THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND THE PUBLIC SCHOOLS

March 2009
During the next few years, public schools will benefit from the largest infusion of federal dollars in history. The American Recovery and Reinvestment Act of 2009 (ARRA), popularly known as the economic stimulus package, makes available approximately $100 billion for education.

Before this appropriation, the budget for the U.S. Department of Education was approximately $45 billion. This new funding doubles that budget if considered as a one year increase. Since the new funds can be used over two years, they could be considered a 50% annual increase for each of the next two years. Either way, this is a big sum of money.

The primary motivation for enacting this law is to blunt the worst effects of the current economic downturn, which is causing large shortfalls in state and local budgets. Some teachers and other school staff have already been laid off due to budget cuts, and many more face possible layoffs before the next school year. A secondary motivation for the law is to encourage changes in schooling that will improve student achievement.

For public elementary and secondary schools, the ARRA includes major new programs—the Stabilization Fund, Incentive Grants, and the Innovation Fund. It also provides additional dollars for current activities, such as for programs for low-income students and students with disabilities. This memorandum briefly describes these initiatives based on the law and the guidance issued by the U.S. Department of Education on March 6, 2009, available at www.ed.gov/recovery. The legislation also provides funds for post secondary education, which is not discussed here in detail.

**Stabilization Fund**

The largest new program is the State Fiscal Stabilization Fund with approximately $48.3 billion. This sum is divided into two different pots of $39.5 billion and $8.8 billion, with somewhat different rules for each pot.

The first pot, the $39.5 billion, is intended to restore the level of state support for public schools and public postsecondary education institutions in fiscal years 2009, 2010, and 2011 to the level of state spending for 2008 or 2009, whichever is greater. The governor of each state determines the shortfalls for public schools and public postsecondary institutions and distributes the state's stabilization grant between those two sectors in proportion to the shortfalls. If funds are still available after meeting those goals, they are to be distributed to school districts according to the formula for Title I of the Elementary and Secondary Education Act (ESEA), the federal program to improve the performance of low-achieving children in low-income areas. However, according to the March 6th guidance, these funds “are not subject to Title I program requirements.”

For public education, the federal government has traditionally focused on providing funds for additional services for children with special needs, such as children from low-income families and children with disabilities. According to the March 6th guidance, these new stabilization funds may be used for quite a different purpose: “to pay salaries to avoid having to lay off teachers and other school employees” and for “modernization, renovation, or repair of public school buildings.” According to the law, these funds cannot be used for maintenance costs, stadiums for sports events that charge admission, vehicles, or separate administrative buildings.

In all likelihood, not every school district in a state will receive the same amount of stabilization funds per student. This is because the stabilization dollars are meant to substitute for funds that each state currently distributes to school districts by its own formulas. Many states give out a portion of education funds on a per pupil basis but also adjust allocations based on the value of real estate in school districts or the districts’ proportions of special needs children.

To qualify for these federal funds, states will have to (a) maintain support for public schools at least at the level.
provided in 2006, (b) achieve a more equitable distribution of highly qualified teachers among high- and low-poverty schools, (c) establish a longitudinal data system, (d) improve academic tests, including those for children with disabilities and children learning English, and improve state academic standards, and (e) support struggling schools.

The second pot of stabilization funds—the $8.8 billion—is available to state governors for any government service. If a governor decides to allocate funds for public schools, those funds can be used for the same purposes as those in first pot described above.

The U.S. Department of Education states that this is “a one-time appropriation,” and therefore urges that “(t)hese funds should be invested in ways that do not result in unsustainable continuing commitment after the funding expires.” By the end of March 2009, the governors will be able to apply for these funds and receive 67% of their grants within two weeks after the federal government receives an approvable application. The remaining funds are to be distributed between July 1 and September 30, 2009. States in unusual economic situations can receive most of these remaining funds earlier than July.

**Incentive Grants**

Up to $5 billion is provided for another new purpose: incentive grants to states to increase student academic achievement, raise graduation rates, and close achievement gaps between groups of students. Unlike funds for stabilization, which are distributed to states using the various formulas set out in law, the amounts states receive for these incentive grants will be discretionary with the U.S. Secretary of Education. This means that not every state may receive funding and that individual state grants may vary in amount.

The U.S. Department of Education has decided to call this the “Race to the Top” program. The Secretary must give priority in awarding these grants to states that have made significant progress in achieving equity in teacher distribution, improving the use of data, improving the quality of assessments and standards, and supporting struggling schools. Once a state receives funds, it must distribute at least half of the funds to school districts based on their Title I allocations.

The U.S. Department of Education has announced that it will soon release guidelines and applications for these funds and that it expects to make Race to the Top grants in fall 2009 and spring 2010. In its March 6th guidance, the Department indicates that these funds will go to states that have made dramatic progress on reform goals.

**Innovation Fund**

The reason that “up to” $5 billion can be used for the new state incentive grant program is that the ARRA permits the U.S. Secretary of Education to reserve up to $650 million of those dollars to create a separate Innovation Fund. According to the March 6th guidance, the Secretary has decided to reserve that amount for an “Invest in What Works and Innovation” fund. These grants would go to (a) school districts, (b) partnerships of nonprofit organizations and school districts, or (c) partnerships of nonprofit organizations and consortia of schools.

Innovation Fund grants would be awarded to entities that have made significant gains in closing the achievement gap. The grantees would use the funds to expand their efforts, become models for best practices, work in partnership with the private sector and the philanthropic community, and document best practices that would be implemented on a broader scale.

The guidance and applications for these funds and the grant-making will follow the same schedule as the Race to the Top grants.

**Title I**

*Regular grants.* Title I of ESEA, the largest federal education program, provides extra services for students in schools with concentrations of children from low-income families. Unlike the three new programs described above, this is one of the current programs that receive additional funds through the ARRA.

For the current school year, Title I received an appropriation of $13.9 billion for grants to school districts. The ARRA provides an additional $10 billion for the same purpose for fiscal years 2010 and 2011.
Although most school districts in the country currently receive some Title I funds, this additional $10 billion will be distributed using two methods that are supposed to target assistance on needier districts and on districts in states with more equitable forms of distributing education funds. A unique feature of the ARRA is that no school district with a child poverty rate of less than 5% qualifies for any of these additional funds. The allocations to districts are posted on the U.S. Department of Education’s web site at www.ed.gov/about/overview/budget/title1/fy09recovery/index.html.

In its March 6th guidance, the Department notes that this increase may not be available after 2011 and therefore schools and school districts have “a unique opportunity to improve teaching and learning and should focus these funds on short-term investments with the potential for long-term benefits, rather than make ongoing commitments that they might not be able to sustain once recovery funds are expended.” The guidance contains an illustrative list of such activities.

The Department also invites requests for waivers for the ARRA funds from existing “set-aside” requirements, the minimum funding requirement for supplemental educational services, limitations on carrying over funds to the next fiscal year, and “maintenance of effort” provisions (explained in the general provisions section of this memo). The guidance also states that although the requirement to use Title I funds to “supplement, not supplant” state and locally funded services cannot be waived, a school district may be able to show compliance in cases of “severe budget shortfalls”; the Department provides a reference to previous guidance on this issue.

Before the end of March 2009, the Department will release half of the Title I increase, with the remainder expected to be released between July 1 and September 30, 2009.

**School Improvement.** The Title I law also contains the accountability requirements added in 2002 by the No Child Left Behind Act. States must annually test students in key academic subjects and bring all students to proficient levels of performance by 2014. The law includes repercussions for schools that do not meet yearly state test score targets. For this current year, the Congress has appropriated $491 million to assist schools identified as being “in need of improvement” because they did not make adequate yearly progress according to these state targets. States must set aside additional funds from their regular Title I grants to assist these identified schools.

The ARRA provides an extra $3 billion for school improvement for fiscal years 2010 and 2011. According to the March 6th guidance, states must also set aside 4% of the new state grants for this same purpose, as required in current law. All these funds will be available to assist the increasing numbers of schools that are not making adequate yearly progress because states are gradually raising their minimum test score targets on the way toward reaching proficiency for all students by 2014.

The Department promises to release future guidance on these funds. The anticipated date when states can begin to use these funds is fall 2009.

**Students with Disabilities**

The Individuals with Disabilities Education Act (IDEA) is the second largest federal program for public schools. Like Title I, this is a current activity that receives a large additional appropriation from the ARRA.

Before the ARRA, IDEA was providing about $10.9 billion for state grants and another $374 million for preschool programs. The appropriation for infants and toddlers with disabilities was $436 million.

The new legislation provides an additional $11.3 billion for state grants for two years, fiscal years 2010 and 2011. The preschool program receives $400 million in new dollars for the same two years, and the infants program gets $500 million.

An area of contention over the years has been whether the federal government has fulfilled its commitment to pay for up to 40% of the excess costs of educating children with disabilities. Prior to the ARRA, the federal government was contributing about 17.2% of the excess costs. With the ARRA appropriation, the federal government would be contributing 34.2% if the funds were all considered to be fiscal 2009 funds, but since the funds will be spread over two years, the federal share of excess costs for 2009 will be somewhat less.
As with the Title I funds, the Department in its March 6th guidance states that the increased IDEA grants are “a large one-time increment” and therefore states and school districts have “a unique opportunity to improve teaching and learning and results for children with disabilities.” The Department states further: “Generally, funds should be used for short-term investments that have the potential for long-term benefits, rather than for expenditures the [school districts] may not be able to sustain once the recovery funds are expended.” A list of possible funded activities is included in the guidance.

As with the Title I grants, 50% of these IDEA funds will be released before the end of March 2009, with the remainder available between July 1 and September 30, 2009.

**Education Technology**

The ARRA provides $650 million for the EdTech program for fiscal years 2010 and 2011. EdTech received an appropriation of $267 million for the most recent fiscal year.

EdTech seeks to increase access to educational technology, support the integration of technology into instruction, enhance technological literacy, and support technology-related professional development of teachers. Grants are made to states and school districts. The Department of Education says that guidance will be issued on this program and that the funds should be available for use in fall 2009.

**Other Programs**

The ARRA contains a number of other appropriations, some for existing programs and some for new activities. The principal ones affecting the public schools are the following:

**Preschool Education.** Head Start receives an additional appropriation of $2 billion, and other early learning programs also are allocated new dollars.

**Teacher Performance Experiments.** An additional $200 million is provided for programs that demonstrate the impact of performance-based teacher and principal compensation systems on teacher and principal recruitment and retention in high-need schools and subjects.

**Teacher Quality Partnerships.** The ARRA makes available an additional $100 million for grants to improve teacher education programs, strengthen teacher recruitment efforts, and provide training to prospective teachers.

**Impact Aid.** An additional $100 million is provided for school construction in districts to offset the effects of federal activities.

**Homeless Children.** The program of assistance to educate homeless children under the McKinney-Vento Act receives an additional $70 million.

**Data Systems.** States will be eligible to compete for $250 million to develop and implement statewide systems for longitudinal student data.

**School Construction.** Although the final version of the ARRA does not contain a general school construction program, it does permit use of the stabilization funds for school modernization, renovation, and repair. Furthermore, there is a new $20 billion credit enhancement program in the U.S. tax code for bonds paying for school construction for elementary and secondary public schools.

**General Provisions**

**Fiscal Requirements.** Federal education programs generally include maintenance of effort provisions to ensure that the federal funds are used for activities in addition to state and locally funded activities. This means that the state or district must spend about the same amount as it did before receiving federal funds. Education programs also contain supplemental not supplant requirements, which mean that federal funds are intended to add to the educational services being offered to children rather than to substitute for state or local funding for those services.

The ARRA implicitly continues these requirements for the new Title I and IDEA funds, but the stabilization funds are treated differently. For the latter, maintenance of effort is required at the state level (as
described above) but not at the school district level, and supplement not supplant is not required at either level. This approach makes sense, since the purpose of the stabilization funds is to use federal dollars to offset staff layoffs due to state budget shortfalls—in a sense, they are replacement funds. The U. S. Secretary of Education is also given authority to allow these stabilization funds to be considered as state and local funds for purposes of meeting the maintenance of effort requirements for Title I and other federal programs.

**Uses of Funds.** The ARRA generally states that individual appropriations are provided to help school districts and states “mitigate the effects of the recent reduction in local revenues and state support for education.” The stabilization funds can be used for any activity authorized under the Elementary and Secondary Education Act, the IDEA, the Adult and Family Literacy Act, or the Carl D. Perkins Career and Technical Education Act. Additional guidance and regulations from the U.S. Department of Education may be needed to explain the meaning of those provisions.

**Reports.** The ARRA includes several reporting requirements states must meet as a condition for receiving these new funds. To receive the Title I funds, states must file with the federal government by March 31, 2010, a school-by-school listing of per-pupil expenditures from state and local sources for school year 2008-09. To continue to receive stabilization funds, states must report how those funds were used and distributed, the estimated number of jobs saved or created, tax increases that were averted, and a list of each renovation or modernization project funded.

**Distribution of Stabilization Funds.** The U.S. Department of Education’s March 6th guidance explains that the governors must distribute the stabilization funds within the state in accordance to the shortfalls in state spending for public schools and public institutions of postsecondary education. The law, however, also requires this calculation to include scheduled state funding increases, as well as state adjustments to ensure educational equity and adequacy among districts, that had already been enacted before October 1, 2008. The Department may need to further regulate on these provisions.
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