

**Guidance on the
State Fiscal Stabilization Fund Program**



**U.S. Department of Education
Washington, D.C. 20202**

April 2009

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 send your comments to State.Fiscal.Fund@ed.gov.

Table of Contents

I. INTRODUCTION.....	1
I-1. What is the State Fiscal Stabilization Fund (Stabilization) program?.....	1
I-2. What is the statutory authority for the program?	1
I-3. What are the two components of the Stabilization program?.....	1
Illustration 1: The Two Funds.....	2
I-4. What overarching principles guide the distribution and use of all ARRA funds that the Department administers?	2
I-5. How does the Department determine the amount of funding that each State may receive under the Stabilization program?.....	3
II. PROCESS FOR AWARDING FUNDS TO GOVERNORS.....	3
II-1. What is the Department’s process for awarding Stabilization funds to Governors?.....	3
Illustration 2: Commitment to Advancing Education Reform.....	4
II-2. How does a State demonstrate that the amount of Stabilization funds that it will receive in phase one is insufficient to prevent the immediate layoff of State or local personnel?	5
II-3. What is the application process for phase two funding?.....	5
Illustration 3: Federal Release of Funds	5

III. THE EDUCATION STABILIZATION FUND	6
A. ELIGIBLE ENTITIES	6
III-A-1. To which entities does the Governor make awards under the Education Stabilization Fund?.....	6
III-A-2. What is a “local educational agency”?	6
III-A-3. What is an “institution of higher education”?	6
Illustration 4: Entities Eligible for Funding under the Education Stabilization Fund.....	7
III-A-4. Are charter schools considered to be LEAs for purposes of the Stabilization program?.....	7
III-A-5. Must an LEA receive State funds through the State’s primary elementary and secondary education formulae in order to be eligible to receive Education Stabilization funds?.....	8
III-A-6. May Governors award Education Stabilization funds to private IHEs?	8
III-A-7. In restoring the levels of State support for public IHEs, may a Governor award Education Stabilization funds to a centralized State agency that administers insurance and pension costs for employees of public IHEs?.....	8
III-A-8. May a Governor award Education Stabilization funds to a State Higher Education Board that, for example, receives appropriated State student financial aid funds?	8
III-A-9. May the Governor award Education Stabilization funds directly to students for scholarships or financial aid or to support State-agency-run scholarship programs for students to attend public IHEs?	8
B. RESTORING LEVELS OF STATE SUPPORT FOR EDUCATION	10
III-B-1. What levels of State support must a Governor restore for elementary and secondary education and public IHEs?.....	10
Illustration 5: Education Stabilization Funding Process – Calculating Restoration Amounts, Releasing Funds, and Obligating Funds	11
III-B-2. What is meant by the term “fiscal year” for purposes of restoring levels of State support for education?.....	12
III-B-3. Are States required to use a particular formula in determining the levels of State support for elementary and secondary education and, as applicable, early childhood education programs and services?	12
III-B-4. May a State include local tax revenues in determining the levels of State support for elementary and secondary education?	12
III-B-5. May State categorical funds that are not awarded through a funding formula be considered part of a State’s support for elementary and secondary education for purposes of determining the amount of Education Stabilization funds that will be awarded to LEAs?	12

III-B-6. How does a State determine the level of State support for public IHEs for a given year?	12
III-B-7. How does a State calculate the amounts of Stabilization funds that must be awarded to LEAs and to public IHEs?	13
III-B-8. May a State choose to restore its level of State support for either elementary and secondary education or public IHEs, but not both?	14
Illustration 6: Restoring Levels of State Support.....	15
III-B-9. In calculating how its Education Stabilization Fund allocation will be distributed among LEAs and public IHEs, a State makes determinations on the levels of State support for elementary and secondary education and public higher education for various fiscal years. Are these levels of State support the same levels that a State must use for purposes of demonstrating compliance with the Stabilization program maintenance-of-effort (MOE) requirements?.....	16
III-B-10. Section 14002(a) of the ARRA directs how a State determines the amount of Education Stabilization funds that it will provide to LEAs and public IHEs. Once a State makes these determinations in accordance with that provision, does the Governor have discretion in determining when to release the funds to LEAs and IHEs?.....	16
III-B-11. May a Governor retain a portion of the State’s Education Stabilization Fund allocation to help defray the costs of administering the program or for other purposes?.....	17
C. LEA AND PUBLIC IHE APPLICATION REQUIREMENTS	17
III-C-1. Must an LEA submit an application to the Governor in order to receive funding under the Education Stabilization Fund?.....	17
III-C-2. May a Governor require an LEA to include in its local application for Education Stabilization funds information other than the required assurances and the GEPA 427 statement (if applicable)?	17
III-C-3. Must a public IHE submit an application to the Governor in order to receive funding under the Education Stabilization Fund?.....	18
Illustration 7: LEA and IHE Application Requirements.....	18
D. USES OF EDUCATION STABILIZATION FUNDS BY LEAS.....	19
III-D-1. For what purposes may an LEA use Education Stabilization funds?.....	19
III-D-2. What are the statutory prohibitions on an LEA’s use of Education Stabilization funds?.....	19
III-D-3. Do the same statutory requirements govern the use of all of the Education Stabilization funds that a Governor awards to an LEA?.....	20
III-D-4. Are the Education Stabilization funds that the Governor awards to LEAs through the State’s primary funding formulae considered to be State funds, subject to the requirements that generally apply to funds awarded under those formulae?	20

III-D-5. If a portion of a State’s Education Fund allocation remains available after the Governor restores fully the levels of State support for elementary and secondary education and public IHEs, the Governor must award any remaining Education Stabilization funds to LEAs on the basis of each LEA’s proportionate share of funding under Part A of Title I of the ESEA. Would the use of these Education Stabilization funds be limited to activities authorized under Part A of Title I?.....	20
III-D-6. How much flexibility do LEAs have in determining the activities to support with Education Stabilization funds?	20
III-D-7. May an LEA use Education Stabilization funds to support activities or services other than the specific activities or services that were eliminated as a result of budget reductions?.....	21
III-D-8. In addition to restoring activities or services that were eliminated as a result of budget reductions, how might an LEA use its Education Stabilization funds to advance reforms?.....	22
III-D-9. To what extent may an LEA use Education Stabilization funds to support early childhood education programs and services?	23
III-D-10. May an LEA use Education Stabilization funds for modernizing, renovating, or repairing public school facilities?	23
III-D-11. May an LEA use Education Stabilization funds for construction activities that are not considered to be modernization, renovation, or repair?.....	23
III-D-12. May an LEA use Education Stabilization funds to supplement or restore its local “rainy day” fund rather than use the funds for specific purposes?	24
III-D-13. May an LEA use Education Stabilization funds to pay down past debt?.....	24
III-D-14. May a Governor or State educational agency (SEA) limit how an LEA uses its Education Stabilization funds?	24
III-D-15. Is an LEA required to provide equitable services for private school students and teachers with Education Stabilization funds?.....	25
Illustration 8: Summary – LEA Uses of Education Stabilization Funds.....	25
Illustration 9: Summary – Prohibitions on an LEA’s Use of Education Stabilization Funds	26
III-D-16. How long does an LEA have to obligate its Education Stabilization funds?	26
III-D-17. Does the Governor’s award of funds to an LEA or public IHE constitute an “obligation” of those funds?.....	27
E. USES OF FUNDS BY PUBLIC INSTITUTIONS OF HIGHER EDUCATION	27
III-E-1. For what purposes may a public IHE use Education Stabilization funds?	27
III-E-2. Are there statutory prohibitions on an IHE’s use of Education Stabilization funds?.....	27
III-E-3. What types of “education and general expenditures” may an IHE support with Education Stabilization funds?	28

III-E-4. May an IHE use Education Stabilization Funds for modernizing, renovating, or repairing facilities?	28
III-E-5. May Education Stabilization funds be awarded to private IHEs to modernize, renovate, or repair their IHE facilities?	28
III-E-6. May an IHE use Education Stabilization funds to support new construction?	28
III-E-7. May an IHE use Education Stabilization funds to pay down existing debt?	29
III-E-8. May an IHE use Education Stabilization funds to supplement or restore a “rainy day” fund rather than use the funds for specific purposes?	29
III-E-9. Does a Governor have the authority to award Education Stabilization funds only to those public IHEs that agree to limit increases in tuition and fees paid by in-State students?.....	29
III-E-10. Does a Governor have the authority to restrict an IHE’s use of Education Stabilization funds?	30
III-E-11. How long does an IHE have to obligate Education Stabilization funds?	30
Illustration 10: Summary – IHE Uses of Education Stabilization Funds.....	30
Illustration 11: Prohibitions on an IHE’s Use of Education Stabilization Funds.....	31
IV. THE GOVERNMENT SERVICES FUND	31
IV-1. For what purposes may a State use its Government Services Fund?	31
IV-2. May a Governor use part of the State’s Government Services Fund to support administrative costs associated with implementing the ARRA, including costs related to monitoring subgrantees and complying with the ARRA reporting requirements?	32
IV-3. What are the statutory limitations on the uses of the Government Services funds?.....	32
IV-4. If a State chooses to use a portion of its Government Services allocation to provide assistance for elementary and secondary education, must the funds be awarded to LEAs through the State funding formulae or on the basis of the LEAs’ proportionate share of funding under Part A of Title I?	33
IV-5. May a State use its Government Services funds for construction or infrastructure support?.....	33
IV-6. May a State use Government Services funds to construct, modernize, renovate, or repair a private school facility?.....	33
IV-7. May a State use its Government Services Fund allocation for paying down past debt?	33
IV-8. May a Governor use the Government Services funds to supplement or restore the State’s “rainy day” fund rather than use the funds for specific purposes?	34
IV-9. Does a Governor have discretion in determining when to use Government Services funds?	34
IV-10. How long are the Government Services funds available for obligation?	34

V. CONSTRUCTION, MODERNIZATION, RENOVATION, AND REPAIR	34
V-1. May Stabilization funds be used for construction?.....	34
V-2. May Stabilization funds be used for modernization, renovation, or repair?.....	35
V-3. Are there specific types of construction, modernization, or repair activities that may not be supported with Stabilization funds?.....	36
V-4. What is meant by the term “modernization, renovation, or repair”?.....	36
V-5. Are there additional resources available on the construction, modernization, renovation, or repairs of schools?	37
V-6. Are there any wage requirements associated with the use of ARRA funds?.....	37
V-7. Does the ARRA include a preference for quick-start activities?.....	38
V-8. What certifications must be provided when funds under the ARRA are used for infrastructure investments?	38
VI. MAINTENANCE OF EFFORT	39
A. STABILIZATION PROGRAM MAINTENANCE-OF-EFFORT REQUIREMENTS.....	39
VI-A-1. What are the specific maintenance-of-effort (MOE) requirements that apply to the Stabilization program?.....	39
VI-A-2. Will the Department require a State to provide MOE data in its annual Stabilization program reports?.....	39
VI-A-3. What is meant by the term “fiscal year” in determining whether a State meets the Stabilization fund MOE requirements?	39
VI-A-4. May a State demonstrate that it is complying with the elementary and secondary education MOE requirements in the ARRA on either an aggregate or a per-student basis?.....	39
VI-A-5. How does a State determine the levels of State support for elementary and secondary education or for public IHEs?.....	40
VI-A-6. In the Stabilization program application, a State must provide assurances that it will comply with the MOE requirements. What if a State anticipates, on the basis of the best available data, that it might not meet the MOE requirements for one or more years?	40
VI-A-7. What criterion governs whether the Department may grant a State’s request for a waiver of the Stabilization program MOE requirements?	40
VI-A-8. Does the same criterion apply to waivers of both the elementary and secondary education MOE requirements and the public IHE MOE requirements?	40
VI-A-9. For purposes of the MOE waiver criterion, what is meant by the term “total revenues available to the State”?	40

VI-A-10. Will the Department be issuing further guidance on the process for obtaining waivers of the Stabilization program MOE requirements?	41
Illustration 12: Applying the MOE Waiver Criterion	41
B. USING STABILIZATION FUNDS TO MEET OTHER MOE REQUIREMENTS	42
VI-B-1. To what extent may a State or LEA use Stabilization funds to meet the MOE requirements of other Federal programs?.....	42
C. IMPACT OF MOE ON A STATE’S RECEIPT OF RACE-TO-THE-TOP FUNDS.....	43
VI-C-1. How might a State’s expenditures for elementary, secondary, and public higher education affect its ability to compete successfully for Race-to-the-Top funds?.....	43
VII. TRANSPARENCY, ACCOUNTABILITY, REPORTING, AND OTHER OBLIGATIONS	43
VII-1. 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?	43
VII-2. How will the Department ensure transparency in the implementation of the State Fiscal Stabilization Fund program by States, LEAs, IHEs, and other entities?	44
VII-3. What information is a State required to include in its quarterly reports under the ARRA?.....	44
VII-4. What information is a State required to include in its annual Stabilization fund report?.....	45
VII-5. Will the Department be issuing guidance on the quarterly ARRA and annual Stabilization fund reporting requirements?.....	45
VII-6. Are there rules that govern the amount of Stabilization funds that a grantee or subgrantee may draw down at any one time?	45
VII-7. Does the receipt of Stabilization funds require recipients to comply with Federal civil rights laws?.....	46
VIII. RESOURCES AND INFORMATION	46
VIII-1. Where may I obtain updated information about the State Fiscal Stabilization Fund program?	46
VIII-2. Where may I obtain answers to specific questions that I may have about the State Fiscal Stabilization Fund program?	46

I. Introduction

I-1. What is the State Fiscal Stabilization Fund (Stabilization) program?

The Stabilization program is a new, one-time appropriation of approximately \$48.6 billion that the U.S. Department of Education (Department) will award to Governors to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance essential education reform in four areas: (1) making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need; (2) establishing pre-K-to-college-and-career data systems that track progress and foster continuous improvement; (3) making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and (4) providing targeted, intensive support and effective interventions for the lowest-performing schools.

I-2. What is the statutory authority for the program?

The Stabilization program is authorized in Title XIV of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5), which President Barack Obama signed into law on February 17, 2009. The provisions of the ARRA relevant to the Stabilization program and other Department programs are available on the Department's website at <http://www.ed.gov/policy/gen/leg/recovery/index.html>.

I-3. What are the two components of the Stabilization program?

The two components of the Stabilization program are the Education Stabilization Fund (CFDA No. 84.394) and the Government Services Fund (CFDA No. 84.397). By statute, the Department will award 81.8 percent of a State's total Stabilization allocation under the Education Stabilization Fund and the remaining 18.2 percent of its allocation under the Government Services Fund.

States must use the Education Stabilization Fund to restore State support for elementary and secondary education, public higher education, and, as applicable, early childhood education programs and services. States must use the Government Services Fund for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education (IHEs), and for modernization, renovation, or repair of public school facilities and IHE facilities.

Illustration 1: The Two Funds

Education Stabilization Fund	Government Services Fund
➤ 81.8 percent of the State’s total Stabilization Fund allocation	➤ 18.2 percent of the State’s total Stabilization Fund allocation

I-4. What overarching principles guide the distribution and use of all ARRA funds that the Department administers?

The overall goals of the ARRA are to stimulate the economy in the short term and to invest in education and other essential public services to ensure the long-term economic health of our nation. Four principles guide the distribution and use of ARRA funds:

1. *Spend funds quickly to save and create jobs.* The Department is distributing ARRA funds quickly to avert layoffs and create jobs. States, local educational agencies (LEAs), and IHEs are urged to move rapidly to develop plans for using the funds, consistent with the ARRA’s reporting and accountability requirements, and promptly to begin spending funds to help drive the nation’s economic recovery.
2. *Improve student achievement through school improvement and reform.* ARRA funds should be used to improve student achievement and help close the achievement gap. Furthermore, in exchange for receiving funds under the State Fiscal Stabilization Fund, States must commit to advancing education reforms in four specific areas. (See Question I-1 and Illustration 2.)
3. *Ensure transparency and accountability and report publicly on the use of funds.* To prevent fraud and abuse, support the most effective uses of ARRA funds, and accurately measure and track results, ARRA recipients must publicly report on how funds are used. Due to the unprecedented scope and importance of this investment, ARRA funds are subject to additional and more rigorous reporting requirements than normally apply to grant recipients. (See Part VII of the guidance.)
4. *Invest one-time ARRA funds thoughtfully to minimize the “funding cliff”.* The ARRA is expected to be a one-time infusion of substantial new resources. These funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires. Under the Stabilization program, funds are available for obligation through September 30, 2011. (See Questions III-D-16, III-E-11, and IV-10.)

I-5. How does the Department determine the amount of funding that each State may receive under the Stabilization program?

The Department determines each State’s total Stabilization allocation by formula on the basis of (1) its relative population of individuals who are aged 5 to 24, and (2) its relative total population. The amount of funding available to each State under the program is provided on the Stabilization program website at <http://www.ed.gov/programs/statestabilization/index.html>.

II. Process for Awarding Funds to Governors

II-1. What is the Department’s process for awarding Stabilization funds to Governors?

The Department will award Stabilization funds to Governors in two phases. To receive its initial Stabilization fund allocation, a State must submit to the Department an application that provides:

1. Assurances that the State is committed to advancing education reform in four specific areas (*see* Illustration 2);
2. Baseline data that demonstrate the State's current status in each of the four education reform areas;
3. Maintenance-of-effort (MOE) information; and
4. A description of how the State intends to use its Stabilization allocation.

The Department has developed a very streamlined application process for the initial phase of funding under the Stabilization program. In the application package, for example, the Department has identified available data that States may use as initial baseline data for each of the required education reform assurances. If a State accepts these data as its initial baseline data, it does not have to submit additional data on the reform assurances in order to receive its initial Stabilization allocation. Similarly, the Department has included in the application not only the required MOE assurances, but also a separate MOE waiver assurance for States that may be unable to meet the MOE requirements. (*See* Questions VI-A-6 through VI-A-10.)

Illustration 2: Commitment to Advancing Education Reform

Commitment to Advancing Education Reform
<p>As part of its application for Stabilization Funding, a State must assure that it will implement strategies to:</p> <ul style="list-style-type: none">➤ Increase teacher effectiveness and address inequities in the distribution of highly qualified teachers;➤ Establish and use a pre-K-through-college-and-career data system to track progress and foster continuous improvement;➤ Make progress towards rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and➤ Provide targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring.

In phase one, within two weeks of receipt of an approvable Stabilization fund application, the Department will award a State 67 percent of its total Stabilization allocation. (That is, the Department will release 67 percent of both the State's total Education Stabilization Fund allocation and its total Government Services Fund allocation).

A State will receive the remaining 33 percent of its total Stabilization allocation in phase two, after the Department approves the State's comprehensive plan for making progress in the four education reform areas for which it provided assurances in phase one. In the near future, the Department will provide further information on the Department's proposal for the phase two application process.

The Department will review the phase one and phase two applications on a rolling basis as they are received. The Department anticipates that the phase two funds will be awarded by September 30, 2009.

If a State demonstrates that the amount of funds it will receive in phase one (67 percent of its total Stabilization allocation) is insufficient to prevent the immediate layoff of personnel by school districts, public IHEs, or State or local agencies, the Department will award the State up to 90 percent of its total Stabilization allocation in phase one. In such cases, the remaining portion of the State's allocation will be provided after the Department approves the State's phase two submission.

II-2. How does a State demonstrate that the amount of Stabilization funds that it will receive in phase one is insufficient to prevent the immediate layoff of State or local personnel?

The Department will use the data that a State provides in the phase one application to determine whether to release more than 67 percent of the State’s total Stabilization allocation in phase one. States are not required to submit additional information to demonstrate their need for additional resources.

Specifically, if a State demonstrates in Part 5, Section A of its application that the fiscal year (FY) 2009 “restoration amount” (i.e., the amount of Stabilization funds that is needed to restore the levels of State support for both elementary and secondary education and public IHEs for FY 2009) is greater than its phase one allocation amount (i.e., 67 percent of the State’s total Stabilization allocation), the Department will provide the State in phase one the lesser of (a) 90 percent of the State’s total Stabilization allocation or (b) the State’s FY 2009 restoration amount. In such cases, the remaining portion of the State’s allocation will be provided after the Department approves the State’s phase two submission.

II-3. What is the application process for phase two funding?

In the near future, the Department intends to publish in the *Federal Register* for public comment a notice detailing the proposed phase two application process. The notice will describe the Department’s proposal for: (1) “metrics” that a State would use to demonstrate that it is making progress relative to the education reform assurances in its phase one application; (2) the State’s plan for providing data under the proposed “metrics” if the data are currently unavailable; and (3) the criteria by which a State’s plan will be evaluated. Expert peer reviewers will review each State’s phase two plan and make recommendations to the Secretary concerning the adequacy of the plan.

Illustration 3: Federal Release of Funds

Phase One	➤ 67 percent of the State’s total Stabilization allocation released.
Phase One Exceptional Circumstances	➤ Up to an additional 23 percent of the State’s total Stabilization allocation released (for a total of up to 90 percent).
Phase Two	➤ Remaining portion of the State’s total Stabilization allocation released.

III. The Education Stabilization Fund

A. Eligible Entities

III-A-1. To which entities does the Governor make awards under the Education Stabilization Fund?

The Governor makes awards under the Education Stabilization Fund only to local educational agencies (LEAs) and public IHEs. The Governor may not retain any portion of the Education Stabilization Fund for State purposes (*see* Question III-B-11), nor award any portion of this allocation to entities other than LEAs and public IHEs. The awards to LEAs and public IHEs must be made in accordance with requirements in section 14002(a) of Division A of the ARRA.¹

III-A-2. What is a “local educational agency”?

For purposes of the Stabilization program, the term “local educational agency” has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (ESEA). That is, a “local educational agency” is “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.”

III-A-3. What is an “institution of higher education”?

For purposes of the Stabilization program, the term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965. That is, an “institution of higher education” is an educational institution that is legally authorized within the State to provide a program of education beyond secondary education and that admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.

The institution must provide an educational program for which it awards a bachelor’s degree or provides not less than a two-year program that is acceptable for full credit toward such a degree. In addition, it must be accredited by a nationally recognized accrediting agency or association or, if not so accredited, be an institution that has been granted pre-accreditation status by an agency or association that has been recognized by

¹ All subsequent references in this guidance to particular sections of the ARRA relate to sections in Division A of the ARRA.

the Secretary of Education for the granting of pre-accreditation status, and that the Secretary has determined there is satisfactory assurance that it will meet the accreditation standards within a reasonable time. For-profit institutions and postsecondary vocational institutions are not included in the definition of an institution of higher education.

Finally, under the Education Stabilization Fund, only *public* IHEs are eligible for assistance.

Illustration 4: Entities Eligible for Funding under the Education Stabilization Fund

Education Fund – Eligible Entities
<ul style="list-style-type: none">➤ Only LEAs and <i>public</i> IHEs may receive funds under the Education Stabilization Fund.➤ Private IHEs are not eligible to receive any portion of the Education Stabilization Fund.➤ The Governor may not retain any portion of the Education Stabilization Fund for State uses.

III-A-4. Are charter schools considered to be LEAs for purposes of the Stabilization program?

State law determines whether a charter school is an LEA, or a school within an LEA. A charter school LEA must receive Stabilization funding on the same basis as other LEAs in the State.

Section 5206 of the ESEA requires State educational agencies to take necessary measures to ensure that a newly opening or a significantly expanding charter school LEA receives Department of Education formula grant funds to which it is entitled within five months after opening or expanding even if the identity of the children in those LEAs needed to determine allocations may not be available at the time the charter school LEA opens or expands. For more details on how to address issues concerning newly opening or significantly expanding charter school LEAs, *see* the regulations concerning charter schools at 34 C.F.R. Part 76, Subpart H and guidance on how a State or LEA allocates funds to charter schools that are opening for the first time or significantly expanding enrollment at http://www.uscharterschools.org/pdf/fr/sea_guidance_main.pdf.

III-A-5. Must an LEA receive State funds through the State’s primary elementary and secondary education formulae in order to be eligible to receive Education Stabilization funds?

When a State awards Education Stabilization funds to LEAs through the State’s primary funding formulae, the State may provide funds only to those LEAs (including any charter school LEAs) that also receive State funds through the State’s primary funding formulae.

However, if there are Education Stabilization funds remaining after the State calculates the amount needed to restore fully the levels of State support for elementary and secondary education and public IHEs, any LEA (including a charter school LEA) that receives Title I, Part A funds will receive a share of those remaining Education Stabilization funds based on its Title I, Part A share, even if that LEA does not receive State funds through the State’s primary funding formulae. (*See* discussion in section B below.)

III-A-6. May Governors award Education Stabilization funds to private IHEs?

No. Governors may not make awards under the Education Stabilization Fund to private IHEs. However, they may provide support to such institutions under the State’s Government Services Fund allocation, subject to the limitations in the ARRA.

III-A-7. In restoring the levels of State support for public IHEs, may a Governor award Education Stabilization funds to a centralized State agency that administers insurance and pension costs for employees of public IHEs?

No. The Governor must award these funds only to public IHEs. A public IHE, however, may use its Education Stabilization funds to support the insurance and pension costs of its employees.

III-A-8. May a Governor award Education Stabilization funds to a State Higher Education Board that, for example, receives appropriated State student financial aid funds?

No. A State Higher Education Board is not a public IHE.

III-A-9. May the Governor award Education Stabilization funds directly to students for scholarships or financial aid or to support State-agency-run scholarship programs for students to attend public IHEs?

No. The Governor must award funds that are needed to restore State support for public higher education directly to public IHEs. However, an IHE may use these funds for scholarship programs and student financial aid.

B. Restoring Levels of State Support for Education

III-B-1. What levels of State support must a Governor restore for elementary and secondary education and public IHEs?

For each of FYs 2009, 2010, and 2011, a Governor must restore the levels of State support for elementary and secondary education and for public IHEs to the greater of the FY 2008 or FY 2009 levels of such support.

- For *elementary and secondary education*, a State must restore the levels of State support provided through the State's primary elementary and secondary education formulae to the greater of the FY 2008 or FY 2009 levels. (See Question III-B-7.) In restoring the levels of State support for elementary and secondary education for FYs 2010 and 2011, a State must allow: (a) existing State formulae increases to support elementary and secondary education for FYs 2010 and 2011 to be implemented, if these increases were enacted pursuant to State law prior to October 1, 2008; and (b) funding for phasing in State equity and adequacy adjustments, if the adjustments were enacted pursuant to State law prior to October 1, 2008.
- For *public institutions of higher education*, a State must also restore the levels of State support (excluding tuition and fees paid by students) to the greater of the FY 2008 or FY 2009 levels of support. State funding for financial assistance to students attending public IHEs is not considered State support for these institutions. Rather, such funding is considered support for students to enable them to pay their educational expenses, even if the IHEs administer the funding. However, unrestricted State funding for public IHEs is considered State support for such institutions even if those institutions choose to use a portion of that funding for financial assistance to students.

In determining the amount of Education Stabilization funds that a State must reserve for LEAs and the amount it must reserve for public IHEs, a State must follow the specific steps outlined in Illustration 6 and detailed in the worksheets in Appendix D of the Stabilization fund application. Once these amounts are determined, a Governor has some discretion in deciding when to release the funds to LEAs and public IHEs. (See Question III-B-10.) In addition, LEAs and public IHEs have some discretion in determining when to use any funds that they receive. (See Questions III-D-16 and III-E-11.)

Illustration 5 summarizes the separate stages of calculating the restoration amounts, releasing Education Stabilization funds to LEAs and public IHEs, and obligating those funds.

Illustration 5: Education Stabilization Funding Process – Calculating Restoration Amounts, Releasing Funds, and Obligating Funds

<p>Calculating the Restoration Amounts</p>	<ul style="list-style-type: none"> ➤ The Governor first determines the amounts of Education Stabilization funds that the State will use to restore the levels of State support for both LEAs and public IHEs. ➤ The worksheets in Appendix D of the Stabilization program application and the Questions in Part III-B of this guidance provide detailed information on how a State determines these restoration or reservation amounts. ➤ The restoration calculations are merely a mechanism for determining the amounts of funding that LEAs and public IHEs will receive. The calculations have no bearing on when a Governor must release the funds, or on the period during which the LEAs and IHEs may use the funds.
<p>Releasing Funds to LEAs and Public IHEs</p>	<ul style="list-style-type: none"> ➤ After a State determines the restoration amounts (i.e., after the State calculates the amounts of Education Stabilization funds that it will provide to LEAs and to public IHEs), the Governor may release the funds to LEAs and IHEs in phases in order to avoid a “funding cliff”. For example, a Governor is not required to release in FY 2009 all of the Education Stabilization funds that LEAs and IHEs are entitled to receive on the basis of the FY 2009 restoration calculations. ➤ Additional information concerning the timing of the release of funds to LEAs and IHEs is provided in Question III-B-10.
<p>Obligation Timeframe</p>	<ul style="list-style-type: none"> ➤ LEAs and IHEs have flexibility in determining when to use their Stabilization funds, as long as the funds are obligated by September 30, 2011. ➤ The restoration calculations referenced above do not affect when an LEA or IHE may spend its funds. For example, funds that an LEA receives based on FY 2009 restoration calculations do not have to be spent in school year 2008-2009. Those funds, like all Education Stabilization funds, remain available for obligation through September 30, 2011.

III-B-2. What is meant by the term “fiscal year” for purposes of restoring levels of State support for education?

“Fiscal year” in this context refers to State fiscal year. For example, FY 2009 means the State fiscal year that covers school year 2008-2009. For most States, FY 2009 will be the period from July 1, 2008 through June 30, 2009.

III-B-3. Are States required to use a particular formula in determining the levels of State support for elementary and secondary education and, as applicable, early childhood education programs and services?

The statute provides States with some flexibility in determining which of their elementary and secondary education funding formulae are their *primary* funding formulae for elementary and secondary education. At a minimum, a Governor must include the State formula(e) that provide(s) basic support to LEAs (i.e., the State’s foundation or base formula(e)).

III-B-4. May a State include local tax revenues in determining the levels of State support for elementary and secondary education?

No. The ARRA requires a State to consider only the levels of *State* support that is provided through the State’s primary funding formula(e).

III-B-5. May State categorical funds that are not awarded through a funding formula be considered part of a State’s support for elementary and secondary education for purposes of determining the amount of Education Stabilization funds that will be awarded to LEAs?

No. Only funds that a State awards through its primary elementary and secondary education funding formula(e) may be used in determining the levels of State support for elementary and secondary education. (The same is not true, however, in determining the levels of State support for elementary and secondary education for maintenance-of-effort purposes. *See* Question III-B-9.)

III-B-6. How does a State determine the level of State support for public IHEs for a given year?

The statute provides States with some flexibility in determining the level of State support for public IHEs, subject to the express restriction that a State not include amounts paid in tuition and fees by students. For example, a State may consider State appropriations for public higher education that are obtained from general tax revenues, as well as funds that are obtained from other sources (e.g., tobacco settlement funds and lotteries) and then provided by the State to public higher education. A State may also include interest or earnings received from State endowments pledged to public IHEs.

In determining the level of State support for public IHEs, a State may also include such support as: (1) State appropriations for community colleges to support adult education and career and technical education programs; and (2) State payments that are made on behalf of employees of public IHEs but that are appropriated to a different State agency (e.g., group insurance contributions that the State appropriates to a central State agency, and State contributions to IHE employee retirement systems that the State appropriates to the State agency responsible for administering retirement systems).

III-B-7. How does a State calculate the amounts of Stabilization funds that must be awarded to LEAs and to public IHEs?

In calculating the amounts of Stabilization funds that must be awarded to LEAs and to public IHEs, a State must first determine the amounts of funds needed to restore fully the levels of State support for elementary and secondary education and for public IHEs for FY 2009 to the greater of the FY 2008 or FY 2009 levels.

In determining the greater of the FY 2008 or FY 2009 levels –

- For FY 2008, a State must use the *actual* levels of State support for elementary and secondary education and for public IHEs.
- For FY 2009, a State may use (a) the actual levels of State support for elementary and secondary education and for public IHEs; (b) the projected levels of State support for elementary and secondary education and for public IHEs; or (c) prior-enacted levels of State support for elementary and secondary education and for public IHEs that were subsequently revised.

If there are any Education Stabilization funds remaining after a State determines the amounts that LEAs and public IHEs will receive on the basis of the FY 2009 restoration calculations, the State then determines, on the basis of the FY 2010 restoration calculations (taking into account any increases or adjustments referenced in Question III-B-1), the amount of the remaining funds that will be awarded to LEAs and IHEs in order to restore the levels of State support for elementary and secondary education and for public IHEs for FY 2010. Next, it restores the levels of State support for FY 2011.

- *Shortfall calculations*: If a State has insufficient funds to restore fully, in a given fiscal year, the levels of State support for both elementary and secondary education and public IHEs, it must use Education Stabilization funds to support elementary and secondary education and public IHEs in proportion to their relative shortfall in accordance with section 14002(a)(2)(B) of the ARRA.

- *Allocations on the basis of Title I, Part A shares:* If a State has any Education Stabilization funds remaining after it restores fully the levels of State support for both elementary and secondary education and public IHEs for FYs 2009 through 2011, the Governor awards those remaining funds to LEAs on the basis of their proportionate share of funding under Title I, Part A, Subpart 2 of the ESEA (Title I, Part A). (See section 14002(a)(3) of the ARRA.)

Special Notes:

- The worksheets in Appendix D of the Stabilization program application package provide detailed guidance on how to calculate the amount of Stabilization funds that will be used to restore the levels of State support for elementary and secondary education and for public IHEs for FYs 2009, 2010, and 2011.
- As discussed in Question III-B-10, although the State must follow specific restoration steps in order to determine the amount of funds that LEAs and IHEs will receive under the program, the Governor has discretion in determining when to release these funds to LEAs and IHEs.

III-B-8. May a State choose to restore its level of State support for either elementary and secondary education or public IHEs, but not both?

No. A State must restore State support for both elementary and secondary education and public IHEs. It may not choose to restore support only for elementary and secondary education or only for public IHEs.

Illustration 6: Restoring Levels of State Support

Restoring Levels of State Support	
Step One	<ul style="list-style-type: none"> ➤ Calculate the amounts needed to restore levels of State support for both elementary and secondary education and public IHEs for FY 2009 to the greater of the FY 2008 or FY 2009 levels. <ul style="list-style-type: none"> ➤ Any remaining funds are carried over to Step Two. ➤ If there is a shortfall, follow shortfall calculation requirements (and there are no additional steps).
Step Two	<ul style="list-style-type: none"> ➤ Calculate the amounts needed to restore levels of State support for both elementary and secondary education and public IHEs for FY 2010 to the greater of the FY 2008 or FY 2009 levels. <ul style="list-style-type: none"> ➤ If State enacted, prior to October 1, 2008, formula increases or adjustments for FY 2010, follow special restoration requirements. ➤ Any remaining funds are carried over to Step Three. ➤ If there is a shortfall, follow shortfall calculation requirements (and there are no additional steps).
Step Three	<ul style="list-style-type: none"> ➤ Calculate the amounts needed to restore levels of State support for both elementary and secondary education and public IHEs for FY 2011 to the greater of the FY 2008 or FY 2009 levels. <ul style="list-style-type: none"> ➤ If State enacted, prior to October 1, 2008, formula increases or adjustments for FY 2011, follow special restoration requirements. ➤ Any remaining funds are carried over to Step Four. ➤ If there is a shortfall, follow shortfall calculation requirements (and there are no additional steps).
Step Four	<ul style="list-style-type: none"> ➤ Award all funds that remain after completing Steps One, Two, and Three to LEAs on the basis of their Title I, Part A shares.

III-B-9. In calculating how its Education Stabilization Fund allocation will be distributed among LEAs and public IHEs, a State makes determinations on the levels of State support for elementary and secondary education and public higher education for various fiscal years. Are these levels of State support the same levels that a State must use for purposes of demonstrating compliance with the Stabilization program maintenance-of-effort (MOE) requirements?

No. The levels of “State support” for the purpose of calculating the amount of Education Stabilization funds that a State will allocate to LEAs are based on the amount of State funds that were provided through the State’s primary elementary and secondary education funding formulae. The levels of “State support” for purposes of the Stabilization program elementary and secondary education *MOE requirements* may include not only the amount of State funds that a State provides through its primary funding formulae in a given year, but also the amount of other State support not provided through the primary formulae.

Similarly, the levels of “State support” for the purpose of calculating the amount of Education Stabilization funds that a State will use for public IHEs exclude the amount of tuition and fees paid by students, while the levels of “State support” for purposes of the public IHE *MOE requirements* exclude not only tuition and fees paid by students, but also support for capital projects and research and development.

III-B-10. Section 14002(a) of the ARRA directs how a State determines the amount of Education Stabilization funds that it will provide to LEAs and public IHEs. Once a State makes these determinations in accordance with that provision, does the Governor have discretion in determining when to release the funds to LEAs and IHEs?

Yes. While a Governor should consider the immediate needs of LEAs and public IHEs, the Governor has some flexibility in the timing of the release of the funds.

A Governor must return to the Secretary any funds that the State does not award as subgrants or otherwise commit within two years of receipt of those funds. The Department is awarding funds to States in two phases, and there are separate deadlines by which the Governor must subgrant or commit the funds awarded in each phase.

In determining when to award funds to LEAs and public IHEs, the Governor should also take into consideration the fact that these funds must be “obligated” by September 30, 2011. (*See* Questions III-D-16, III-D-17, and III-E-11 for additional information on when an obligation occurs.)

Finally, in order to ensure that the expenditures and activities under the Education Stabilization program occur as quickly as possible consistent with prudent management, section 807(a)(2) of the ARRA authorizes the Secretary of Education to require States to make “prompt allocations to local educational agencies”. At this time, however, the Department is not invoking that authority, but is providing Governors discretion

concerning the timing of release of funds to LEAs. The Department does, however, strongly encourage Governors to make timely awards in order to minimize the impact of any reduction in State education spending and maximize the ability of these funds to save and create jobs.

III-B-11. May a Governor retain a portion of the State’s Education Stabilization Fund allocation to help defray the costs of administering the program or for other purposes?

No. A Governor must award all of the Education Stabilization funds to LEAs and public IHEs in accordance with the requirements in the ARRA. However, a Governor may use funds under the State’s Government Services Fund allocation to administer the Education Stabilization Fund and for other purposes. (*See* Questions IV-1 and IV-2.)

C. LEA and Public IHE Application Requirements

III-C-1. Must an LEA submit an application to the Governor in order to receive funding under the Education Stabilization Fund?

Yes. The Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. 76.301 require an LEA to have on file with the State an application that contains the assurances in section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e). Among other things, the LEA must assure that it will (1) administer the program in accordance with all applicable statutes and regulations, and (2) use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, the funds.

In addition, in order to comply with section 427 of GEPA (20 U.S.C. 1228a) and depending on the LEA’s planned uses of the funds, an LEA may need to provide in its application a description of the steps it proposes to take to permit students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede access to, or participation in, particular programs to be funded with Education Stabilization funds. (Information on the GEPA 427 requirement is available on the Department’s website at <http://www.ed.gov/fund/grant/apply/appforms/gepa427.doc>.)

III-C-2. May a Governor require an LEA to include in its local application for Education Stabilization funds information other than the required assurances and the GEPA 427 statement (if applicable)?

Yes. A Governor has the discretion to require an LEA to provide in its application additional information that the Governor may reasonably require. For example, because of the Governor’s administrative responsibilities over the Stabilization program, the Governor may require an LEA to describe how it intends to use its Education Stabilization funds. Such a requirement would help the State ensure that the LEA is

expending its funds on activities authorized under the ARRA. In addition, the Governor may require the LEA to demonstrate that it has the capacity to comply with the strict ARRA reporting requirements before the State awards funds to the LEA. However, a Governor may not use the local application process to restrict an LEA’s use of the funds beyond the limitations in the ARRA.

While a Governor may not restrict an LEA’s use of Education Stabilization funds beyond the limitations in the ARRA, he or she may require an LEA to describe in its local application how the LEA will assist the State in advancing essential reforms in the four areas for which the State provides assurances in its application for Stabilization funds.

III-C-3. Must a public IHE submit an application to the Governor in order to receive funding under the Education Stabilization Fund?

A Governor has the discretion to determine whether an IHE must submit an application before receiving Education Stabilization funds. As with LEA applications, the Governor may require that IHE applications include information that he or she may reasonably require. A Governor may require an IHE to describe, for example, how it intends to use its Education Stabilization funds to help mitigate the need for increases in tuition and fees paid by in-State students (*see Questions III-E-9 and III-E-10*) and how it will meet the ARRA reporting requirements.

Illustration 7: LEA and IHE Application Requirements

	Application Requirements
LEA	<ul style="list-style-type: none"> ➤ An LEA must submit an application to the Governor in order to receive funds. <ul style="list-style-type: none"> ➤ The LEA application must include basic GEPA assurances. ➤ The LEA application must address requirements in section 427 of GEPA, as applicable. ➤ The Governor may direct an LEA to provide in its application additional information that he or she may reasonably require, but may not restrict the LEA’s use of funds beyond the statutory limitations.
IHE	<ul style="list-style-type: none"> ➤ An IHE is not required to submit an application in order to receive funds unless Governor requires an application. ➤ The Governor may direct an IHE to submit an application that contains information that he or she may reasonably require, and may restrict the IHE’s use of funds to expenditures that would help mitigate the need for increases in tuition and fees paid by in-State students.

D. Uses of Education Stabilization Funds by LEAs

III-D-1. For what purposes may an LEA use Education Stabilization funds?

Subject to the limited statutory prohibitions described below, section 14003(a) of the ARRA authorizes an LEA to use Education Stabilization funds for any activity that is authorized under the following Federal education acts:

- The Elementary and Secondary Education Act of 1965 (ESEA);
- The Individuals with Disabilities Education Act (IDEA);
- The Adult Education and Family Literacy Act (AEFLA); or
- The Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act).

The ARRA also provides that, to the extent consistent with State law, an LEA may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

If an LEA uses Education Stabilization funds for modernization, renovation, or repair of public school facilities or for construction of new school facilities², the LEA must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (*See* Section 1605 of the ARRA.)

III-D-2. What are the statutory prohibitions on an LEA's use of Education Stabilization funds?

Section 14003 of the ARRA prohibits an LEA from using Education Stabilization funds for –

- Payment of maintenance costs;
- Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
- Purchase or upgrade of vehicles;
- Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or
- School modernization, renovation, or repair that is inconsistent with State law.

In addition, no Stabilization funds (either Education Stabilization funds or Government Services funds) may be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education

² An LEA may use Education Stabilization funds for construction of new school facilities as well as for modernization, renovation, or repair of existing facilities. *See* Question III-D-11.

and related services to children with disabilities as authorized by the IDEA (Section 14011 of the ARRA).

There are also other prohibitions in section 1604 of the ARRA – for example, prohibitions against using funds for an aquarium, zoo, golf course, or swimming pool – that apply to the use of Stabilization funds by any entity.

III-D-3. Do the same statutory requirements govern the use of all of the Education Stabilization funds that a Governor awards to an LEA?

Yes. Any Education Stabilization funds that an LEA receives – whether through the State’s primary elementary and secondary education funding formulae or based on its proportionate share of funding under Part A of Title I of the ESEA – may be used for activities authorized under the ESEA, the IDEA, the AEFLA, or the Perkins Act, subject to ARRA and other applicable Federal requirements, including the limited prohibitions referenced Question III-D-2.

III-D-4. Are the Education Stabilization funds that the Governor awards to LEAs through the State’s primary funding formulae considered to be State funds, subject to the requirements that generally apply to funds awarded under those formulae?

No. State funding formulae are used solely as the mechanism to determine the amount of Education Stabilization funds that each LEA will receive. The Education Stabilization funds are Federal funds, and the ARRA, the Federal laws referenced in III-D-1, and other applicable Federal requirements (such as the OMB cost principles) govern their uses.

III-D-5. If a portion of a State’s Education Fund allocation remains available after the Governor restores fully the levels of State support for elementary and secondary education and public IHEs, the Governor must award any remaining Education Stabilization funds to LEAs on the basis of each LEA’s proportionate share of funding under Part A of Title I of the ESEA. Would the use of these Education Stabilization funds be limited to activities authorized under Part A of Title I?

No. As with the Education Stabilization funds that an LEA receives through a State’s primary elementary and secondary education funding formulae, any Education Stabilization funds that an LEA receives on the basis of its proportionate share of funding under Part A of Title I may be used for any activities authorized under the ESEA, the IDEA, the AEFLA, or the Perkins Act, subject to ARRA and other applicable Federal requirements, including the limited prohibitions referenced in Question III-D-2.

III-D-6. How much flexibility do LEAs have in determining the activities to support with Education Stabilization funds?

LEAs (including charter school LEAs) have considerable flexibility in determining how best to use Education Stabilization funds. As stated previously, an LEA may use these funds for, among other things, activities that are authorized under the ESEA. Because the

ESEA includes the broad Impact Aid authority (*see* Title VIII of the ESEA), an LEA may use Education Stabilization funds for activities that would be allowable under Impact Aid. This flexibility applies to all LEAs that receive Education Stabilization funds, and is not limited to those LEAs that also receive Impact Aid funds.

Most funds that the Department awards under Impact Aid are considered to be general aid to LEAs. Thus, under the Impact Aid authority, an LEA may use Education Stabilization funds for educational purposes consistent with State and local requirements, subject to ARRA and other applicable Federal requirements, including the limited prohibitions referenced in Question III-D-2.

Because an LEA may consider Education Stabilization funds to be available for any activity authorized under Impact Aid, the funds may be used to support both current expenditures and other expenses such as capital expenditures. Among other things, the Education Stabilization funds may be used for activities such as: paying the salaries of administrators, teachers, and support staff; purchasing textbooks, computers, and other equipment; supporting programs designed to address the educational needs of children at risk of academic failure, limited English proficient students, children with disabilities, and gifted students; and meeting the general expenses of the LEA. It is important to note, however, that all funds appropriated under the ARRA (including Education Stabilization funds that an LEA uses for activities authorized under Title VIII of the ESEA) will be subject to stringent reporting requirements, which is in contrast to the minimal reporting requirements in place for funds appropriated under Title VIII of the ESEA (Impact Aid).

Accountability and Reporting Cautionary Note

Whether an LEA uses its Education Stabilization funds for activities authorized under the Impact Aid program or for activities authorized under any of the other programs in the ESEA, the IDEA, the AEFLA, or the Perkins Act, the LEA must (a) maintain records that separately track and account for its Education Stabilization funds and (b) report on the specific uses of those funds. (*See* discussion under Part VII of this Guidance – “Transparency, Accountability, Reporting, and Other Obligations”.)

III-D-7. May an LEA use Education Stabilization funds to support activities or services other than the specific activities or services that were eliminated as a result of budget reductions?

Yes. As explained in Question III-D-1, an LEA may use its Education Stabilization funds for any activities authorized under the ESEA, the IDEA, the AEFLA, or the Perkins Act, subject to limited restrictions in the ARRA and other Federal laws.

III-D-8. In addition to restoring activities or services that were eliminated as a result of budget reductions, how might an LEA use its Education Stabilization funds to advance reforms?

The Department encourages LEAs to use available Education Stabilization resources in ways most likely to assist the State in making progress in areas related to the four education reform assurances in the State's Stabilization application and to lead to improved results for students, long-term gains in school system capacity, and increased efficiency and effectiveness.

Examples of activities that an LEA might support with its funds in order to advance reform include:

1. *Improving teacher effectiveness and the equitable distribution of highly qualified teachers* by:
 - Establishing fair and reliable evaluation systems that provide feedback, help educators improve, and ensure that poor performers are dismissed;
 - Establishing a system for identifying and training highly effective teachers to serve as instructional leaders and modifying the school schedule to allow for collaboration among the instructional staff; and
 - Implementing innovative strategies for identification of, advancement of, and compensation for highly effective teachers and leaders.

2. *Establishing data systems and using data for improvement*, including:
 - Strengthening the use of longitudinal data systems to drive effective decision-making and continuous improvement efforts; and
 - Developing and providing intensive professional development on use of data to improve instruction.

3. *Turning around the lowest-performing schools* by:
 - Attracting teams of committed educators who are compensated for taking on new assignments and roles in a school in corrective action or restructuring;
 - Extending time for learning, including activities provided before school, after school, during the summer, or over an extended school year;
 - Providing intensive, year-long teacher training in reading that aggressively works on improving students' oral language skills and vocabulary or, in some other way, builds teachers' capacity to address academic achievement problems;
 - Strengthening and expanding early childhood education;
 - Providing intensive training to all teachers in new curriculum and the use of assessment data to improve instruction; and
 - Using high-quality, on-line courses as supplemental learning materials to help secondary students meet core content requirements.

III-D-9. To what extent may an LEA use Education Stabilization funds to support early childhood education programs and services?

An LEA has considerable flexibility in using Education Stabilization funds to support early childhood programs and services as authorized activities under the ESEA. For example, under Title VIII of the ESEA (Impact Aid), an LEA may support pre-K programs, even if pre-K is not considered part of “elementary education” under State law. The Department encourages LEAs to use Education Stabilization funds to support early childhood programs and services that are grounded in scientifically based research.

III-D-10. May an LEA use Education Stabilization funds for modernizing, renovating, or repairing public school facilities?

Yes. Under section 14002(a) of the ARRA, LEAs (including charter school LEAs) may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system.³ In conducting these activities, LEAs are encouraged to consider how schools might be adapted to better accommodate the needs of the community and serve as community centers.

As noted in the response to Question III-D-2, however, there are certain prohibitions that apply to an LEA’s use of Education Stabilization funds, including prohibitions against using funds for: (a) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; (b) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; and (c) school modernization, renovation, or repair that is inconsistent with State law.

In addition, if an LEA uses Education Stabilization funds for modernization, renovation, or repair of public school facilities, it must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (*See* Section 1605 of the ARRA.)

III-D-11. May an LEA use Education Stabilization funds for construction activities that are not considered to be modernization, renovation, or repair?

Yes. Construction of new school buildings is an authorized activity under the Impact Aid construction program in section 8007 of the ESEA. Thus, subject to the ARRA statutory requirements and prohibitions governing the uses of Education Stabilization funds, an LEA (including a charter school LEA) may use the funds to support the construction of new school buildings, including construction activities that are consistent with a recognized green-building rating system.

³ Additional guidance on “green-building rating systems” is provided in Part V: “Construction, Modernization, Renovation, and Repair”.

An LEA may not use Education Stabilization funds for construction of (or modernization, renovation, or repair of) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public, or stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities. If an LEA uses Education Stabilization funds for construction, it must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (*See* Section 1605 of the ARRA.)

III-D-12. May an LEA use Education Stabilization funds to supplement or restore its local “rainy day” fund rather than use the funds for specific purposes?

No. An LEA’s transfer of Education Stabilization funds to its local “rainy day” fund would not constitute an “obligation” of the funds. The LEA must actually obligate the funds for specific allowable activities during the period of fund availability. (*See* Question III-D-16.)

III-D-13. May an LEA use Education Stabilization funds to pay down past debt?

Although paying down an LEA’s past debt may be an allowable use of these funds under Title VIII of the ESEA (Impact Aid) to the extent consistent with State and local requirements, the Department strongly encourages LEAs to consider how its Education Stabilization funds could be better used to restore cuts in essential educational services, stimulate the local economy, and promote needed educational reforms.

Under the statutory provisions governing the uses of the Government Services Fund, however, a Governor may *not* use Government Services funds for paying down past debt because this type of expenditure does not constitute the use of funds for “government services” within the plain meaning of those words in section 14002(b)(1) of the ARRA. (*See* Question IV-7.)

III-D-14. May a Governor or State educational agency (SEA) limit how an LEA uses its Education Stabilization funds?

No. Because the amount of Education Stabilization funding that an LEA receives is determined strictly on the basis of formulae and the ARRA gives LEAs considerable flexibility over the use of these funds, neither the Governor nor the SEA may mandate how an LEA will or will not use the funds. As stated above, for example, an LEA may use Education Stabilization funds for activities authorized under Title VIII of the ESEA (Impact Aid), subject to the limited ARRA statutory prohibitions on the uses of funds and other applicable Federal requirements.

There are no similar provisions directing how a Governor must award Education Stabilization funds to public IHEs. Consistent with the purposes of the Stabilization program, a Governor may restrict an IHE’s use of funds to expenditures that would

mitigate the need for increases in tuition and fees paid by in-State students. (*See* Questions III-E-9 and III-E-10.)

III-D-15. Is an LEA *required* to provide equitable services for private school students and teachers with Education Stabilization funds?

No. There is no requirement in the ARRA that an LEA provide equitable services for private school students with Education Stabilization funds, even if those funds are used for an activity authorized by a program that otherwise requires equitable services. However, an LEA may provide services for private school students and teachers to the extent that the activities are authorized by the ESEA, the IDEA, the AEFLA, or the Perkins Act.

Illustration 8: Summary – LEA Uses of Education Stabilization Funds

LEA Uses of Education Stabilization Funds	
Cautionary Note: All of the uses identified in this Illustration are subject to ARRA and other applicable requirements, including prohibitions relating to the uses of funds.	
Basic Rule	➤ An LEA may use its Education Stabilization funds for any activities authorized under the ESEA, the IDEA, the AEFLA, or the Perkins Act, regardless of whether the Education Stabilization Funds were awarded through the State’s primary education funding formula(e) or based on the LEA’s relative share of funding under Title I, Part A.
Governor’s Control	➤ A Governor does <u>not</u> have the discretion to direct how an LEA must use its Education Stabilization Funds.
Education activities consistent with State and local requirements	➤ An LEA may use its Education Stabilization allocation for such purposes because these activities are authorized under Title VIII of the ESEA (Impact Aid). NOTE: The LEA must maintain records that track separately the specific uses of the funds (<i>see</i> Part VII: “Transparency, Accountability, Reporting, and Other Obligations”).
Modernization, renovation, and repair of public school facilities	➤ Section 14003(a) of the ARRA expressly authorizes an LEA to use Education Stabilization funds for this purpose.
Construction	➤ Construction is allowable as an authorized activity under Title VIII of the ESEA (Impact Aid).

Illustration 9: Summary – Prohibitions on an LEA’s Use of Education Stabilization Funds

Prohibitions on an LEA’s Use of Education Stabilization Funds

Cautionary Note: This list is not meant to be all-inclusive. LEAs must carefully review, for example, all requirements in Titles XIV, XV, and XVI of Division A of the ARRA relating to the Education Stabilization Fund.

An LEA may not use Education Stabilization funds for –

- Payment of maintenance costs;
- Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
- Purchase or upgrade of vehicles;
- Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities;
- Financial assistance for students to attend private elementary or secondary schools, unless the funds are used to provide special education and related services to students with disabilities, as authorized by the IDEA;
- School modernization, renovation, or repair that is inconsistent with State law; or
- Restoring or supplementing a “rainy day” fund.

III-D-16. How long does an LEA have to obligate its Education Stabilization funds?

An LEA may use Education Stabilization funds to support authorized activities in school years 2008-2009, 2009-2010, and 2010-2011. The funds may also support educational activities that the LEA provides between school years. Education Stabilization funds remain available for local obligation through September 30, 2011. This obligation deadline applies to all of the Education Stabilization funds that an LEA receives, regardless of when the Governor awards those funds to the LEA. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. 76.707.

III-D-17. Does the Governor’s award of funds to an LEA or public IHE constitute an “obligation” of those funds?

No. The Governor’s awarding of funds to an LEA or public IHE does not constitute an obligation of those funds. Rather, those funds are obligated when the LEA or IHE actually commits those funds to specific purposes consistent with the EDGAR provision referenced in Question III-D-16.

E. Uses of Funds by Public Institutions of Higher Education

III-E-1. For what purposes may a public IHE use Education Stabilization funds?

Section 14004(a) of the ARRA authorizes a public IHE to use Education Stabilization funds for –

- Education and general expenditures, in such a way as to mitigate the need to raise tuition and fees for in-State residents; or
- Modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system.

III-E-2. Are there statutory prohibitions on an IHE’s use of Education Stabilization funds?

Yes. Sections 14004(b) and (c) of the ARRA prohibit an IHE from using Education Stabilization funds for the following purposes or activities –

- To increase its endowment;
- Maintenance of systems, equipment, or facilities;
- Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or
- Modernization, renovation, or repair of facilities –
 - (a) used for sectarian instruction or religious worship; or
 - (b) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

In addition, there are other prohibitions in section 1604 of the ARRA – for example, prohibitions against using funds for an aquarium, zoo, golf course, or swimming pool – that apply to the use of Stabilization funds by any entity.

III-E-3. What types of “education and general expenditures” may an IHE support with Education Stabilization funds?

Subject to all applicable ARRA statutory requirements and prohibitions, as well as any restrictions that a Governor places on an IHE’s use of Education Stabilization funds to help mitigate the need for increases in tuition and fees paid by in-State students, an IHE may use the funds to support a broad array of activities. For example, an IHE might use Education Stabilization funds to provide:

- Support for salaries related to classroom and laboratory instruction and instructional technology;
- Academic support for libraries, laboratories, and other academic facilities;
- Institutional support for activities related to personnel, payroll, security, environmental health and safety, and administrative offices;
- Student services that promote a student’s emotional and physical well-being outside the context of the formal instructional program; and
- Student financial aid, such as IHE-sponsored grants and scholarships.

III-E-4. May an IHE use Education Stabilization Funds for modernizing, renovating, or repairing facilities?

Subject to all applicable ARRA statutory requirements and prohibitions, an IHE may use these funds for modernization, renovation, or repair of IHE facilities that are used primarily for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. If an IHE uses Education Stabilization funds for modernization, renovation, or repair of IHE facilities, it must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (*See* Section 1605 of the ARRA.)

III-E-5. May Education Stabilization funds be awarded to *private* IHEs to modernize, renovate, or repair their IHE facilities?

No. Education Stabilization funds may not be awarded to private IHEs for any purpose. However, a Governor has the discretion to use funds from the State’s Government Services Fund to modernize, renovate, or repair private IHE facilities, subject to applicable requirements in the ARRA and other Federal laws.

III-E-6. May an IHE use Education Stabilization funds to support new construction?

No. An IHE may use Education Stabilization funds only for the modernization, renovation, or repair activities described in response to Question III-E-4, or for education and general expenditures. Construction is a *capital* expenditure and not a general

expenditure. Thus, construction is not an allowable use of Education Stabilization funds by an IHE.⁴

III-E-7. May an IHE use Education Stabilization funds to pay down existing debt?

An IHE may use Education Stabilization funds to pay down existing debt unless the Governor restricts the IHE from doing so on the basis that this would not help mitigate the need for increases in tuition and fees paid by in-State students. However, the Department strongly encourages Governors and IHEs to consider how the funds could be better used to restore cuts in essential educational services, help alleviate the need to raise tuition and fees for in-State students, and stimulate the economy.

Under the statutory provisions governing the uses of the Government Services Fund, however, a Governor may *not* use Government Services funds for paying down past debt because this type of expenditure does not constitute the use of funds for “government services” within the plain meaning of those words in section 14002(b)(1) of the ARRA. (See Question IV-7.)

III-E-8. May an IHE use Education Stabilization funds to supplement or restore a “rainy day” fund rather than use the funds for specific purposes?

No. An IHE’s transfer of Education Stabilization funds to a “rainy day” fund would not constitute an “obligation” of the funds. The IHE must actually obligate the funds for specific allowable activities during the period of fund availability. (See Question III-E-11.) In addition, the ARRA expressly prohibits an IHE from using funds to increase its endowment.

III-E-9. Does a Governor have the authority to award Education Stabilization funds only to those public IHEs that agree to limit increases in tuition and fees paid by in-State students?

Yes. Since a Governor has the discretion to decide how Education Stabilization funds are allocated to public IHEs, the Governor may impose specific eligibility requirements on these institutions, so as to ensure the efficient and effective allocation of funds to meet the intent of the statute.

One of the purposes of the State Fiscal Stabilization Fund program is to help mitigate the need for increases in tuition and fees that in-State students pay to attend public IHEs. Thus, consistent with this statutory purpose, a Governor may refuse to award Education Stabilization funds to public IHEs that do not minimize tuition and fee increases for in-State students.

⁴ LEAs, on the other hand, may use Education Stabilization funds for construction because construction is an authorized activity under Title VIII of the ESEA (Impact Aid), and LEAs may use Education Stabilization funds for any activity authorized under the ESEA and the other referenced Federal education statutes.

III-E-10. Does a Governor have the authority to restrict an IHE’s use of Education Stabilization funds?

Yes. A Governor may restrict an IHE’s use of Education Stabilization funds to expenditures that would help mitigate the need for increases in tuition and fees paid by in-State students.

III-E-11. How long does an IHE have to obligate Education Stabilization funds?

An IHE may obligate Education Stabilization funds through September 30, 2011. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. 76.707.

Illustration 10: Summary – IHE Uses of Education Stabilization Funds

IHE Uses of Education Stabilization Funds	
Cautionary Note: All of the uses identified in this Illustration are subject to ARRA and other applicable requirements, including prohibitions relating to the uses of funds.	
Basic Rule	<ul style="list-style-type: none"> ➤ An IHE may use its Education Stabilization funds for – <ul style="list-style-type: none"> ➤ Education and general expenditures, in such a way as to mitigate the need to raise tuition and fees for in-State residents; or ➤ Modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing.
Governor’s Control	<ul style="list-style-type: none"> ➤ A Governor may restrict an IHE’s use of Education Stabilization funds to expenditures that would help mitigate the need for increases in tuition and fees paid by in-State students.
Modernization, renovation, and repair of IHE facilities	<ul style="list-style-type: none"> ➤ The ARRA expressly authorizes an IHE to use funds for this purpose if the facilities are used primarily for instruction, research, or student housing.

Illustration 11: Prohibitions on an IHE's Use of Education Stabilization Funds

Prohibitions on an IHE's Use of Education Stabilization Funds

Cautionary Note: This list is not meant to be all-inclusive. IHEs must carefully review, for example, all requirements in Titles XIV, XV and XVI of Division A of the ARRA relating to the Education Stabilization Fund.

An IHE may not use Education Stabilization funds for the following activities or purposes –

- To increase its endowment;
- The maintenance of systems, equipment, or facilities;
- Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
- Modernization, renovation, or repair of facilities --
 - (a) used for sectarian instruction or religious worship; or
 - (b) in which a substantial portion of the functions of the facilities are subsumed in a religious mission;
- New construction; or
- Restoring or supplementing a “rainy day” fund.

IV. The Government Services Fund

IV-1. For what purposes may a State use its Government Services Fund?

Section 14002(b) of the ARRA authorizes a State to use its Government Services funds for “public safety and other government services”, including assistance for elementary and secondary education and public IHEs. In addition, the State may use these funds for modernization, renovation, or repair of public school facilities and IHEs, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system, subject to the requirements in the ARRA.

The scope of allowable activities must be determined on the basis of State law, subject to applicable requirements in the ARRA and other Federal laws, including the limited restrictions in the ARRA on the uses of funds.

A State should expend funds from its Government Services Fund allocation in a manner that will help create jobs, reduce unemployment, stabilize and improve the State's economy, and avert the need to raise taxes. The Department also encourages Governors to use these funds in ways that support State and local educational reform initiatives, especially activities that will enable the State to make progress in the areas related to the four education reform assurances provided in the State's application for Stabilization funding.

IV-2. May a Governor use part of the State's Government Services Fund to support administrative costs associated with implementing the ARRA, including costs related to monitoring subgrantees and complying with the ARRA reporting requirements?

Yes. These types of activities are allowable as "other government services". (See Section 14002(b) of the ARRA.)

IV-3. What are the statutory limitations on the uses of the Government Services funds?

A Governor is prohibited from using Government Services funds for –

- Casinos and other gaming establishments, aquariums, zoos, golf courses, or swimming pools (Section 1604 of the ARRA);
- Financial assistance to students to attend private elementary and secondary schools, unless the funds are used to provide special education and related services to children with disabilities as authorized by the IDEA (Section 14011 of the ARRA);
- Maintenance of systems, equipment, or facilities;
- Construction, modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or
- Construction, modernization, renovation, or repair of facilities –
 - (a) used for sectarian instruction or religious worship; or
 - (b) in which a substantial portion of the functions of the facilities are subsumed in a religious mission. (See generally Section 14004(c) of the ARRA.)

IV-4. If a State chooses to use a portion of its Government Services allocation to provide assistance for elementary and secondary education, must the funds be awarded to LEAs through the State funding formulae or on the basis of the LEAs' proportionate share of funding under Part A of Title I?

No. While awarding subgrants to LEAs in such manners would be an allowable use of the Government Services funds, a State may use its Government Services allocation to provide assistance for elementary and secondary education in other ways. For example, a State may use the funds to award competitive subgrants to LEAs or other entities to help advance educational reforms in the State or to help lower dropout rates. A State might also retain Government Services funds for activities to improve teacher effectiveness and the distribution of highly qualified teachers, develop and implement comprehensive strategies to enhance the quality of the State's assessments, improve the collection and use of data to drive reforms, and support the lowest-performing schools.

IV-5. May a State use its Government Services funds for construction or infrastructure support?

Yes. The scope of allowable activities for the Government Services funds is broad, and is not limited to modernization, renovation, or repair of public school facilities or IHEs. Subject to the limitations in section 14004(c) of the ARRA, construction and infrastructure support are allowable uses of Government Services funds. If a State uses Government Services funds for construction, alteration, maintenance, or repair of a public building or public work, it must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (*See* Section 1605 of the ARRA.)

IV-6. May a State use Government Services funds to construct, modernize, renovate, or repair a *private* school facility?

Yes. A State may use these funds to construct, modernize, renovate, or repair a private school facility. However, the limitations referenced in Question IV-3 apply to such uses of funds. For example, a State is prohibited from using Government Services funds for construction, modernization, renovation, or repair of facilities (a) that are used for sectarian instruction or religious worship; or (b) in which a substantial portion of the functions of the facilities are subsumed in a religious mission. (*See generally* Section 14004(c) of the ARRA.)

IV-7. May a State use its Government Services Fund allocation for paying down past debt?

No. A State may use its Government Services Fund allocation for "public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized

green building rating system”. (See Section 14002(b)(1) of the ARRA.) Although payment of public debt obligations is a necessary government expenditure, the paying down of past debt or the paying of interest or other obligations on past debt does not constitute the use of funds for “government services” under the plain meaning of those words in the ARRA.

For example, a State may not use its Government Services Fund allocation to pay debt obligations arising from State-issued bonds or relating to the under-funding of the State’s Unemployment Compensation Trust Fund or of its pension fund for State employees.

IV-8. May a Governor use the Government Services funds to supplement or restore the State’s “rainy day” fund rather than use the funds for specific purposes?

No. The State’s transfer of Government Services funds to a “rainy day” fund would not constitute an “obligation” of the funds. The State must actually obligate the funds to specific allowable uses during the period of fund availability. (See Question IV-10.)

IV-9. Does a Governor have discretion in determining when to use Government Services funds?

Yes. A Governor has some flexibility in determining when to use these funds. However, a Governor must return to the Secretary any funds that the State does not award as subgrants or otherwise commit within two years of receipt of those funds. The Department is awarding funds to States in two phases, and there are separate deadlines by which the Governor must subgrant or commit the funds awarded in each phase.

IV-10. How long are the Government Services funds available for obligation?

The Government Services funds are available for obligation through September 30, 2011. The regulation at 34 C.F.R. 76.707 offers guidance on when an obligation occurs for various kinds of activities.

V. Construction, Modernization, Renovation, and Repair

V-1. May Stabilization funds be used for construction?

Stabilization funds may be used to support construction as follows:

- By LEAs under the Education Stabilization Fund – An LEA (including a charter school LEA) may use Education Stabilization funds for construction of new public school facilities because section 14003(a) of the ARRA authorizes an LEA to use its funds for any activities authorized under the ESEA (and certain other Federal education laws), and construction is an activity authorized under Title VIII of the ESEA (Impact Aid).

- By Governors under the Government Services Fund – A Governor may use Government Services funds for construction because section 14002 of the ARRA authorizes the use of funds for “public safety and other government services”, and construction may be considered a government service.

All construction activities under the ARRA are subject to the applicable requirements in the ARRA and other Federal statutes and the assurances that the Governor provides in the State’s Stabilization program application.

Special Note on an IHE’s Use of Education Stabilization Funds

An IHE may not use Education Stabilization funds for construction. An IHE may use the funds only for “education and general expenditures” or for “modernization, renovation, or repair of institutions of higher education facilities that are used primarily for instruction, research, or student housing” (Section 14004(a) of the ARRA). New construction does not fall under either of these categories.

V-2. May Stabilization funds be used for modernization, renovation, or repair?

Stabilization funds may be used to support modernization, renovation, and repair as follows:

- By LEAs under the Education Stabilization Fund – An LEA (including a charter school LEA) may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system. (See Section 14002(a) of the ARRA.)
- By IHEs under the Education Stabilization Fund – An IHE may use Education Stabilization funds for modernization, renovation, or repair of IHE facilities that are used primarily for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. (See Section 14004(a) of the ARRA.)
- By Governors under the Government Services Fund – A Governor may use Government Services funds for modernization, renovation, or repair of public school facilities and IHEs, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. (See Section 14002(b)(1) of the ARRA.) Under the authority to use funds for “public safety and other government services”, a Governor may also support other types of modernization, renovation, and repair activities with Government Services funds.

These activities are subject to the applicable requirements in the ARRA and other Federal statutes and the assurances that the Governor provides in the State's Stabilization program application.

V-3. Are there specific types of construction, modernization, or repair activities that may not be supported with Stabilization funds?

There are specific prohibitions that apply to the use of ARRA funds by any entity. For example, entities may not use ARRA funds for any casino or other gaming establishment, aquarium, zoo, golf course, or swimming pool. (*See* Section 1604 of the ARRA.) In addition, there is an express prohibition against any entity using Stabilization funds for: (a) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or (b) modernization, renovation, or repair of facilities used for sectarian instruction or religious worship, or in which a substantial portion of the functions of the facilities are subsumed in a religious mission. These limitations also apply to construction activities that an LEA supports under the Education Stabilization Fund and that a Governor supports under the Government Services Fund. (*See generally* Section 14004(c) of the ARRA.)

A public IHE may use Education Stabilization funds for the modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing. (*See* Section 14004(a) of the ARRA.)

An LEA may use Stabilization funds for modernization, renovation, or repair of public school facilities. (*See* Section 14003(a) of the ARRA.) However, an LEA is prohibited from using Stabilization funds for: (a) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; (b) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; and (c) school modernization, renovation, or repair that is inconsistent with State law. (*See* Sections 14003(b) and (c) of the ARRA.)

All construction, modernization, renovation, or repair activities under the ARRA are subject to the applicable requirements in the ARRA and other Federal statutes and the assurances that the Governor provides in the State's Stabilization application.

V-4. What is meant by the term “modernization, renovation, or repair”?

The term “modernization, renovation, or repair” includes altering, remodeling, repairing, or retrofitting an existing facility. Depending on the nature of the project, permissible activities might involve work related to electrical systems, plumbing systems, sewage systems, heating, ventilation or air conditioning systems, the installation of energy-efficient windows, the repair or replacement of roofs, asbestos abatement or removal,

bringing facilities into compliance with fire and safety codes, making facilities accessible, or upgrading facilities to support new programs or services.

The Department strongly encourages entities to engage in modernization, renovation, and repairs that are consistent with a recognized green-building rating.

V-5. Are there additional resources available on the construction, modernization, renovation, or repairs of schools?

The National Clearinghouse for Educational Facilities (NCEF) provides information on planning, designing, funding, building, improving, and maintaining safe, healthy, high-performance schools. NCEF's Federal Stimulus Funding for School Modernization webpage provides useful information on school construction, modernization, renovation, and repair.

Organizations supporting this "high-performance" approach to schools include:

- [Collaborative for High Performance Schools](#)
- [U.S.G.B.C. Build Green Schools Program](#)
- [National Institute of Building Sciences](#)
- [Council of Educational Facility Planners International](#)
- [Green Building Initiative Green Globes™](#)
- [American Society of Heating, Refrigerating and Air-Conditioning Engineers](#)
- [American Institute of Architects](#)
- [American Architectural Foundation](#)
- [21st Century School Fund](#)
- [Society for College and University Planning](#)
- [ENERGY STAR for K-12 Schools](#)
- [EPA Healthy School Environments](#)
- [U.S. Access Board, Classroom Acoustics](#)
- [Healthy Schools Network](#)

NOTE: The information provided in this response should not be construed as an endorsement by the U.S. Department of Education of any products or services offered or the views expressed by the referenced organizations.

V-6. Are there any wage requirements associated with the use of ARRA funds?

Yes. Any laborers and mechanics employed by contractors or subcontractors on construction, modernization, renovation, or repair projects assisted in whole or in part with ARRA funds must be paid in accordance with the prevailing wage requirements as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code (commonly called "Davis-Bacon and related acts"). (See also 20 U.S.C. 1232b Labor Standards and Section 1606 of the ARRA.) Contracts must include language that acknowledges that all contractors or subcontractors must pay laborers and mechanics employed under the contract no less than the locally prevailing

wages for corresponding work on similar projects in the area. The Davis-Bacon Act directs the U.S. Department of Labor (DOL) to determine such locally prevailing wage rates.

If you need information about the prevailing wage rates in your community, you should contact the DOL regional office serving your geographic location. A list of the regional offices with contact information can be found at the following website: <http://www.dol.gov/esa/contacts/whd/america2.htm#content>. You can also find additional Davis-Bacon and other prevailing wage information at the following DOL website: <http://www.dol.gov/esa/whd/programs/dbra/faqs.htm>.

The DOL regional offices may also provide guidance as to where the required weekly payroll submissions referenced in the Davis-Bacon regulations (*see* 29 C.F.R. 3.3 and 3.4) should be sent. Your State Department of Labor (or equivalent) may also provide further guidance on these types of issues.

V-7. Does the ARRA include a preference for quick-start activities?

Yes. Section 1602 of the ARRA specifies that in using these grant funds for infrastructure investment, recipients must give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after February 17, 2009. In addition, recipients must use grant funds in a manner that maximizes job creation and economic benefit.

V-8. What certifications must be provided when funds under the ARRA are used for infrastructure investments?

Section 1511 of the ARRA requires that a recipient Governor or other appropriate chief executive certify that any infrastructure investment made with covered funds under the ARRA has received the full review and vetting required by law and that the executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. These certifications, along with a description of the investment, estimated total cost, and amount of ARRA funds to be used, must be posted and linked on the Recovery Accountability and Transparency Board website at www.recovery.gov. A State or local agency may not use funds under the ARRA for infrastructure investments until this certification is made and posted.

VI. Maintenance of Effort

A. Stabilization Program Maintenance-of-Effort Requirements

VI-A-1. What are the specific maintenance-of-effort (MOE) requirements that apply to the Stabilization program?

Section 14005(d) of the ARRA contains MOE requirements that apply both to a State's level of support for elementary and secondary education and to its level of support for public IHEs. Those requirements are as follows:

- In each of FYs 2009, 2010, and 2011, the State will maintain State support for elementary and secondary education at least at the level of such support in FY 2006.
- In each of FYs 2009, 2010, and 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in FY 2006.

VI-A-2. Will the Department require a State to provide MOE data in its annual Stabilization program reports?

Yes. As part of the annual reports that a State must submit under section 14008 of the ARRA, the Department intends to require each State to provide updated data on the levels of State support for elementary, secondary, and public higher education, as well as data on the State's total revenues (for education and all other purposes) for the relevant years so that the Department, and more importantly the public, will be fully aware of the extent that a State is committed to providing sufficient resources to support education. (See discussion in Part VII of this guidance for additional information concerning the Stabilization program reporting requirements.)

VI-A-3. What is meant by the term "fiscal year" in determining whether a State meets the Stabilization fund MOE requirements?

For purposes of determining MOE, a State may use either the applicable Federal fiscal years (which run from October 1 through September 30) or State fiscal years.

VI-A-4. May a State demonstrate that it is complying with the elementary and secondary education MOE requirements in the ARRA on either an aggregate or a per-student basis?

Yes. In comparing the levels of State support for elementary and secondary education in FYs 2009, 2010, and 2011, a State may demonstrate that it is meeting the MOE requirement on either an aggregate or per-student basis.

VI-A-5. How does a State determine the levels of State support for elementary and secondary education or for public IHEs?

The Department has provided guidance on determining the levels of State support for education for MOE purposes in the instructions accompanying the State Fiscal Stabilization Fund application package. (*See* Appendix C of the State Fiscal Stabilization Fund Application.)

VI-A-6. In the Stabilization program application, a State must provide assurances that it will comply with the MOE requirements. What if a State anticipates, on the basis of the best available data, that it might not meet the MOE requirements for one or more years?

If a State is unable to confirm in its Stabilization fund application that it will meet both the elementary and secondary education MOE requirements and the public higher education MOE requirements for FY 2009, 2010, and 2011, it must provide in Part 4, Section B of its application the MOE waiver assurance. That assurance confirms, on the basis of the best data available, that the State will meet the criterion for an MOE waiver. A State should submit its MOE waiver request as soon as the data referenced in Illustration 12 is available. As noted in Question VI-A-10, in the near future, the Department intends to issue detailed guidance on how a State applies for an MOE waiver.

VI-A-7. What criterion governs whether the Department may grant a State's request for a waiver of the Stabilization program MOE requirements?

In determining whether a State is eligible for a waiver of the elementary and secondary education MOE requirement or the higher education MOE requirement for a given fiscal year, the Secretary will consider whether or not the State has provided for elementary, secondary, and public higher education, for the fiscal year under consideration, an equal or greater percentage of the total revenues available to the State than the percentage provided for that purpose in the preceding fiscal year.

VI-A-8. Does the same criterion apply to waivers of both the elementary and secondary education MOE requirements and the public IHE MOE requirements?

Yes. Under the ARRA, the same criterion applies to waivers of both the elementary and secondary education and the public IHE MOE requirements.

VI-A-9. For purposes of the MOE waiver criterion, what is meant by the term "total revenues available to the State"?

For purposes of the MOE waiver criterion, the term "total revenues available to the State" may include either (a) projected or actual total State revenues for education and other purposes for the relevant years *or* (b) projected or actual total State appropriations for education and other purposes for those years.

VI-A-10. Will the Department be issuing further guidance on the process for obtaining waivers of the Stabilization program MOE requirements?

Yes. In the near future, the Department intends to issue detailed guidance on how a State applies for an MOE waiver. That document will also provide additional guidance on determining the levels of State support for education and the total revenues available to a State for a given fiscal year.

Illustration 12: Applying the MOE Waiver Criterion

Applying the MOE Waiver Criterion
<p>In determining whether to grant a waiver of the Stabilization program MOE requirements, the Department will carefully examine State data demonstrating the following:</p> <ul style="list-style-type: none">• <u>A-1</u>: \$ _____. The aggregate level of State support for elementary, secondary, and public higher education for the fiscal year for which a waiver is sought (i.e., FYs 2009, 2010, or 2011).• <u>A-2</u>: \$ _____. The total revenues available to the State (for education and all other purposes) for the fiscal year for which a waiver is sought (i.e., FYs 2009, 2010, or 2011).• <u>B-1</u>: \$ _____. The aggregate level of State support for elementary, secondary, and public higher education for the fiscal year immediately preceding the fiscal year for which a waiver is sought.• <u>B-2</u>: \$ _____. The total revenues available to the State (for education and all other purposes) for the fiscal year immediately preceding the fiscal year for which a waiver is sought. <p>In order to be eligible for an MOE waiver for a given fiscal year, a State must demonstrate that the percentage of its total State revenues that were used to support elementary, secondary, and public higher education for that fiscal year was equal to or greater than the percentage of its total State revenues that were used to support elementary, secondary, and public higher education for the preceding fiscal year.</p> <p>Relative to the data referenced above, to be eligible for a waiver, the State would have to demonstrate that the percentage obtained by dividing the amount on Line A-1 by the amount on Line A-2 is at least equal to or greater than the percentage obtained by dividing the amount on Line B-1 by the amount on Line B-2.</p>

B. Using Stabilization Funds to Meet Other MOE Requirements

VI-B-1. To what extent may a State or LEA use Stabilization funds to meet the MOE requirements of other Federal programs?

Section 14012(d) of the ARRA provides that, “[u]pon prior approval from the Secretary”, a State or LEA 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 or an LEA to treat Stabilization funds as non-Federal funds for MOE purposes of other Federal programs only if the following criteria are met:

1. 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
2. The State or LEA 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 or LEA’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 or LEA 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. Impact of MOE on a State’s Receipt of Race-to-the-Top Funds

VI-C-1. How might a State’s expenditures for elementary, secondary, and public higher education affect its ability to compete successfully for Race-to-the-Top funds?

In FY 2010, the Department will award \$4.35 billion to States through a national competition under the State Incentive “Race-to-the-Top Fund”. The Race-to-the-Top Fund will help States drive substantial gains in student achievement by supporting States that are: (a) making significant progress on the four education reform goals referenced in Illustration 2; and (b) effectively using other ARRA funds.

In the near future, the Department intends to publish in the *Federal Register* for public comment proposed criteria for the Race-to-the-Top Fund competition. As part of the process for making grant awards under this competition, the Department may propose that the following factors be taken into consideration:

1. Whether a State is complying with the Stabilization program MOE requirements (unless the Secretary has granted the State an MOE waiver); and
2. Whether a State reduced the proportion of total State revenues spent on education and, if so, 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.

VII. Transparency, Accountability, Reporting, and Other Obligations

VII-1. 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, recipients of ARRA funds must maintain accurate, complete, and reliable documentation of all ARRA expenditures. The law contains very stringent reporting requirements and requires that detailed information on the uses of funds be available publicly on www.recovery.gov.

States have important oversight responsibilities and must monitor grant and subgrant supported activities to ensure compliance with all applicable Federal requirements. If a grantee or subgrantee fails to comply with requirements governing the funds, the Department may, consistent with applicable administrative procedures, take one or more

enforcement actions, including withholding or suspending, in whole or part, funds awarded under the program, 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. Moreover, recipients 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.

VII-2. How will the Department ensure transparency in the implementation of the State Fiscal Stabilization Fund program by States, LEAs, IHEs, and other entities?

As part of the process of ensuring transparency, the Department will keep the public fully apprised of all activities that occur throughout the State's implementation of the Stabilization program. From the date that a State first submits its application for funding through the date on which the last dollar is spent under the program, the Department will make information publicly available regarding a State's implementation of the program.

For example, the Department intends to post on its website a State's application for initial Stabilization funding, as well as its phase two application. The information will be linked to the Recovery website at www.recovery.gov. Similarly, information concerning how States, LEAs, IHEs, and other entities use their Stabilization funds will be available in the quarterly reports required under section 1512 of the ARRA. (*See* Question VII-3.) In addition, each State's annual report to the Department under section 14008 of the ARRA will be available through the referenced websites.

VII-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. The Department is currently developing a common reporting form that will describe for States a streamlined quarterly process for reporting on the use of the ARRA funds awarded by the Department. Additionally, OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

VII-4. What information is a State required to include in its annual Stabilization fund report?

For each year of the Stabilization program, the State must submit to the Department a report that describes:

- The uses of funds within the State;
- How the State distributed the funds it received;
- The number of jobs that the Governor estimates were saved or created with the funds;
- Tax increases that the Governor estimates were averted because of the funds;
- The State's progress in reducing inequities in the distribution of highly qualified teachers, implementing a State longitudinal data system, and developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;
- The tuition and fee increases for in-State students imposed by public IHEs and a description of any actions taken by the State to limit the increases;
- The extent to which public IHEs maintained, increased, or decreased enrollment of in-State students, including those students eligible for Pell Grants or other need-based financial aid; and
- A description of each modernization, renovation, and repair project funded, including the amounts awarded and project costs. (*See* Section 14008 of the ARRA.)

The Department also intends to collect in the annual reports detailed data on (1) a State's compliance with the MOE requirements, and (2) any construction activities supported with Stabilization funds.

VII-5. Will the Department be issuing guidance on the quarterly ARRA and annual Stabilization fund reporting requirements?

Yes. In the near future, the Department will provide additional guidance on both the quarterly ARRA reporting requirements (Section 1512 of the ARRA) and the annual Stabilization program reporting requirement. (*See* Section 14008 of the ARRA.)

VII-6. Are there rules that govern the amount of Stabilization funds that a grantee or subgrantee may draw down at any one time?

Yes. A State must have an effective system for managing the flow of funds that ensures that entities are 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 grantee or subgrantee, in accordance with U.S. Department of the Treasury regulations at 31 C.F.R. Part 205. (*See* 34 C.F.R. 80.21(b).) Grantees and subgrantees must promptly, but at least quarterly, remit to the Department interest earned on advances

(34 C.F.R. 80.21(i)). The Department will take appropriate actions against grantees and subgrantees that fail to comply with this requirement.

VII-7. Does the receipt of Stabilization funds require recipients to comply with Federal civil rights laws?

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

VIII. Resources and Information

VIII-1. Where may I obtain updated information about the State Fiscal Stabilization Fund program?

The Department will frequently post updated information about the State Fiscal Stabilization Fund program on the Department's website at <http://www.ed.gov/programs/statestabilization/index.html>.

VIII-2. Where may I obtain answers to specific questions that I may have about the State Fiscal Stabilization Fund program?

You may submit specific questions about the Stabilization program to the following e-mail address: State.Fiscal.Fund@ed.gov. Department staff will respond promptly to your questions.