- The U.S. Department of Education should work with other federal agencies that have funds for education-related programs (such as Head Start and Early Head Start in the Department of Health and Human Services and the two school construction tax credit bond programs in Treasury Department) to ensure coordination among these programs. Perhaps joint guidance or suggestions on how schools can integrate funds from these programs at the local level should be issued.
CEP hopes to continue to monitor the implementation of ARRA and looks forward to working with you and other officials at the U.S. Department of Education. Again congratulations for all the work that has been done with the ARRA, and we are offering this summary of our forum and suggestions for action as a way of being of assistance to you as you continue your work.

Sincerely,

Jack Jennings
President and CEO