THE COUNCIL FOR EXCEPTIONAL CHILDREN'S

American Recovery and Reinvestment Act

Questions and Answers

How the American Recovery and Reinvestment Act Impacts Special Education and Early Intervention

CEC POLICY AND ADVOCACY SERVICES

Council for Exceptional Children

Council for Exceptional Children

Core Values

CEC Values:

- The dignity and worth of all individuals.
- Social justice, inclusiveness, and diversity.
- Professional excellence, integrity, and accountability.
- Rich and meaningful participation in society for all individuals with exceptionalities.
- Effective individualized education for all individuals with exceptionalities.
- The importance of families in the lives and education of all individuals with exceptionalities.
- Collaboration and community building to improve outcomes.

Mission

CEC is an international community of educators who are the voice and vision of special and gifted education. Our mission is to improve the quality of life for individuals with exceptionalities and their families through professional excellence and advocacy.

Vision

CEC is a diverse, vibrant professional community working together and with others to ensure that individuals with exceptionalities are valued and included in all aspects of life. CEC is a trusted voice in shaping education policy and practice and is globally renowned for its expertise and leadership. CEC is one of the world's premiere education organizations. *Ratified January 2008, CEC Board of Directors*

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Council for Exceptional Children's Questions & Answers: How the American Recovery and Reinvestment Act Impacts Special Education and Early Intervention

Background

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA), commonly referred to as the Economic Stimulus Package. ARRA **more than doubles** current federal funding for programs that CEC and its members have long advocated for, including special education and early intervention Never before has the federal government invested so much in special education. This historic investment is the culmination of decades of advocacy and leadership by CEC and its members, in collaboration with the education and disability communities. **CEC thanks its members for more than 30 years of strategic, focused advocacy!**

To help our members understand ARRA and maximize its impact, CEC is providing a variety of resources about how ARRA funds special education and early intervention programs. In addition to this Q&A, CEC has dedicated an area of its Web site to ARRA[1] (referred to as *economic stimulus*) and will continue to provide regular updates via its Policy Insider[2] (weekly e-newsletter), which will be updated as new information becomes available.

This Q&A summarizes the portions of ARRA and the accompanying April 1, 2009, Guidance released by the U.S. Department of Education ("April 1, 2009, Guidance") that CEC believes will be of particular interest to its members. It is not meant to summarize the entire Act or all of the April 1, 2009, Guidance. For more information on topics not addressed in this Q&A, please look to CEC's ARRA Web page, which has links to all Department of Education Guidance and the text of the Act[3].

In addition, CEC is collecting feedback on how ARRA has impacted you, your school/early intervention program, children, and youth. By completing CEC's short survey[4] you will help us to advocate for sustaining this historic investment in special education and early intervention.

[1] www.cec.sped.org>>Policy and Advocacy
[2] www.cec.sped.org>>Policy and Advocacy
[3] www.cec.sped.org>>Policy and Advocacy>>CEC Policy Resources>>Economic Stimulus
[4] http://www.surveymonkey.com/s.aspx?sm=n00n4DZd18SjGgOV62m4Yw_3d_3d

General Information About ARRA

ARRA seeks to address the challenging economic times confronting the nation by providing an historic infusion of federal funding into the economy in areas such as education, health care, energy, and infrastructure, as well as providing a package of tax cuts.

Of the total $787 billion ARRA package:

- $575 billion is dedicated for spending, which includes:
  - **$105 billion for education related programs**
  - $90 billion for Medicaid
  - $51 billion for Energy & Water
  - $48 billion for Transportation
  - $39 billion for Unemployment
  - $25 billion for Health Insurance

- $212 billion is dedicated for tax cuts. This includes:
  - $83 billion for Alternative Minimum Tax Fix
  - $66 billion for Making Work Pay Credit
  - $36 billion for Business Tax Cuts
  - **$4 billion for Education Credit**

Overall, ARRA provides more than $100 billion for funding programs administered by the U.S. Department of Education. CEC has created a chart[5] specifically detailing ARRA-funded programs that impact individuals with disabilities. These programs include:

- $12.2 billion for Special Education (IDEA) which includes:
  - $11.3 billion for Part B Grants to States for school-aged students
  - $400 million for Part B Section 619 for preschool children
  - $500 million for Part C Infants and Toddlers with Disabilities Program
- $680 million for Rehabilitation Services and Disability Research
- $13 billion for Education for the Disadvantaged (including Title I)
- $53.6 billion for a State Fiscal Stabilization Fund (to provide fiscal relief to states to prevent tax increases and cutbacks in education and other critical services)
- $250 million for Institute for Education Sciences (education research)
- $1 billion for Head Start
- $1.1 billion for Early Head Start

CEC's Questions & Answers on the American Recovery and Reinvestment Act (ARRA)

While there are many areas of ARRA that the U.S. Department of Education is currently reviewing, CEC is pleased to provide this general Q&A to assist its members in understanding how the law will impact students, schools and states. **PLEASE NOTE:** Information regarding ARRA is fluid and CEC will provide regular updates as information becomes available.

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[5] www.cec.sped.org>>Policy and Advocacy>>CEC Policy Resources>>Economic Stimulus

Q1. Why is funding for education considered an economic stimulus?

A1. The answer to this question focuses on ARRA's twin goals: to have a short- and a long-term economic impact. In the short term, ARRA aims to stimulate the economy by reducing cuts to education. Estimates indicate that at least 26 states are confronting fiscal crises and cutting education as a result. Cutting education funding often means layoffs, discontinuation of programs and indefinite postponement of new initiatives. Moreover, during times of economic crisis, programs serving children and youth with disabilities are often cut, further straining systems that have been stretched thin for years.

By infusing more funding into education in the short term, ARRA seeks to avoid layoffs and program cuts, especially in programs that help individuals with disabilities. It also aims to create new jobs needed to implement new initiatives.

In the long term, ARRA seeks to ensure better educational outcomes, thus preserving the economic health of the nation. To that end, ARRA provides the U.S. Secretary of Education with discretionary funds to grant to local education agencies (LEAs), nonprofit partnerships or consortia of LEAs. The U.S. Department of Education has stated that these funds are for innovative programs designed to prepare students to succeed in the global workforce. By investing in these programs, ARRA hopes to ensure long term job growth for the nation.

Q2. How does ARRA provide additional funding for education?

A2. ARRA provides more than $100 billion for education programs. Much of this money will be distributed to state education agencies (SEAs) and LEAs through existing programs such as the Individuals with Disabilities Education Act (IDEA), Title I and Student Financial Assistance and Higher Education (including Pell Grants). ARRA also includes $53.6 billion for a State Fiscal Stabilization Fund, which is intended to provide fiscal relief to states and prevent tax increases and cutbacks in critical services, namely education. Of the State Fiscal Stabilization Fund, governors must use $40 billion to restore support to elementary, secondary and higher education. (*See* the following questions for more information on State Fiscal Stabilization Fund.)

Q3. What is the timeline for use and distribution of IDEA funds?

A3. The Department of Education has released the following timeline for IDEA-specific ARRA funds:

- April 1, 2009:
    - 50 percent of IDEA Part B Grants to States and Preschool Grants to States will be awarded to SEAs
    - A minimum of 50 percent of IDEA Part C Infants and Toddlers with Disabilities Program, and Vocational Rehabilitation State Grants will be available

- ♦ End of April 2009:
  - o SEAs are encouraged to make funds available to LEAs
- ♦ July 1, 2009:
  - o Regular Fiscal Year 2009 Part B Grants to States and Preschool Grants to States awarded to SEAs

    Note: ARRA funds are in addition to *regular* Fiscal Year 2009 funding.
- ♦ Sept. 30, 2009:
  - o Remaining 50 percent of ARRA IDEA, Part B Grants to States and Preschool Grants to States awarded to SEAs.
- ♦ Sept. 30, 2011:
  - o All IDEA ARRA funds must be obligated.

Q4. II understand that the ARRA provides more than $12 billion to special education. How much of that money will go to my SEA and LEA?

A4. ARRA provides $12.2 billion to IDEA programs, (*see* CEC chart for program breakdown[6]) which will flow to SEAs and LEAs using the same funding formula currently used by IDEA programs, based on the timelines described above. The U.S. Department of Education has published data charts[7] detailing how much additional funding SEAs will receive for IDEA Part B (school-aged students); Part B Section 619 (preschool children); and Part C (infants and toddlers). The Congressional Research Service has also published charts[8] listing individual LEA allocations.

Q5. I understand that IDEA's Part C Infants and Toddlers with Disabilities Program will receive $500 million. How can this money be allotted?

A5. Part C funding will be distributed through the same IDEA funding formula used to distribute Part C funds. Therefore, Part C funding is subject to all of the rules and regulations in IDEA 2004.

In addition, the April 1, 2009, Guidance clarified that a state lead agency must have an effective system for managing the flow of funds that ensures that it is able to draw down funds as needed to pay program costs but also minimizes the time that elapses between the transfer of funds and their disbursement by the state lead agency. (*See* 34 C.F.R. §80.21(b).) A state lead agency also must remit quarterly to the Department of Education interest earned on advances. (*See* 34 C.F.R. §80.21(i).) Furthermore, in order to obtain indirect cost recoveries, grantees are allowed to apply their currently negotiated indirect cost rate to expenditures incurred under ARRA. No maintenance of effort waiver is available for Part C funds. See the discussion below in ***Question 17*** for an explanation of how a state may use State Fiscal Stabilization Funds as non-federal funds

[6] www.cec.sped.org>>Policy and Advocacy>>CEC Policy Resources>>Economic Stimulus
[7] http://www.ed.gov/about/overview/budget/statetables/09arrastatetables.pdf
[8] http://edlabor.house.gov/documents/111/pdf/publications/ARRA-estimatedallocationstoLEAs-20090213.pdf

to meet maintenance of effort (MOE). For an explanation of MOE see our answer to ***Question 11(a)*** below.

Finally, Part C ARRA funding is subject to many of the same requirements as Part B. **NOTE:** Only where applicable, and unless specifically noted otherwise, the answers throughout this Q & A apply to both Part B and Part C funds.

Q6. How can SEAs and LEAs spend the additional ARRA IDEA funding?

A6. The additional IDEA funding provided by ARRA will be distributed through the existing funding formulas. This means that the allowable uses are the same for Part B and Part C funds as they always are for IDEA funds. The U.S. Department of Education has emphasized, however, that ARRA funds should be used for investments that can be sustained after ARRA funding expires, and are reform-minded, such as:

- Assistive technology devices and training in their use;
- Focused professional development;
- Data collection enhancements;
- Expanding the availability and range of inclusive placements for preschool children with disabilities; and
- Hiring transition coordinators and job developers for students entering the workforce.

The April 1, 2009, Guidance also emphasized that IDEA funds may be used for construction or alteration of facilities, but only if the state obtains prior approval for these activities from the Secretary. In addition, the rules outlined in OMB Circular A-87 (*See* 2 C.F.R. Part 225) will apply to any construction or alteration of facilities paid for with Part B or Part C funds.

NOTE: If you are interested in more information on this topic, CEC has developed more detailed recommendations for spending ARRA funds in its *American Recovery and Reinvestment Act: Making Wise Investments to Support Positive Outcomes for all Students with Exceptionalities*. You can view this document on CEC's Web site[9].

Q7. How long will the IDEA funds provided by ARRA remain available?

A7. All IDEA ARRA funds must be obligated by LEAs by Sep. 30, 2011. Thus, basically, the $11.3 billion provided by ARRA to IDEA Part B (school-aged students), $400 million for IDEA Part B Section 619 (preschool children), and the $500 million for IDEA Part C (infants and toddlers) will be available during school years 2008-2009, 2009-2010, and 2010-2011. Importantly, the U.S. Department of Education is emphasizing the prompt use of available funds and has stated, "[a]n LEA should obligate the majority of these funds during the school years 2008-09 and 2009-10 and the remainder during school year 2010-11."

[9] www.cec.sped.org>>Policy and Advocacy>>CEC Policy Resources>>Economic Stimulus

Q8. How much of this funding can SEAs use for state administration and state level activities?

A8. For Part B Grants to States, ARRA funds do not increase the amount an SEA would otherwise be able to reserve for state administration or other state level activities under Section 611(e). Indeed, SEAs are held to the amounts already identified in their Fiscal Year 2009 awards. But, the additional ARRA amounts do increase the amount a state can set aside for Section 619(d) funds, which govern preschool-related state activities.

Q9. Is IDEA now fully funded because of this historic investment in special education?

A9. No. While ARRA provides an historic infusion of funding to special education—doubling what special education programs currently receive—it does not fully fund IDEA. In 1975, when IDEA was originally enacted, Congress committed to providing 40 percent of the national average per pupil expenditure to assist SEAs and LEAs with the excess cost of educating students with disabilities. For fiscal year 2009, ARRA brings the percentage from its current 17.2 percent to 34.2 percent, a significant step forward, but still not full funding.

Q10. Does the new funding in ARRA serve as a baseline for future funding of IDEA programs?

A10. It is unclear. The U.S. Department of Education guidelines on ARRA IDEA funds repeatedly note that funding provided by ARRA represents a one-time, historic infusion that is expected to be temporary and should not be used to create unsustainable commitments after ARRA funding expires.

Because all IDEA programs have been underfunded for decades, however, CEC believes ARRA's investment must be the baseline for future federal funding of special education programs. CEC and its members have long advocated for full funding of IDEA and therefore, will advocate for ARRA's substantial investment to remain intact and increase in the future. Full funding is CEC's goal.

Q11. How does ARRA address maintenance of effort (MOE) for IDEA ?

A11. IDEA 2004's rules and regulations regarding MOE still apply and have not changed. States may apply to the Secretary for waivers of their state Part B MOE requirements, but LEAs may not. Finally, the U.S. Secretary of Education does not have any authority to grant waivers for Part C MOE.

States may seek MOE waivers in cases of unforeseeable economic conditions or natural disaster. State waivers are good for only one year and do not permanently reduce the level of MOE. Thus, after the waiver expires, state level MOE returns to the level it was before the U.S. Department of Education granted the waiver.

Q11(a) What is maintenance of effort (MOE) and why are we concerned with it?

A11(a) When Congress originally enacted P.L. 94-142, The Education for All Handicapped Children Act, now known as the Individuals with Disabilities Education Act (IDEA), in 1975, it authorized the federal government to pay 40 percent of each state's "excess cost" of educating children with disabilities. That amount—commonly referred to as the "IDEA full funding" amount—is calculated by taking 40 percent of the national average per pupil expenditure (APPE) multiplied by the number of children with disabilities served under IDEA in each state.

In the same legislation, Congress adopted a full funding formula that phased-in funding increases for IDEA over a period of 5 years, intending to reach full funding by fiscal year (FY) 1981. The cost of special education services, however, was higher than the amount provided by the federal government for these services. So during the 5 years leading up to 1981, local education agencies (LEA[10]) and states provided the balance of funding.[11] Additionally, the federal government did not fully fund IDEA in 1981; in fact, the federal government has never fully funded IDEA. As a result, local communities and states have been forced to pay an increasingly higher proportion of special education costs.

Despite these increasing costs, for states and local governments to continue to receive any federal IDEA funds, they must agree each year to pay the same share of the local cost of special education that they paid the previous year. For example, if an LEA spent $100,000 in FY 2008, it must spend at least $100,000 in FY2009 to be eligible to receive federal IDEA funding in FY 2009. In this context, the level of local expenditures that must be maintained by an LEA to continue to receive federal funding is called maintenance of effort (MOE). If an LEA fails to maintain its MOE, it may lose or be ineligible for federal IDEA funding.

Q11(b) What is the MOE Adjustment?

A11(b) In IDEA 2004, Congress—for the first time—allowed an LEA to reduce its level of MOE, under certain circumstances, if its allocation of federal IDEA Part B funds increased. (*See* 20 U.S.C. §1413(a)(2)(C).) IDEA's regulations call this "Adjustment to Local Fiscal Efforts in Certain Fiscal Years." (*See* 34 C.F.R. §300.205.) Here, we will call this the "MOE Adjustment".

The MOE Adjustment allows an LEA that received an increase in its Part B IDEA subgrant allocation to reduce its MOE by up to 50 percent of the amount of the increase. For example, if an LEA received $900,000 in FY 2008 and $1,000,000 in FY 2009, then in FY 2009 its subgrant increased by $100,000. Fifty percent of $100,000 is $50,000. Thus, if

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[10] Throughout this Q & A we use the term *local education agency* and refer to it by the acronym LEA. A local education agency is the term used in IDEA and includes a local school district, a charter school or a local school division.

[11] Maintenance of Effort is a common requirement in many federal laws that provide funding, and it is used throughout many provisions and parts of IDEA. This Q & A only discusses Maintenance of Effort in terms of local education agencies receiving funding from IDEA Part B Grants to States.

the LEA met the conditions described below, it could adjust its level of MOE by up to $50,000 in FY 2009. In other words, the LEA could reduce its MOE by up to $50,000.

IDEA 2004 included this MOE Adjustment basically to provide tax relief to LEAs for the many years they paid more than their fair share of special education costs with local tax dollars, due to the federal government's failure to fully fund IDEA.

Q11(c) How will I know if my LEA is eligible for the MOE Adjustment?

A11(c) To determine whether an LEA is eligible, compare its total federal subgrant allocation under Part B Grants to States in FY 2008 with the total federal subgrant allocation under Part B Grants to States that it expects to receive in FY 2009. (*Remember*: The FY2009 grant allocation includes both the Part B Grants to States subgrant allocation **and** any Part B IDEA Grants to States allocation from ARRA funds.)

If the LEA's FY2009 Part B subgrant allocation (including the amount it will receive from ARRA funds) is more than its FY 2008 Part B subgrant allocation, then the LEA may be eligible for the MOE Adjustment, assuming it meets the conditions described below.

Q11(d) If an LEA's FY2009 IDEA Part B subgrant allocation is greater than its FY2008 allocation, is there any reason it wouldn't be eligible for the MOE Adjustment?

A11(d) There are several reasons why an LEA may not be eligible for the MOE Adjustment.

a. State Prohibitions

States can prohibit LEAs from taking advantage of the MOE Adjustment. A state can prohibit an LEA if the state determines that the LEA is unable to establish and maintain programs that provide FAPE or fails to have policies and procedures that are consistent with state IDEA policies. (*See* 20 U.S.C. 1413(a)(2)(C)(iii).) A state can also prohibit an LEA from using the MOE Adjustment if it has taken action against the LEA under 20 U.S.C. § 1416, meaning it has found the LEA out of compliance during the monitoring process.

b. "Meets Requirements"

According to the April 1, 2009, Guidance, for an LEA to be eligible for the MOE Adjustment it "must receive a determination under section 616 of "Meets Requirements" from the state. (*See* April 1, 2009, Guidance, p. 16, D-7.) Thus, if your LEA does not meet requirements, it cannot take advantage of the MOE Adjustment.

c. Significant Disproportionality

The April 1, 2009, Guidance also states that an LEA, which a state has identified as having significant disproportionality under 34 C.F.R. §300.646, will not be able to use the MOE Adjustment. (*See* April 1, 2009, Guidance p. 17, D-7.) Thus, an LEA with significant disproportionality cannot take advantage of the MOE Adjustment.

d. Early Intervening Services Limit

IDEA 2004 also allowed LEAs to reserve up to 15 percent of their total Part B subgrant allocation for early intervening services. If an LEA would like to reserve this amount, and it would like to adjust its MOE, it must consider both of these amounts because they are interconnected. Their interconnection is described in Appendix D to the IDEA 2004 Regulations, and as explained in ***Question 13*** below.

Q11(e) If an LEA is eligible for the MOE Adjustment, how can it use the freed-up local funds?

A11(e) If an LEA takes advantage of the MOE Adjustment, then the amount of funds by which it reduces its MOE must be spent on purposes authorized by NCLB/ESEA. If the LEA reduced its MOE by $50,000, as in the example above in ***Question 11(b)***, then it could use $50,000 for any authorized purpose under NCLB/ESEA. Therefore, this money does not disappear from public education; it simply supports another part of public education. For example, an LEA could use these MOE Adjustment funds to reduce general education class size, implement a Response to Intervention (RtI) program, or enhance a Positive Behavioral Supports program.

Q11(f) ***If an LEA takes advantage of the MOE Adjustment and reduces its MOE, will that permanently reduce the LEA's MOE by the adjustment amount in coming years, even when there are no more ARRA funds? Or is this a temporary drop?***

A11(f) When an LEA takes advantage of the MOE Adjustment, it permanently reduces its MOE by the amount of the adjustment. Remember, however, that the LEA's MOE could rise at any time if it contributes more local funds to special education. Any funds the LEA contributes after it has reduced its MOE with the MOE Adjustment are added to the new level, just as they have always been added.

Q11(g) Did ARRA alter IDEA 2004's supplement not supplant provisions?

A11(g) No. ARRA did not alter any of the requirements under IDEA 2004. Therefore, IDEA 2004's supplement not supplant provisions continue to apply.

Q11(h) If an LEA takes advantage of the MOE Adjustment and reduces locally funded special education instructional programs and non-instructional services, can it use IDEA Part B ARRA funds or its FY 2009 IDEA Part B subgrant allocation to replace the loss in local funding? Or will that violate IDEA's supplement not supplant provision?

A11(h) It does not appear that ARRA funds or FY2009 Part B subgrants can be used to replace the amount of local funding removed by the MOE Adjustment. This is because IDEA 2004's supplement not supplant provisions apply to the use of these funds. Supplanting occurs when federal funds replace non-federal funds (i.e. local funds) . ARRA did not include a supplement not supplant provision, nor did it alter IDEA 2004's provision. Therefore, LEAs must continue to operate according to IDEA 2004 and examine carefully how reductions are made to ensure they do not supplant.

But remember that IDEA 2004 did not include a "particular cost test" as this was removed from regulations in 1992. (*See* April 1, 2009, Guidance, p.12, fn. 1.) Therefore, there is no supplanting requirement related to "particular costs" and if an LEA maintains local effort, or state and local effort, it will not violate the supplement not supplant requirements of the IDEA.

a. State Fiscal Stabilization Funds

It is important to point out that under ARRA, <u>with the prior approval of the U.S. Secretary of Education</u>, an LEA that receives State Fiscal Stabilization Funds may treat any portion of those funds used for elementary, secondary or postsecondary education as non-federal funds for the purpose of maintenance of effort requirements under any program. (*See* § 14012(d).) Therefore, an LEA could use any State Fiscal Stabilization Funds it receives to replace any reduction in local funds without violating supplement not supplant provisions.

NOTE: *This is an extremely complicated issue and the law is very ambiguous in this area. This Q&A is not meant to provide legal counsel or address specific circumstances. The Department of Education may issue future guidance on this specific topic to clarify these provisions. If any guidance is released, CEC will update this Q&A.*

Q11(i) Is there any provision authorizing the U.S. Secretary of Education to waive the MOE requirements for LEAs?

A11(i) No. Although there is a provision in IDEA Part B which allows the Secretary to waive state level MOE requirements under certain circumstances, (like unforeseeable economic conditions or loss of local revenue) there is no equivalent provision authorizing waiver of the LEA maintenance of effort requirement.

Q11(j) What if an LEA creates and funds a new program using ARRA funds, how will this impact its MOE?

A11(j) ARRA funds are federal funds and therefore their use will not add to local MOE. But remember, ARRA funds are not a guaranteed funding source. So if an LEA adds a program which must be sustained beyond ARRA's two-year timeline, it should expect to either cancel the program at the end of that two years or pay for it with local funds or funds from another source. To the extent that the LEA contributed local funds to a program, local funds would add to its MOE.

Q12. Are LEAs allowed to use up to 15 percent of their total IDEA Part B allocation for early intervening services?

A12. Yes. IDEA 2004 allows LEAs to reserve up to 15 percent of IDEA Part B funds for early intervening services (EIS). This also applies to ARRA funds. LEAs may (and in cases of disproportionality must) spend up to 15 percent of their total IDEA Part B Grants to States on general education students in K through 12, who are not currently eligible for IDEA, but who need academic or behavioral support to succeed in general education.

Q13. Can an LEA use the full amount available to it for MOE and EIS?

A13. Probably not. If an LEA would like to use both of these provisions, it must perform a calculation, which limits the amount of both an LEA can use. In short, LEAs must subtract the bigger of MOE or EIS from the smaller of the two. Based on this, the LEA will know how much of either or both are available. Therefore, an LEA must carefully plan for and consider how it uses these funds. Here are two examples provided with IDEA 2004 guidance by the U.S. Department of Education which illustrate this interconnection:

- **Example 1:**
  - Prior Year's Allocation: $900,000
    Current Year's Allocation: $1,000,000
    Increase: $100,000
    Maximum Available for MOE Reduction: $50,000
    Maximum Available for EIS: $150,000
    - If the LEA chooses to set aside $150,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $150,000 for EIS means $0 can be used for MOE).
    - If the LEA chooses to set aside $100,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $100,000 for EIS means $0 can be used for MOE).
    - If the LEA chooses to set aside $50,000 for EIS, it may not reduce its MOE (MOE maximum $50,000 less $50,000 for EIS means $0 can be used for MOE).
    - If the LEA chooses to set aside $30,000 for EIS, it may reduce its MOE by $20,000 (MOE maximum $50,000 less $30,000 for EIS means $20,000 can be used for MOE).
    - If the LEA chooses to set aside $0 for EIS, it may reduce its MOE by $50,000 (MOE maximum $50,000 less $0 for EIS means $50,000 can be used for MOE).
- **Example 2:**
  - Prior Year's Allocation: $1,000,000
    Current Year's Allocation: $2,000,000
    Increase: $1,000,000
    Maximum Available for MOE Adjustment: $500,000
    Maximum Available for EIS $300,000
    - If an LEA chooses to use no funds for MOE, it may set aside $300,000 for EIS (EIS maximum $300,000 less $0 means $300,000 for EIS).
    - If an LEA chooses to use $100,000 for MOE, it may set aside $200,000 for EIS (EIS maximum $300,000 less $100,000 means $200,000 for EIS).

- If an LEA chooses to use $150,000 for MOE, it may set aside $150,000 for EIS (EIS maximum $300,000 less $150,000 means $150,000 for EIS).
- If the LEA chooses to use $300,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $300,000 means $0 for EIS).
- If the LEA chooses to use $500,000 for MOE, it may not set aside anything for EIS (EIS maximum $300,000 less $500,000 means $0 for EIS).

Q14. How do ARRA funds impact High Cost Funds and Risk Pools?

A14. ARRA funds do not affect a state's High Cost Fund. Furthermore, states that choose to use 10 percent of the funds reserved for state-level activities (not including administration) for LEA Risk Pools will have the maximum set aside level for non-administrative activities (10 percent or 10.5 percent) of their FY2006 allocation, increased by inflation, depending on the amount reserved for administration.

Q15. What are the key elements of the State Fiscal Stabilization Fund?

A15. The State Fiscal Stabilization Fund is an appropriation of $53.6 billion, intended to provide fiscal relief to SEAs to prevent tax increases and cutbacks in critical education and other services. To that end, $48.3 billion will be distributed in Grants to States for fiscal relief, mainly tied to education: $4.35 billion will be issued in State Incentive Grants, $650 million will be issued in an Innovation Fund; and the U.S. Secretary of Education is permitted to reserve $14 million for administration and oversight of the Fund. To see how much money your state will receive, please look to the Department of Education's chart[12].

$48.3 billion in Grants to States:

- ♦ First 81 percent: Governors must use approximately 81 percent of their state allocations to support elementary, secondary and post secondary education, and, as applicable, early childhood education programs and services. The overall purpose of this money is to restore funding to education programs which may have been cut as a result of the current economic crisis and state budget shortfalls. Therefore, SEAs are required to use this money through existing formulas, to restore funding levels for elementary and secondary education, in the fiscal years 2009-2011 to the 2008 or 2009 fiscal year level, whichever is higher.
- ♦ Remaining 18 percent: Governors must use approximately 18 percent of their state allocations for public safety and other government services, which may include education, modernization, renovation, and repair of public school and higher education facilities.

[12] http://edlabor.house.gov/documents/111/pdf/publications/ARRA-estimatedstateeducationfunding-20090213.pdf

- Funds used by LEAs for elementary and secondary education can be used for any activity permitted by ESEA, IDEA, the Adult Family Literacy Act, or the Carl Perkins Career and Technical Education Act.
- LEAs are prohibited from using funds for maintenance costs, stadiums, and the purchase or upgrade of vehicles.
- Institutions of higher education must use funds for education and general expenditures and to either "mitigate the need to raise tuition and fees for in-State students," or for modernization, renovation, or repair of facilities that are primarily used for instruction, research or student housing.
- Prohibitions here include: funds cannot increase endowment; maintenance of systems, equipment or facilities; modernization, renovation or repair of stadiums; modernization, renovation, or repair of facilities used for sectarian or religious instruction or in which a substantial portion of the functions of the facilities are religious in nature.

$4.35 billion for State Incentive Grants (also referred to as the "Race to the Top Fund"):

- SEAs submit applications to the U.S. Secretary of Education for these funds. SEAs receiving a grant must distribute at least 50 percent to local school districts based on the Title I formula. To receive these funds, each state application must include the following assurances:
  - Providing maintenance of effort at least at FY 2006 level
  - Achieving equity in teacher distribution
  - Improving collection and use of data
  - Enhancing the quality of state assessments and improving state; academic content standards and student academic achievement standards
  - Ensuring compliance with requirements related to schools identified for corrective action and restructuring under ESEA

$650 million for the Innovation Fund (also referred to as the "Invest in What Works and Innovation Fund"):

- This is to provide academic achievement awards to LEAs, partnerships between nonprofits and LEAs or a consortia of LEAs, based on a variety of criteria including all of the following:
  - Making significant progress in closing achievement gaps; making AYP for two or more years
  - Showing significant improvement in other areas, such as graduation rates
  - Serving as models for best practices
  - Enhancing partnerships between private sector and philanthropic communities
  - Identifying and documenting best practices

Q16. Are there any maintenance of effort and supplement/not supplant provisions which apply to the State Fiscal Stabilization Fund?

A16. To receive State Fiscal Stabilization funds, ARRA requires SEAs to use the state fiscal stabilization fund monies to restore funding to the Fiscal Year 2008 or 2009 level, whichever is higher. If that is not possible, the state must maintain an MOE of at least fiscal year 2006, as a condition of accepting the funds.

Upon prior approval of the Secretary, State Fiscal Stabilization funds can be used for elementary, secondary or postsecondary education as non-federal funds for the purpose of the MOE requirement. This designation can be used for Part B and Part C funds. According to the April 1, 2009, Guidance, the Secretary will grant a waiver if the state demonstrates, on the basis of auditable data, that: (1) it is complying with the State Fiscal Stabilization Fund MOE requirements and (2) the portion of its Stabilization funds it seeks to treat as non-federal was spent in such a manner that had the Stabilization funds actually been non-federal funds they would have been permitted to be used in determining the state's or LEA's compliance with the MOE requirement of the other program.

Finally, the April 1, 2009, Guidance also clearly stated the intention of the Secretary to monitor these funds closely and ensure they are spent properly and for their intended purpose. To that end, it stated, "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 . . . 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." (*See* April 1, 2009, Guidance, p. 13, C-7.)

Q17. Does ARRA include any reporting and accountability requirements for the use of the money? How will I know how the money is spent?

A17. Yes. First, all IDEA reporting provisions continue to apply. Therefore, recipients must also follow all guidelines currently apply to IDEA funds. Second, ARRA requires all participants to report publically on their use of ARRA funds. In particular, ARRA funds must be tracked separately from IDEA funds, and recipients must report quarterly on their use of ARRA funds.

Moreover, to receive the second infusion on September 30, 2009, SEAs must submit an amendment to their Fiscal Year 2009 applications, explaining the record keeping and reporting requirements they will use to ensure transparency. It will be important for members to understand what information their states will require to track use of these funds.

The U.S. Department of Education has stated more guidance and a possible reporting template for these funds will be available soon. CEC will update its ARRA webpage with this information when it becomes available.

Q18. What provisions of EDGAR and GEPA apply to the use of IDEA funds?

A18. All provisions of EDGAR and GEPA that currently apply to the use of IDEA funds also apply to the use of IDEA ARRA funds.

Q19. What other programs are funded by ARRA that impact children and youth with disabilities?

A19. A variety of programs funded by ARRA impact children and youth with disabilities. These include healthcare, research, school improvement, and child and family services. CEC's chart[13] of selected programs in ARRA provides highlights of many of these programs.

Q20. How will ARRA funds impact parentally-placed private school children?

A20. ARRA funds will increase an LEA's proportionate share calculation. To determine the appropriate proportionate share, LEAs must calculate the amount of the proportionate share of IDEA funds for services to parentally-placed private school children based on both the FY2009 IDEA award and the ARRA funds. Furthermore, IDEA 2004's rules and regulations apply. Therefore, the consultation requirement still applies and an LEA must ensure it engages in consultation with private school representatives and representatives of parents who place their children in private schools to determine how to use its proportionate share.

Q21. Does ARRA address Medicaid?

A21. Yes. Of great interest to CEC members is the extension of the current moratoria on controversial Medicaid regulations, which would cut or eliminate the reimbursement for targeted case management, rehabilitation services, transportation and administrative claiming for Medicaid-eligible children with disabilities. ARRA extends the current moratoria to July 1, 2009.

Q22. Where can I find more information on ARRA?

A22. CEC is committed to providing up-to-date information on ARRA and how it impacts special education on a specially designated area of the CEC Web site[14], which will include links to a variety of additional resources, so please visit frequently for the latest information. CEC's Policy Insider[15] (e-update) will also provide useful updates.

Q23. How can I share the impact the economic crisis has had on me, my school/program, early intervention program, and children and youth; and how ARRA is addressing these issues?

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[13] www.cec.sped.org>>Policy and Advocacy>>CEC Policy Resources>>Economic Stimulus
[14] www.cec.sped.org>>Policy and Advocacy>>CEC Policy Resources>>Economic Stimulus
[15] www.cec.sped.org>>Policy and Advocacy

A23. CEC encourages you to take its short, five question survey[16] to provide feedback on how ARRA will address issues impacting personnel, schools and early intervention programs. Your feedback will help CEC's advocacy efforts for a sustained investment in special education and early intervention.

[16] http://www.surveymonkey.com/s.aspx?sm=n00n4DZd18SjGgOV62m4Yw_3d_3d

Glossary of Terms

ARRA: American Recovery and Reinvestment Act of 2009
EIS: Early Intervening Services
ESEA: Elementary and Secondary Education Act of 1965
IDEA 2004: Individuals with Disabilities Education Act of 2004
LEA: Local Education Agency
MOE: Maintenance of Effort
Part B: IDEA's Grants to States program for school aged students
Part B Section 619: IDEA's Grants to States program for preschool children
Part C: IDEA's Grants to States program for infants and toddlers with disabilities
SEA: State Education Agency
SNS: Supplement not supplant