

**PUBLIC OVERSIGHT ROUNDTABLE ON
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS
2009-2010 EQUALIZATION PROCESS,
BUDGET REDUCTIONS, AND REDUCTION IN
FORCE**

**Before the
Committee on the Whole
Council of the District of Columbia**

The Honorable Vincent C. Gray, Chairman

**October 29, 2009; 10:00 a.m.
Council Chamber, John A. Wilson Building**



**Testimony of
Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia**

Good morning, Chairman Gray and members of the Committee of the Whole. I am Natwar M. Gandhi, Chief Financial Officer of the District of Columbia government. I am pleased to be here for this public hearing. With me are Gordon McDonald, Deputy CFO for Budget and Planning, and Noah Wepman, CFO for the District of Columbia Public Schools (DCPS).

My testimony presents the DCPS budget numbers. As I proceed, I will be referring to the table in Attachment 1. This table is carefully designed to present an apples-to-apples comparison from FY 2009 through the FY 2010 budget formulation.

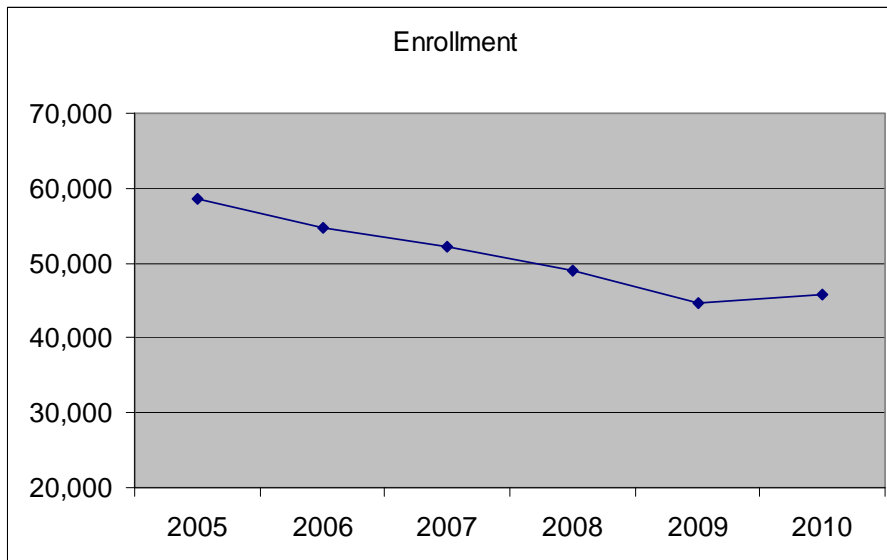
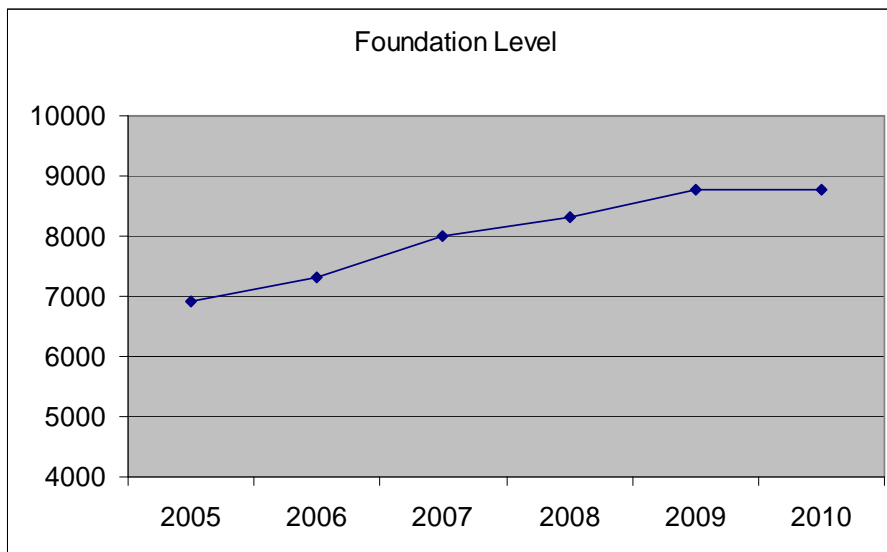
Overview

Over the past several years, the District has strived to protect and enhance the budget for primary and secondary education, because of the utmost importance of providing quality schooling to the youngest District residents. To this end, from 2005 to 2009 the annual changes to the foundation number in the Uniform Per Student Funding Formula (UPSFF, or formula funding) exceeded the annual rate of inflation. The level in 2010 remains unchanged, but that compares to a slightly negative actual inflation rate in 2009 over 2008:

<u>Year</u>	<u>Level</u>	<u>Annual increase</u>
2005	\$6,903.60	5.39% (vs. 3.07% inflation 2004 over 2003)
2006	\$7,307.47	5.85% (vs. 4.88% inflation 2005 over 2004)
2007	\$8,002.00	9.5% (vs. 2.76% inflation 2006 over 2005)
2008	\$8,322.00	4.0% (vs. 3.44% inflation 2007 over 2006)
2009	\$8,770.00	5.38% (vs. 5.46% inflation 2008 over 2007)
2010	\$8,770.00	0 (vs. -0.77% inflation 2009 over 2008)

During the same time period, enrollment has declined:

<u>Year</u>	<u>Budgeted</u>	<u>Actual (Audited)</u>
2005	62,280	58,548
2006	58,548	54,748
2007	54,748	52,191
2008	49,158	49,076
2009	47,774	44,681
2010	44,681	45,772 Reported, to be audited



During FY 2009, as the worst recession since the 1930s developed, we drastically revised downward our revenue projections for the FY 2009 – FY 2013 period. Each quarter we gave the Mayor and the Council bad news. The last installment came on June 22, after the Council had acted on the Mayor’s proposed budget from March. Attachment 2 shows the revenue estimates from September 2008 through June 2009. This sent the Mayor and Council back to the drawing boards, and local funds were reduced, as I will describe in detail.

Gross Funds

The D.C. Public Schools’ FY 2010 gross funds budget approved by the District Council on July 31st and signed into law by the Mayor on August 26, 2009, reflects operating resources of \$779.6 million for DCPS. (See line 13 in table 1), or \$7 million (0.9 percent) more than FY 2009 budget resources of \$772.6 million (which, for purposes of comparison, includes \$8 million that is part of DCPS’s FY 2010 budget but located elsewhere in FY 2009, for services provided elsewhere).

Local Funds and State Fiscal Stabilization Funds

For purposes of comparison with previous years, the appropriate amount to consider is the sum of local funds plus the State Fiscal Stabilization Funds (SFSF) (line 6). In FY 2009 the local funding, driven mostly by the formula funding, was \$570.1 million, 74 percent of gross funds available (\$772.6 million). In FY 2010, the equivalent funding is \$550.2 million, or 71 percent of the \$779.6 gross funds available.

The FY 2010 amount, \$550.2 million, is lower than FY 2009 local resources by \$19.9 million or 3.5 percent. Before the June 22 revenue estimate, the Council had approved an amount of up to \$571.6 million, including \$3.3 million set aside pending actual enrollment numbers.

Before the June 22 revenue estimate, the proposed foundation level for the formula funding was \$8,945, a 2 percent increase over the level in FY 2009. In the final approved budget, the foundation level is \$8,770 per student, unchanged from FY 2009. (See line 14 in table 1). Increases in weighting factors were applied for certain special education and the English Language Learner add-ons to the base foundation.

The final approved FY 2010 formula funding is based on enrollment of 44,681 students (line 15), equal to the FY 2009 audited student enrollment of 44,681. The formula funding supports a summer school enrollment of 5,872 students (line 15), a decline of 43 percent from the 10,300 summer school enrollment in the Mayor's proposed budget for FY 2010.

Local funds available to DCPS were reduced in the final District-approved budget, compared to the budget agreed to by the Mayor and Council in June, by the following amounts:

- \$8.1 million, by eliminating the proposed 2 percent increase in the UPSFF;
- \$9.1 million from the summer school portion of the formula funding, assuming approximately half as many students;
- \$381,000 from the allocation for Interagency Collaboration and Service Integration Commission; and

- \$501,000 that was moved from DCPS to the Office of Public Education Facilities Management (OPEFM) for services provided by OPEFM.

In addition, the \$3.3 million that was set aside in the Non-Departmental agency in the event enrollment exceeded projections was eliminated.

As a result, local resources available to DCPS are lower in the final FY 2010 District-approved budget by \$21.4 million compared to the FY 2010 plan approved for DCPS earlier in the summer, and \$19.9 million lower than the comparable amount in FY 2009. (See line 6 on table 1.)

The formula funding includes \$39.3 million in State Fiscal Stabilization Funding (SFSF) (line 2). This component of the *American Recovery and Reinvestment Act (ARRA)* is designed explicitly to keep education budgets from declining. (See Attachment 3.) All “stimulus” funds for public education are received by the Office of the State Superintendent of Education (OSSE) and distributed to the public schools agencies via Intra-District transfer. The District has been awarded a total of \$89.7 million in State Fiscal Stabilization Funding to date. The \$39.3 million allocated to DCPS represents 44 percent of the total.

Federal Payment, Federal and Private Grants, and Special Purpose

These four elements of the DCPS budget account for \$60 million or 8 percent of the gross budget for FY 2010, as shown on line 11 in table 1.

Intra-District Funding

Major grant funding comes to DCPS via Intra-District transfer from OSSE (line 12 in table 1). Two major sources of funding for DCPS are Title I and Individuals with Disabilities Education Act (IDEA) funds.

Title I provides financial assistance to schools with high numbers or percentages of low-income children. Funds are allocated through statutory formulas that are based on census poverty estimates and the cost of education in the state. IDEA supports early intervention, special education, and related services for infants, toddlers, children, and youth with disabilities.

The DCPS FY 2010 gross funds budget includes a \$12.1 million increase in Title I and \$5.5 million increase in IDEA as a result of the American Recovery and Reinvestment Act of 2009. Remaining available in OSSE for DCPS are \$11.5 million in Title I and \$7.5 million in IDEA funds, for which DCPS has applied.

Federal grant revenue is allocated with specific uses and may not be flexible depending on the circumstances. DCPS must maintain a pre-determined match to many federal funds, so cuts to local funds cannot always be replaced by grants (except for State Fiscal Stabilization Funds available through the federal American Recovery and Reinvestment Act of 2009). This prohibition is commonly referred to as the “supplement, not supplant” principle.

The US Department of Education (USDOE) has issued much guidance on the permissible uses of Title I stimulus funds. In general guidance issued April 1, 2009, USDOE listed four principles for using these funds (see Attachment 4):

1. Spend funds quickly to save and create jobs.
2. Improve student achievement through school improvement and reform.
3. Ensure transparency, reporting and accountability.
4. Invest one-time funds thoughtfully to minimize the “funding cliff.”

Then on April 24, 2009, USDOE issued guidance elaborating on the second principle of using these funds to drive school reform and improvement. The document “includes framing questions for decision making and examples of potential uses of funds to improve educational outcomes It is intended to spark ideas about how districts and schools might use ARRA funds, particularly those under the SFSF, Title I, and IDEA Part B programs.”

Also in April, USDOE issued the detailed *Guidance – Funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 Made Available Under ARRA*. Question C-9 in that guidance document addresses whether Title I stimulus funds may be used to support activities that were previously supported with non-Federal funds without violating the supplement, not supplant requirement. The answer provided by USDOE is, “it depends.” There is a presumption that federal funds are being used to supplant, but that presumption can be rebutted considering four factors: severe reductions in local funds, whether the decision to eliminate the locally-funded activity considered the availability of the federal funds, whether the locally-funded activity was consistent with all the Title I fiscal and programmatic requirements, whether the locally-funded activity met OMB standards for proper and efficient program administration.¹ The guidance goes on to say that “If an LEA [local education agency] can successfully rebut the presumption of supplanting, the LEA may use Title I, Part A ARRA to support an activity that it previously supported with non-Federal funds.”²

¹ See Attachment 5 for question C-9 and the complete answer.

² On September 2, 2009, USDOE issued the guidance document *Using Title I, Part A ARRA Funds for Grants to Local Education Agencies to Strengthen Education, Drive Reform, and Improve Results for Students*, to be used in conjunction with other guidance documents.

My reading of this voluminous guidance is that it encourages seemingly contradictory decisions: save jobs by retaining individuals on the payroll or rehire individuals to work on Title I allowable activities, but also minimize or avoid a “funding cliff,” that is, use the funds in programs or activities that are short-term since the funds will no longer be available for obligation after September 30, 2011. Difficult decisions must be made with great care and caution to find the right use of these funds in the District given today’s entire financial and educational context (including the District’s high-risk designation from USDOE), all the while complying with applicable laws and regulations so as not to lose any of the much-needed funds. As stated in the April 24 guidance, “While many school districts may need to use a portion of their ARRA funds to save jobs, every district and school should be considering how to use these funds to improve student outcomes over the next two years and to advance reforms that will have even longer-term impact.”

This concludes my remarks. My colleagues and I would be pleased to answer any questions you may have.

Attachment 1

Table 1. Comparison of DCPS Resources in FY 2009 and FY 2010 (Dollars in millions)

Fiscal year	2009	2010				Amount Variance July 31 vs. July 17	Variance July 31 vs. FY 2009	
		Mayor March	Council 2-Jun	Mayor 17-Jul	Council 31-Jul		\$	%
1 Local	562.1	533.4	514.7	503.9	510.9			
2 Stimulus funds available for balancing the budget	0.0	29.4	29.4	40.2	39.3			
3 In June, Non departmental available Oct 1, 2009 to fund 44,681 students			24.2	24.2	[included in \$510.9mm above]			
4 In June, Non departmental available if enrollment reaches 45,054			3.3	3.3	0.0			
5 Funds reflected elsewhere in March and subsequently included in DCPS	8.0	8.8	[8.8 included in 514.7mm above]	[8.8 included in 503.9mm above]	[8.0 included in 510.9mm above]			
6 Subtotal (1+2+3+4+5)	570.1	571.6	571.6	571.6	550.2	(21.4)	(19.9)	-3.5%
7 Fed. Payment	40.0	13.0	42.2	42.2	42.2		2.2	0.5%
8 Fed. Grants	9.5	10.0	10.0	10.0	10.0		0.5	N/A
9 Private Grants	3.8	3.8	3.8	3.8	3.8		0.0	N/A
10 Special Purpose	3.7	4.0	4.0	4.0	4.0		0.3	0.1%
11 Subtotal (7+8+9+10)	57.0	30.8	60.0	60.0	60.0		3.0	5.3%
12 IntraDistrict	145.5	169.5	169.5	169.5	169.5		24.0	15.9%
13 TOTAL	772.6	771.8	801.0	801.0	779.6	(21.4)	7.0	0.9%
14 <i>Foundation level</i>	\$8,770	\$8,945	\$8,945	\$8,945	\$8,770			
15 <i>Enrollment-General</i>	47,744	45,054	44,681	44,681	44,681			
16 <i>Enrollment-Summer</i>	4,919	10,300	10,300	10,300	5,872			

Table 1 Notes:

Totals may not add due to rounding.

Line 2: Stimulus funds were reduced by \$861,000 on July 31 but local funds were increased an equal amount.

Line 5: Funds reflected elsewhere in FY 2009 and included in DCPS in FY 2010:

- Council added a total of \$8.846 million after the Mayor submitted his proposal in March:
 - An increase of \$5.899 million, representing funding for DCPS contractual school security formerly budgeted in the Metropolitan Police Department;
 - An increase of \$650,000 representing logistics employees transferred to DCPS from OPEFM; and
 - An increase of \$2.297 million for a program transferred from the Deputy Mayor for Education to the DCPS Youth Engagement Office.
- \$881,000 was removed by July 31:
 - A decrease of \$501,000 representing FTEs of the Realty Office transferred to the Office of Public Education Facilities Modernization (OPEFM)
 - A decrease of \$381,000 in ICSIC
- To provide an apples-to-apples comparison, \$8.0 million – the final approved amount in FY 2010 -- is added to FY 2009 resources.

Attachment 2

FY 2009 – FY 2013 Revenue Changes Since June 2008					
Changes Since June 2008, Local Source, General Fund Revenue Estimate					
(\$ millions)					
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
June 2008 budget	5,562.9	5,831.7	6,099.2	6,402.5	-
Change September 2008	(130.7)	(151.9)	(148.5)	(162.3)	
Change December 2008	(127.1)	(303.8)	(330.4)	(327.5)	
Change February 2009	(135.7)	(346.3)	(488.3)	(613.8)	(676.9)
Change June 2009	(190.0)	(150.2)	(211.5)	(223.2)	(251.4)
June 2009 estimate	4,979.4	4,879.3	4,920.4	5,075.6	5,288.7
Change in the estimate since June 2008	(583.5)	(952.4)	(1,178.8)	(1,326.9)	n/a
Loss sustained compared to June 2008	10.5%	16.3%	19.3%	20.7%	n/a
Dollar change year to year		(100.1)	41.1	155.1	213.1
Percent change year to year		-2.0%	0.8%	3.2%	4.2%

			DC Estimate/To Date by Fiscal Year		
	Expenditure Areas	DC Totals (see note below)	FY 2009 To Date	FY 2010 To Date	FY 2011 Estimate
1	State Fiscal Stabilization Fund	89.7	0.0	89.7	0.0
2	Medicaid FMAP Increase	321.0	131.9	149.2	39.9
3	Foster care\Adoption Assistance - Title IV-E	5.7	2.7	2.4	0.6
4	Subtotal State Fiscal Stabilization Fund, Medicaid, Title IV-E	416.4	134.6	241.3	40.5
5	Federal Operating Grants	248.5	88.3	118.1	42.1
6	Federal Capital Grants	123.5	109.2	14.3	0.0
7	Non-General Fund: Unemployment Trust Fund	18.0	18.0	0.0	0.0
8	Subtotal District Government	806.4	350.1	373.7	82.6
9	Non-General Fund: Housing Authority, WASA, WMATA	231.7	104.5	104.5	22.6
10	Grand total of Expenditure Provisions	1,038.2	454.6	478.3	105.2
11	Tax Provisions	-29.4	-6.9	-17.2	-5.2
12	Total with Tax Provisions	1,008.8	447.7	461.1	100.0

Sources: FFIS, "Budget Brief 09-04: The American Recovery and Reinvestment Act Becomes Law" February 23, 2009.

DC Office of Revenue Analysis summary of "American Recovery and Reinvestment Act," Conference report.

Center on Budget and Policy Priorities, "American Recovery and Reinvestment Act of 2009: State by State Estimates of Key Provisions Affecting Low- and Moderate-Income Individuals," February 13, 2009.

PattonF Boggs, LLP. "No Small Change: The Stimulus Package and Its Impact," February 17, 2009.

Grant estimates from the following Federal agencies: Department of Education, Department of Housing and Urban Development, Department of Justice, Environmental Protection Agency.

Note: The FY 2009 and FY 2010 information for lines 1 through 8 balance to SOAR as of October 28, 2009. All FY 2011 information is based on the ORA estimate as are lines 9 and 11 for all years.

***** The Federal Capital Grants figure of \$123.5 million reflects the anticipated total of grants awards.**

American Recovery and Reinvestment Act of 2009: Vocational Rehabilitation Recovery Funds

April 1, 2009



The American Recovery and Reinvestment Act of 2009 (ARRA) appropriates significant new funding for the Vocational Rehabilitation (VR) State Grants program, authorized under Title I of the Rehabilitation Act of 1973, as amended (Rehabilitation Act). The VR State Grants program provides grants to states to help individuals with disabilities, especially those individuals with the most significant disabilities, prepare for, obtain, and maintain employment.

The ARRA provides an unprecedented opportunity for states and VR agencies to implement innovative strategies to improve employment outcomes for individuals with disabilities. Under the ARRA, \$540 million is provided for the VR State Grants program. Information about each state's formula allocation is available at: <http://www.ed.gov/about/overview/budget/statetables/index.html> This website also provides information about the State Fiscal Stabilization Fund (SFSF) under the ARRA, which is separate from the VR ARRA funds described in this Fact Sheet.

Overview of ARRA

Principles: The overall goals of the ARRA are to stimulate the economy in the short term and invest in education and other essential public services to ensure the long-term economic health of our nation. The success of the part of the ARRA providing support for programs under the Rehabilitation Act will depend on the shared commitment and responsibility of all involved in supporting improved outcomes for young people and adults with disabilities. Collectively, we must advance ARRA's short-term economic goals by investing quickly, and we must support ARRA's long-term economic goals by investing wisely, using these funds to strengthen VR programs, drive reforms, and improve results for people with disabilities.

Principles guiding the distribution and use of ARRA funds that are particularly relevant to VR programs include:

- a. **Spend funds quickly to save and create jobs.** ARRA funds will be distributed quickly to states and other entities in order to avert layoffs and create jobs. They in turn are urged to move rapidly to develop plans for using funds, consistent with ARRA's reporting and accountability requirements, and to promptly begin spending funds to help drive the nation's economic recovery.
- b. **Ensure transparency, reporting, and accountability.** To prevent fraud and abuse, support the most effective uses of ARRA funds, and accurately measure and track results, 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.

c. Invest one-time ARRA funds thoughtfully to minimize the "funding cliff."

ARRA represents a historic infusion of funds that is expected to be temporary. VR ARRA funds are available for obligation until September 30, 2011. These funds should be invested in ways that do not result in unsustainable continuing commitments after the funding expires.

Awarding VR State Grants Program ARRA Funds

The U.S. Department of Education (Department) awarded 50 percent of the VR ARRA funds to state VR agencies on April 1, 2009. The remaining funds will be awarded by September 30, 2009. These funds are allocated to state VR agencies under the program's allotment formula and are in addition to the funds received under the regular FY 2009 appropriation for the VR State Grants program. Together, these awards will constitute a state's total FY 2009 allocation for the VR State Grants program.

State VR agencies do not need to submit new applications or amend their approved FY 2009 state plans to receive VR ARRA funds. Eligibility for these VR ARRA funds is based on a state's eligibility for FY 2009 VR funds and the provision of the certification required by section 1607 of the ARRA. The assurances in a state's approved FY 2009 state plan, as well as the requirements of the ARRA, will apply to the use of the VR ARRA funds. However, in order to receive the remaining 50 percent of the state's allocation of VR ARRA funds, states must submit information, for review and approval by the Department, that addresses the recordkeeping and reporting requirements in the ARRA.

In accordance with the ARRA, state VR agencies should obligate VR ARRA funds expeditiously. State VR agencies may begin obligating VR ARRA funds immediately. All VR ARRA funds must be obligated by September 30, 2011.

Uses of VR ARRA Funds

All VR ARRA funds must be used consistently with the statutory and regulatory requirements for the VR State Grants program, as well as applicable requirements in the General Education Provisions Act (GEPA) and the Education Department General Administrative Regulations (EDGAR).

The VR ARRA funds constitute a large one-time increment in VR state grant funding that offers state VR agencies a unique opportunity to improve employment outcomes for individuals with disabilities, especially those with the most significant disabilities. Generally, funds should be used for short-term investments that have the potential for long-term benefits, rather than for commitments that the State may not be able to sustain once ARRA funds are expended. State VR agencies are encouraged to consider serving individuals on waiting lists in agencies currently using an order of selection; increasing services to eligible consumers; and expanding services to traditionally underserved and unserved populations in the state, including students with disabilities transitioning from school to the workplace.

States are also encouraged to use funds in innovative ways for significant system improvement. Examples of possible uses include:

Obtaining or improving effective case management systems that provide the agency with enhanced program management and evaluation capabilities.

Providing training to VR counselors and other persons who provide VR services that will enhance the utilization of rehabilitation technology by VR program participants and improve employment outcomes.

Providing intensive training to VR counselors and other persons who provide VR services on effective and innovative evidence-based VR practices to improve employment outcomes for persons with disabilities.

Providing intensive training to agency staff to improve the capability of the agency to analyze and use data to improve VR services and employment outcomes.

Fiscal Issues

In accordance with the goals of the ARRA, the VR ARRA funds should be obligated expeditiously and with appropriate accountability. VR ARRA funds will remain available for obligation by grantees until September 30, 2011. However, grant funds from the regular FY 2009 appropriation must be obligated by September 30, 2010 and may only be carried over into FY 2010 if the state has met the matching requirements for those funds.

The ARRA waives the matching requirements for the VR ARRA funds. However, it does not waive the requirements to match the regular grant funds. Therefore, a state still must provide the requisite non-federal funds, as provided in section 7(14) of the Rehabilitation Act, to match its FY 2009 VR grant award received through the program's regular appropriation.

A state may not count State Fiscal Stabilization funds or VR ARRA funds as non-federal funds for purposes of meeting the maintenance of effort (MOE) requirement for the VR State Grants program or the match that the state is required to make for the regular FY 2009 award.

The Secretary has authority under the Rehabilitation Act to waive a state's MOE requirement, in whole or in part, based on a determination that a waiver is necessary to permit the state to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn that causes significant unanticipated expenditures or reductions in revenue that result in a general reduction in programs within a state.

Accountability Principles

As with all federal funds, states are responsible for ensuring that VR ARRA funds are used prudently and in accordance with the law.

ARRA requires that recipients of funds made available under that act separately account for, and report on, how those funds are spent. Further information on reporting instructions will be provided online at www.FederalReporting.gov. The President and the Secretary are committed to ensuring that ARRA funds are spent with an unprecedented level of transparency and accountability. VR ARRA expenditures will be reported on the Recovery.gov Web site.

Additional Information

The Department will provide updates as additional information becomes available regarding the details of the VR ARRA funds.

The Department will also provide further information on the government-wide data collection and reporting requirements as this information becomes available.

If you have any questions or concerns, please email them to RSARecoveryActComments@ed.gov.

GUIDANCE

**Funds under Title I, Part A of the
Elementary and Secondary Education Act of 1965**

Made Available Under

The American Recovery and Reinvestment Act of 2009



April 2009

U.S. Department of Education
Office of Elementary and Secondary Education

State Fiscal Stabilization Funds in determining maintenance of effort may reduce the incidence of a State's or LEA's failing to maintain fiscal effort and the need to seek a waiver from ED, as described in C-4 and C-5. The State Fiscal Stabilization Funds would then be included in the State's or LEA's expenditures on which maintenance of effort is calculated in subsequent years (see Section 14012(e) of the ARRA). Note that, although State Fiscal Stabilization Funds may be used for general purposes and may be counted to maintain effort, those funds remain Federal funds for reporting and recordkeeping as well as other Federal purposes, such as determining compliance with the Title I, Part A supplement, not supplant and comparability requirements. See C-10 and C-12.

Supplement, Not Supplant

C-8. Do the supplement, not supplant requirements in sections 1120A(b) and (d) and 1114(a)(2)(B) of the ESEA apply to Title I, Part A ARRA funds?

Yes.

C-9. May Title I, Part A ARRA funds be used to support activities that were previously supported with non-Federal funds without violating the supplement, not supplant requirement?

It depends. A determination of supplanting necessitates determining what activities an LEA would conduct with non-Federal funds if it had no Title I, Part A funds. Generally, an LEA may not use Title I, Part A funds for activities that it would have conducted in the absence of Title I, Part A funds. Several situations give rise to a presumption of supplanting (*i.e.*, a presumption that the LEA would conduct the activity with non-Federal funds if it had no Title I, Part A funds available): (1) the activity is required by local, State, or other Federal law; (2) the LEA conducted the activity in the prior year with non-Federal funds; or (3) the LEA uses non-Federal funds to provide the same activity for non-Title I students or in non-Title I schools that it provides with Title I, Part A funds for Title I students in Title I schools.

Thus, the use of Title I, Part A ARRA funds for an activity that an LEA provided in the prior year with non-Federal funds generally gives rise to a presumption that the LEA would have continued to use non-Federal funds to conduct the activity this year in the absence of Title I, Part A ARRA funds and, therefore, the use of Title I Part A funds for that activity would constitute supplanting. The LEA may overcome this presumption, however, under the following conditions:

- The LEA can demonstrate that there was a reduction in the amount of non-Federal funds available to the LEA to pay for the activity previously supported by non-Federal funds or the LEA can demonstrate that its educational priorities with respect to its use of non-Federal funds have changed.

- The LEA makes the decision to eliminate the activity without taking into consideration the availability of Title I, Part A funds, as documented by fiscal and programmatic records confirming that, in the absence of Title I, Part A funds, the LEA would have eliminated the activity. These records, for example, might document the reduction in non-Federal funds or explain what priorities changed to warrant a shift of non-Federal funds away from those priorities and the LEA's reasons for choosing to eliminate non-Federal support for the priorities. Please note that such documentation must be *contemporaneous* with the LEA's decision-making process; it is very difficult to rebut a presumption of supplanting after the fact.
- The activity now paid with Title I, Part A funds is allowable under Title I, Part A and consistent with all Title I fiscal and programmatic requirements. This means, for instance, that a teacher formerly paid from non-Federal funds must be (1) engaged in activities that are allowable under Title I, Part A; (2) meeting the academic needs of Title I students identified through a schoolwide program school's comprehensive needs assessment or providing supplemental services in a targeted assistance school; and (3) conducting activities consistent with the LEA's application approved by the SEA.
- Using Title I, Part A funds for the activity also meets the general standards established in Office of Management and Budget (OMB) Circular A-87 *Cost Principles for State, Local, and Indian Tribal Governments* (OMB Circular A-87). OMB Circular A-87 requires that the use of funds for a specific purpose be necessary and reasonable for the proper and efficient performance and administration of the program and be authorized and not prohibited under State and local laws or regulations.

If an LEA can successfully rebut the presumption of supplanting, the LEA may use Title I, Part A ARRA funds to support an activity that it previously supported with non-Federal funds. On the other hand, if the LEA is unable to rebut this presumption, it may not use Title I, Part A ARRA funds for an activity that it conducted the previous year with non-Federal funds because such use would be inconsistent with the Title I, Part A supplement, not supplant requirements. For additional information on the Title I, Part A supplement, not supplant requirements, see the relevant section in the Title I Fiscal Guidance [available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>].

C-10. Does an SEA take into consideration an LEA's use of State Fiscal Stabilization Funds in determining whether the LEA has violated the Title I, Part A supplement, not supplant requirements?

No. The Title I, Part A supplement, not supplant requirements concern only an LEA's use of non-Federal funds. State Fiscal Stabilization Funds are Federal funds. As a result, those funds are not taken into consideration in determining whether supplanting has occurred.

