GUIDANCE

Funds for Part C of the Individuals with Disabilities Education Act

Made Available Under

The American Recovery and Reinvestment Act of 2009

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U.S. Department of Education
Office of Special Education and Rehabilitative Services

Purpose of the Guidance

The purpose of this guidance is to provide comprehensive information on the State Fiscal Stabilization Fund Program. The guidance provides the U.S. Department of Education's interpretation of various statutory provisions and does not impose any requirements beyond those included in the American Recovery and Reinvestment Act of 2009 and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

The Department will provide additional or updated program guidance as necessary. If you are interested in commenting on this guidance, please sent your comments to IDEARecoveryComments@ed.gov.

Funds for Part C of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)

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Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) appropriates significant new funding for programs under Parts B and C of the Individuals with Disabilities Education Act (IDEA). Part B of the IDEA provides funds to state educational agencies (SEAs) and through them to local educational agencies (LEAs) to help them ensure that children with disabilities, including children aged three through five, have access to a free appropriate public education to meet each child's unique needs and prepare each child for further education, employment, and independent living. Part C of the IDEA provides funds through the Grants for Infants and Families program to each state lead agency designated by the Governor to implement statewide systems of coordinated, comprehensive, multidisciplinary interagency programs and make early intervention services available through early intervention service (EIS) programs to infants and toddlers with disabilities and their families.

The IDEA ARRA funds will provide an unprecedented opportunity for states, LEAs, and EIS programs to implement innovative strategies to improve outcomes for infants, toddlers, children, and youth with disabilities while stimulating the economy. Under the ARRA, the IDEA funds are provided under three authorities: $11.3 billion is available under Part B Grants to States; $400 million is available under Part B Preschool Grants; and $500 million is available under Part C Grants for Infants and Families program. Preliminary information about each state's allocation is available at: http://www.ed.gov/about/overview/budget/statetables/recovery.html.

This document provides guidance related to the Part C IDEA ARRA funds; two separate documents provide guidance related to Part B IDEA ARRA funds at [fill in] and State Fiscal Stabilization Funds under the ARRA at [fill in].

A. Timing and Eligibility

A-1. How and when will IDEA Part C ARRA funds be allocated by the Department of Education to the state lead agency for Part C (lead agency)?

The Department of Education awarded 50 percent of the IDEA Part C Grants for Infants and Families program ARRA funds on April 1, 2009. The other 50 percent will be awarded by September 30, 2009. These awards will be in addition to the regular fiscal year (FY) 2009 IDEA Part C awards that will be made on July 1, 2009. Together, these grant awards will constitute a state's total FY 2009 Part C Grants for Infants and Families program allocation.

A-2. What must a lead agency do to receive IDEA Part C ARRA funds?

A state did not need to submit a new application to receive the first 50 percent of the Part C Grants to Infants and Families program ARRA funds because these funds are being made available to each state based on the state's eligibility established for FY 2008 IDEA Part C funds and its provision of the certification required by section 1607 of the ARRA. The assurances, certifications, and other information provided in the state's FY 2008 application will apply to these ARRA funds, as well as the requirements of the ARRA. In order to receive the remaining funds, your state will need to submit, for review and approval by the Department, additional information that addresses how the state will meet the accountability and reporting requirements in section 1512 of the ARRA. The second half of the awards will be made by September 30, 2009 upon approval of the state's recordkeeping and reporting submission. The Department will issue specific guidance for preparing and submitting this recordkeeping and reporting information and other guidance governing ARRA funds in the coming weeks.

A-3. What is the period of availability for the IDEA Part C ARRA funds?

States must obligate all IDEA Part C ARRA funds by September 30, 2011. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department Administrative Regulations (EDGAR) at 34 CFR §76.707. In accordance with the goals of the ARRA, a state should obligate IDEA ARRA funds as soon as possible, consistent with prudent management. States may begin obligating IDEA Part C ARRA funds immediately. Costs are allowable beginning February 17, 2009, the effective date of the grants.

B. Indirect Costs

B-1. Will restricted indirect cost provisions in EDGAR apply to lead agency's use of IDEA Part C ARRA funds?

Yes. States may calculate their restricted indirect costs on the IDEA Part C ARRA funds in the same way as they calculate indirect costs on their regular IDEA grant award under 34 CFR Part 76. If a state indicated in its FY 2008 Part C application that it would not charge indirect costs to its Part C grant, it is assumed that indirect costs will also not be charged to its IDEA Part C ARRA funds.

B-2. How might the ARRA funding affect indirect cost recoveries by grantees?

In order to obtain indirect cost recoveries, grantees are allowed to apply their currently negotiated indirect cost rate to expenditures incurred under the ARRA. The negotiated indirect cost rate for the current fiscal year is based on actual cost information from a prior fiscal year. Therefore, applying the currently negotiated indirect cost rate to the increased funding under ARRA (which was not considered in the rate calculation) could result in an over-recovery of indirect costs in the current period. Such an over-recovery will be adjusted in a future fiscal year, thereby reducing indirect cost recoveries during that future period. In order to avoid a future compounding effect of less program dollars and reduced indirect costs, we recommend grantees closely monitor the potential impact of the ARRA on their indirect cost recoveries and consider making appropriate adjustments during the current periods. Such adjustments will lessen the dollar impact in future years and allow for stability in future budgets. Adjustments to indirect cost recoveries should first be discussed with the cognizant Federal agency.

C. Waivers and Authorized Uses of ARRA Funds

C-1. Does the ARRA provide any authority for the Secretary to grant waivers for maintenance of effort (MOE) under Part C of the IDEA?

The Secretary does not have authority to grant waivers under IDEA for Part C's MOE (which are Part C's supplement not supplant) requirements under section 637(b)(5)(B) of the IDEA and 34 CFR §303.124. These provisions require each lead agency to ensure that the total amount of state and local expenditures on early intervention budgeted for a particular fiscal year are at least the amount of such funds expended in the prior fiscal year.

C-2 To what extent may a state use Stabilization funds to meet the MOE requirements of the IDEA, Part C program?

Section 14012(d) of the ARRA provides that, "[u]pon prior approval from the Secretary," a state may treat Stabilization funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program that the Department administers.

The Secretary will permit a state to treat Stabilization funds as non-Federal funds for MOE purposes of other Federal programs only if the following criteria are met:

- The state first demonstrates to the Department, on the basis of auditable data, that it is complying with the Stabilization program MOE requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in section 14012(c) of the ARRA; and

- The state has available for inspection auditable data demonstrating that the portion of its Stabilization funds that it seeks to treat as non-Federal funds to meet the MOE requirements of other Federal programs was spent in such a manner that had the Stabilization funds been non-Federal funds, the Stabilization funds would have been

permitted to be used in determining the State's compliance with the MOE requirement of that other program.

In addition, 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 to treat Stabilization funds as non-Federal funds for MOE purposes of other Federal programs. 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, the extent of the decline in available financial resources, and any changes in demand for services.

The Department intends to issue further guidance on the process for obtaining the Secretary's "prior approval" to use Stabilization funds to meet the MOE requirements of other programs.

C-3. What provisions of the EDGAR and the General Education Provisions Act (GEPA) apply to use of the IDEA Part C ARRA funds?

All provisions of the EDGAR and GEPA, as well as those in the IDEA, that currently apply to the IDEA Part C funds also apply to the IDEA Part C ARRA funds. State lead agencies may use IDEA Part C funds, including the IDEA Part C ARRA funds, for all allowable purposes under Part C of the IDEA identified in section 638 and consistent with the applicable provisions of GEPA and EDGAR. Similarly, EIS programs must use IDEA Part C ARRA funds for the allowable purposes identified in section 638 of the IDEA, which includes providing early intervention services to infants and toddlers with disabilities and their families.

C-4. May IDEA Part C funds, including IDEA Part C ARRA funds, be used for construction or alteration of facilities?

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA Part C funds, including IDEA Part C ARRA funds, for construction or alteration of facilities, if the Secretary determines that the program would be improved by allowing funds to be used for those purposes. To be able to charge the IDEA Part C funds for these costs, a state lead agency must obtain the prior approval of the Department for the state's use of IDEA Part C funds for these costs. (See, 2 CFR Part 225, Appendix B, 15.b.) In addition, any construction or alteration of facilities must comply with Appendix A to part 36 of title 28, Code of Federal Regulations, the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities" or Appendix A of subpart 101-19.6, of title 41, Code of Federal Regulations the "Uniform Federal Accessibility Standards." States also must comply with requirements in 34 CFR Part 76, regarding construction, including the requirements in 34 CFR §§75.600-75.617 that are incorporated by reference in 34 CFR §76.600.

Additionally, if a state uses IDEA ARRA funds for construction, it must comply with specific requirements relating to the use of American iron, steel and manufactured goods used in the project (ARRA section 1605), as well as the wage rate provisions of ARRA section 1606. Also, ARRA section 1604 prohibits the use of any ARRA funds, including

IDEA ARRA funds, for any casino, or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

C-5. May IDEA Part C funds, including IDEA Part C ARRA funds, be used to purchase equipment?

Section 605 of the IDEA authorizes the Secretary to allow the use of IDEA Part C funds for the acquisition of equipment if the Secretary determines that the program would be improved by allowing funds to be used for these purposes. The Secretary has determined that the Part C program would be improved by allowing IDEA Part C funds, including IDEA Part C ARRA funds, to be used for the acquisition of equipment in appropriate circumstances. In general, to be able to use IDEA Part C funds for these costs, a state lead agency must obtain the prior approval of the Department for the state's use of IDEA Part C funds for these costs. (See 2 CFR Part 225, Appendix B, 15.b.) For purposes of these prior approval requirements, "equipment" is defined to mean an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5,000. (See 2 CFR Part 225, Appendix B, 15.a)

C-6. What additional rules apply to use of IDEA Part C funds, including IDEA Part C ARRA funds, for construction or alteration of facilities or for the acquisition of equipment?

Under OMB Circular A-87 (2 CFR Part 225), the following general criteria must be met in order for a cost to be allowable under any Federal award. The cost must --

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
b. Be allocable to Federal awards under the provisions of OMB Circular A-87 (2 CFR Part 225).
c. Be authorized or not prohibited under state or local laws or regulations.
d. Conform to any limitations or exclusions set forth in OMB Circular A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
g. Except as otherwise provided for in OMB Circular A-87, be determined in accordance with generally accepted accounting principles.
h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
i. Be the net of all applicable credits.
j. Be adequately documented.

D. Transparency, Accountability, and Reporting

D-1. Are states required to track IDEA Part C ARRA funds separately from regular IDEA Part C funds?

Yes. ARRA requires that recipients of funds made available under that Act separately account for, and report on, how those funds are spent. The Department has assigned a new CFDA number to the IDEA ARRA funds in order to facilitate separate accounting for the funds. Recipients will need to maintain accurate documentation of all ARRA expenditures to ensure that the data reported is accurate, complete, and reliable. States will be expected to monitor providers to help ensure data quality and the proper expenditures of the ARRA funds. Further information on ARRA reporting instructions will be provided shortly at www.FederalReporting.gov <http://www.federalreporting.gov/>

D-2. Are there rules that govern the amount of IDEA Part C ARRA funds that a state lead agency may draw down at any one time?

Yes. 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 that also minimizes the time that elapses between the transfer of the funds and their disbursement by the state lead agency, in accordance with U.S. Department of the Treasury regulations at 31 CF. Part 205. (See 34 CFR §80.21(b).) A state lead agency must promptly, but at least quarterly, remit to ED interest earned on advances (34 CFR §80.21(i)). The Department will take appropriate actions against state lead agencies that fail to comply with this requirement.

D-3 What information is a state required to include in its quarterly reports under the ARRA?

A state is required to submit reports containing the information required under section 1512(c) of the ARRA. These reports must be submitted not later than 10 days after the end of each calendar quarter. OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

D-4. What are our shared responsibilities for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?

All ARRA funds must be spent with an unprecedented level of transparency and accountability. Accordingly, state lead agencies must maintain accurate, complete, and reliable documentation of all IDEA, Part C ARRA expenditures. The ARRA contains very stringent reporting requirements and requires that detailed information on the uses of funds be available publicly on www.recovery.gov <<http://www.recovery.gov>>.

A state lead agency has important oversight responsibilities and must monitor grant activities to ensure compliance with all applicable Federal requirements. If a state lead agency fails to comply with requirements governing the use of IDEA Part C funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or in part, IDEA Part C funds or recovering misspent funds following an audit.

The ARRA establishes the Recovery Act Accountability and Transparency Board, which is responsible for coordinating and conducting oversight of spending under the ARRA to prevent fraud, waste, and abuse. The Department's Office of Inspector General (OIG) will be conducting comprehensive audits of ARRA implementation activities. In addition, Department program offices will closely monitor these activities.

Any instances of potential fraud, waste, and abuse should be promptly reported to the OIG hotline at 1-800-MIS-USED or oig.hotline@ed.gov <<mailto:oig.hotline@ed.gov>>. Moreover, states are reminded that significant new whistleblower protections are provided under section 1553 of the ARRA.

In the coming weeks, the Department will provide additional information on how to help prevent instances of fraud, waste, and abuse.

E. Part C Incentive Grants

E-1. Will the Secretary exercise his authority under section 643(e) of the IDEA relating to reservation of funds for Part C incentive grants for states that elect to make Part C services available to children with disabilities beyond three years of age under sections 632(5)(B)(ii) and 635(c) of the IDEA?

The Secretary has reserved funds under section 643(e) of the IDEA for Part C incentive grants. A state that wishes to receive a State Incentive Grant must submit with its FY 2009 application, due May 18, 2009, the policies and other information showing it has met the requirements in sections 632(5)(B)(ii) and 635(c) of the IDEA. No individual state can receive more than 20 percent (or approximately $14.2 million) of the total amount of funds set aside by the Secretary under section 643(e) of the IDEA, which total amount for FY 2009 will be approximately $71 million. All funds reserved by the Department, but not allocated to states eligible for Incentive Grants, will be reallocated proportionately to all states on July 1, 2009.

F. Civil Rights Obligations

F-1. Does the receipt of IDEA Part C ARRA funds require recipients to comply with civil rights laws?

Yes. The receipt of federal funds obligates recipients to comply with civil rights laws that prohibit discrimination based on race, color, national origin, gender, disability, and age. For additional information see: http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html.