



Funding for Education in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

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Summary

On February 13, 2009, both the House and Senate passed the conference version of H.R. 1, the American Recovery and Reinvestment Act of 2009 (ARRA). Subsequently, the ARRA was signed into law by President Obama on February 17, 2009 (P.L. 111-5). The primary purposes of the ARRA focus on promoting economic recovery, assisting those most affected by the recession, improving economic efficiency by “spurring technological advances in science and health,” investing in infrastructure, and stabilizing state and local government budgets. The House had previously passed its version of H.R. 1 on January 28, 2009 (House bill), while the Senate passed S.Amdt. 570, an amendment in the nature of a substitute to H.R. 1, on February 10, 2009 (Senate bill).

The ARRA provides funds to several existing education programs administered by the U.S. Department of Education (ED), including programs authorized by the Elementary and Secondary Education Act (ESEA), the Individuals with Disabilities Education Act (IDEA), and the Higher Education Act (HEA). It also provides general funds for education to support state fiscal stabilization at the elementary, secondary, and postsecondary levels, as well as for “public safety and other government services.” Funds made available through the State Fiscal Stabilization Fund may be used for modernization, renovation, or repair of public school or higher education facilities.

Under the House and Senate versions of H.R. 1, funds also would have been provided to several existing education programs administered by the U.S. Department of Education (ED), including programs authorized by the ESEA, IDEA, and HEA. The House bill, but not the Senate bill, would have created new programs to support school modernization, renovation, and repair at the elementary, secondary, and postsecondary education levels. Both the House bill and the Senate bill would have provided general funds for education to support state fiscal stabilization.

This report provides a brief overview of the key provisions related to education programs that are or will be administered by ED that were included in the ARRA under Division A, Title VIII, Department of Education, and under Title XIV, State Fiscal Stabilization Fund. It also includes a discussion of relevant provisions that were included in the House and Senate bills. Education-related tax provisions are beyond the scope of this report.

The report will be updated as warranted by legislative action.

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On February 13, 2009, both the House and Senate passed the conference version of H.R. 1, the American Recovery and Reinvestment Act of 2009 (ARRA).¹ Subsequently, the ARRA was signed into law by President Obama on February 17, 2009 (P.L. 111-5). The primary purposes of the ARRA focus on promoting economic recovery, assisting those most affected by the recession, improving economic efficiency by “spurring technological advances in science and health,” investing in infrastructure, and stabilizing state and local government budgets. The House had previously passed its version of H.R. 1 on January 28, 2009,² while the Senate passed S.Amdt. 570, an amendment in the nature of a substitute to H.R. 1, on February 10, 2009.³

The ARRA provides funds to several existing education programs administered by the U.S. Department of Education (ED), including programs authorized by the Elementary and Secondary Education Act (ESEA), the Individuals with Disabilities Education Act (IDEA), and the Higher Education Act (HEA). It also provides general funds for education to support state fiscal stabilization at the elementary, secondary, and postsecondary levels, as well as for “public safety and other government services.” Funds made available through the State Fiscal Stabilization Fund may be used for modernization, renovation, or repair of public school or higher education facilities.

Under the House and Senate versions of H.R. 1 (hereafter referred to the House bill and the Senate bill, respectively), funds also would have been provided to several existing education programs administered by the U.S. Department of Education (ED), including programs authorized by the ESEA, IDEA, and HEA. The House bill, but not the Senate bill, would have created new programs to support school modernization, renovation, and repair at the elementary, secondary, and postsecondary education levels. Both the House bill and the Senate bill would have provided general funds for education to support state fiscal stabilization.

This report provides a brief overview of the key provisions related to education programs that are or will be administered by ED that were included in the ARRA under Division A, Title VIII, Department of Education and under Title XIV, State Fiscal Stabilization Fund. It also includes a discussion of relevant provisions that were included in the House and Senate versions of H.R. 1.⁴ Education-related tax provisions are beyond the scope of this report.

The report begins with a discussion of provisions related to elementary and secondary education. The next section of the report examines provisions related to higher education, followed by a discussion of provisions related to the Institute for Education Sciences. The report concludes with an examination of the State Fiscal Stabilization Fund and a discussion of fiscal accountability issues.

¹ The House passed the conference version of H.R. 1 by a vote of 246-183 (Roll no. 70). The Senate passed the conference version of H.R. 1 by a vote of 60-38 (Record vote no. 64).

² The House passed its version of H.R. 1 by a vote of 244-188 (Roll no. 46).

³ The Senate passed its version of H.R. 1 by a vote of 61-37 (Record vote no. 61).

⁴ The relevant provisions were included in the House bill under Division A, Title IX, Subtitle C (Labor, Health and Human Services, and Education) and Title XIII (State Fiscal Stabilization Fund); and in the Senate bill under Title VIII (Labor, Health and Human Services, Education, and related agencies) and Title XIV (State Fiscal Stabilization, Department of Education).

Funding Overview

The ARRA provides \$97.558 billion in discretionary and mandatory appropriations for education programs that are or will be administered by ED.⁵ Funds provided for education are considered FY2009 appropriations, and generally, all funds are available for obligation until September 30, 2010.⁶ Section 807 of the ARRA includes a provision allowing the Secretary to award FY2009 funds appropriated in Title VIII of the bill on the basis of state and LEA eligibility for FY2008 awards and to require states to make “prompt” allocations to LEAs. In the joint explanatory statement accompanying the ARRA, funds appropriated under the State Fiscal Stabilization Fund are to be made available upon enactment. On February 18, 2009, ED posted general information about the implementation of the ARRA.⁷ According to ED, guidelines and a timetable for each funding stream included in the ARRA will be available in “the coming days.” In addition, ED states that its goal is to get half of the funds to states within 40 days and the remaining funds to states within six months, conditioned upon “the receipt of a comprehensive reform plan.”⁸

The ARRA specifies that the funding provided through the act is considered emergency funding (Section 5). Further, appropriations provided through the ARRA have no effect on the availability of the amount provided under the Continuing Appropriations Resolution, 2009 (Division A of P.L. 110-329), and the amounts appropriated or made available under the ARRA are in addition to amounts otherwise appropriated for the fiscal year involved (Section 1601).

The House bill would have provided about \$145.045 billion for education programs that are or would have been administered by ED, while the Senate bill would have provided \$79.964 billion for such programs.⁹ While funds generally would have been appropriated in FY2009, the House bill would have made some funding available in FY2009 and some funding available in FY2010.¹⁰ The Senate bill would have appropriated and made funds available in FY2009.¹¹ **Table 1** provides an overview of the specific funding provided by the ARRA, and the funding that would have been provided under the House and Senate bills. The remainder of this report provides a more detailed discussion of the specific funding provisions included in the House and Senate bills and summarizes the provisions ultimately enacted in P.L. 111-5.

⁵ As discussed in a subsequent section of the report, under the ARRA, a portion of the funds provided to states through the State Fiscal Stabilization Fund could be used for non-education-related purposes. For purposes of determining the total amount of funds that would be available, it is assumed that all the funds provided through the State Fiscal Stabilization Fund would be used for education.

⁶ Funds for the Office of the Inspector General shall remain available until September 30, 2012.

⁷ The general information released by ED is available online at <http://www.ed.gov/policy/gen/leg/recovery/factsheet/overview.html>.

⁸ Presumably this is a reference to the state application required under the State Fiscal Stabilization Fund.

⁹ As discussed in a subsequent section of the report, under the House bill a portion of the funds provided to states through the State Fiscal Stabilization Fund could have been used for non-education-related purposes. For purposes of determining the total amount of funds that would have been available, it is assumed that all the funds provided through the State Fiscal Stabilization Fund would have been used for education.

¹⁰ All funds would have been appropriated in FY2009 except for \$831 million for FY2010 mandatory appropriations for Pell Grants.

¹¹ In most cases, the funds provided would have remained available until the end of the fiscal year following the fiscal year in which the funds were first made available.

Table I. Summary of Appropriations for Education Programs under the House-Passed and Senate-Passed Versions of H.R. 1 and under P.L. 111-5

Program	House-Passed Version of H.R. 1			Senate-Passed Version of H.R. 1	P.L. 111-5
	Funds made available in FY2009 (\$)	Funds made available in FY2010 (\$)	Total Appropriation FY2009 and FY2010 (\$)	Total Appropriation FY2009 (\$)	Total Appropriation FY2009 (\$)
Title I-A Grants to States (ESEA)	5,500,000,000	5,500,000,000	11,000,000,000	11,000,000,000	10,000,000,000
Title I-A School Improvement Grants (ESEA)	1,000,000,000	1,000,000,000	2,000,000,000	1,400,000,000	3,000,000,000
Education Technology (ESEA Title II-D)	500,000,000	500,000,000	1,000,000,000	1,000,000,000	650,000,000
Credit Enhancement Initiatives to Assist Charter Schools (ESEA Title V-B-2)	25,000,000	0	25,000,000	0	0
Fund for the Improvement of Education (ESEA Title V-D)	200,000,000	0	200,000,000	0	200,000,000
Impact Aid Section 8007: Construction (ESEA Title VIII)	100,000,000	0	100,000,000	0	100,000,000
IDEA, Part B (Grants to States)	6,000,000,000	7,000,000,000	13,000,000,000	13,000,000,000	11,300,000,000
IDEA, Part B (Preschool grants)	0	0	0	0	400,000,000
IDEA, Part C	300,000,000	300,000,000	600,000,000	500,000,000	500,000,000
McKinney-Vento Homeless Assistance	33,000,000	33,000,000	66,000,000	70,000,000	70,000,000
School Modernization, Renovation, and Repair	14,000,000,000	0	14,000,000,000	0	0
Pell Grants (discretionary appropriations)	15,636,000,000	0	15,636,000,000	13,869,000,000	15,640,000,000

Program	House-Passed Version of H.R. 1			Senate-Passed Version of H.R. 1	P.L. 111-5
	Funds made available in FY2009 (\$)	Funds made available in FY2010 (\$)	Total Appropriation FY2009 and FY2010 (\$)	Total Appropriation FY2009 (\$)	Total Appropriation FY2009 (\$)
Pell Grants (mandatory appropriations)	683,000,000	831,000,000 ^a	1,514,000,000	0	1,474,000,000
Work-Study Program ^b	245,000,000	245,000,000	490,000,000	0	200,000,000
Perkins Loan Program	0	0	0	61,000,000	0
Student Aid Administration	50,000,000	0	50,000,000	0	60,000,000
Teacher Quality Partnership Grant Programs	100,000,000	0	100,000,000	50,000,000	100,000,000
Higher Education Modernization, Renovation, and Repair	6,000,000,000	0	6,000,000,000	0	0
Institute of Education Sciences	250,000,000	0	250,000,000	0	250,000,000
State Fiscal Stabilization Fund ^c	39,500,000,000	39,500,000,000	79,000,000,000	39,000,000,000	53,600,000,000
Office of the Inspector General	14,000,000 ^d	0	14,000,000	14,000,000	14,000,000
Total	90,136,000,000	54,909,000,000^e	145,045,000,000^f	79,964,000,000	97,558,000,000^g

Source: Table prepared by CRS, February 19, 2009, based on CRS analysis of the conference version of P.L. 111-5, as well as the House- and Senate-passed versions of H.R. 1.

Notes: Title VIII of the ARRA provides \$680 million for Rehabilitation Services and Disability Research for FY2009. Title IX of the House bill would have provided \$700 million for Rehabilitation Services and Disability Research for FY2010. Title VIII of the Senate bill would have provided \$610 million for Rehabilitation Services and Disability Research for FY2009.

- a. These funds would have been provided through FY2010 mandatory appropriations.
- b. The House-passed bill specified that \$245 million would become available on October 1, 2009. It did not specify when the remaining funds would become available. To ensure that the full amount was included in this table, the remaining funds were included in the FY2009 column.
- c. Under the ARRA and the House bill, a portion of the funds provided to states through the State Fiscal Stabilization Fund could be used for non-education-related purposes. For purposes of determining the total amount of funds that would be available, it is assumed that all the funds provided through the State Fiscal Stabilization Fund would be used for education.

- d. Funding for the Office of the Inspector General under the House-passed bill was included in Title I, Section 1107.
- e. All funds would have been appropriated in FY2009 except for \$831 million for FY2010 mandatory appropriations for Pell Grants.
- f. All funds would be appropriated in FY2009 except for \$831 million for FY2010 mandatory appropriations for Pell Grants.
- g. Total discretionary funding is \$96.084 billion.

Funding for Elementary and Secondary Education

The ARRA provides funding for a number of existing education programs, including the two federal education programs that provide the largest amounts of funding for elementary and secondary education—Title I-A Grants to Local Educational Agencies (ESEA) and IDEA, Part B Grants to States. It also provides funding for School Improvement Grants (ESEA Title I-A); Education Technology (ESEA Title II-D); IDEA, Part C (Grants for Infants and Toddlers); IDEA, Part B (Preschool Grants); and the McKinney-Vento Homeless Assistance Act. Both the House and Senate bills would have provided funds for all of these purposes, except that the House bill would not have provided funding for IDEA, Part B (Preschool Grants). The ARRA includes funding for the Fund for the Improvement of Education (FIE, ESEA Title V-D-1) and Impact Aid Section 8007 (Grants for Construction, ESEA Title VIII). Funds for these programs would have been provided only under the House bill. The House bill only also would have provided funding for Credit Enhancement Initiatives to Assist Charter Schools (ESEA Title V-B-2) and a new program to provide school construction funds to LEAs. The ARRA does not provide funds for these purposes, although funds under the State Fiscal Stabilization Fund (see subsequent discussion) could be used for school modernization, renovation, and repair. Provisions applicable to each of these programs are discussed below.

ESEA Programs Included in the ARRA

The primary source of federal aid to K-12 education is the Elementary and Secondary Education Act, particularly its Title I, Part A program of Education for the Disadvantaged. The ESEA was initially enacted in 1965 (P.L. 89-10), and was most recently amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB, P.L. 107-110). Other major ESEA programs provide grants to support the education of migrant students; recruitment of and professional development for teachers; language instruction for limited English proficient (LEP) students; drug abuse prevention programs; after-school instruction and care; expansion of charter schools and other forms of public school choice; education services for Native American, Native Hawaiian, and Alaska Native students; Impact Aid to compensate local educational agencies for taxes foregone due to certain federal activities; and a wide variety of innovative educational approaches or instruction to meet particular student needs.¹² This section discusses ESEA programs that would receive additional funding through the House and Senate bills and, where appropriate, provides estimates of the amounts that states would receive.

Title I-A Grant to LEAs

Title I, Part A, of the ESEA authorizes federal aid to local educational agencies (LEAs) for the education of disadvantaged children. Title I-A grants provide supplementary educational and related services to low-achieving and other pupils attending pre-kindergarten through grade 12 schools with relatively high concentrations of pupils from low-income families. For FY2008, the program received an annual appropriation of \$13.9 billion. Portions of each annual appropriation for Title I-A are allocated under four different formulas—Basic, Concentration, Targeted, and Education Finance Incentive Grants (EFIG)—although funds allocated under all of these

¹² For additional information about the ESEA, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Wayne C. Riddle and Rebecca R. Skinner.

formulas are combined and used for the same purposes by recipient LEAs. Although the allocation formulas have several distinctive elements, the primary factors used in all four formulas are estimated numbers of children aged 5-17 in poor families plus a state expenditure factor based on average expenditures per pupil for public K-12 education. Other factors included in one or more formulas include weighting schemes designed to increase aid to LEAs with the highest concentrations of poverty, and a factor to increase grants to states with high levels of expenditure equity among their LEAs.¹³

Under three of the formulas—Basic, Concentration, and Targeted Grants—funds are calculated initially at the LEA level, and state total grants are the total of allocations for LEAs in the state, adjusted to apply state minimum grant provisions. Under the fourth formula, Education Finance Incentive Grants, grants are first calculated for each state overall, with state totals subsequently suballocated by LEA using a different formula. A primary rationale for using four different formulas to allocate shares of the funds for a single program is that the formulas have distinct allocation patterns, providing varying shares of allocated funds to different types of LEAs or states (e.g., LEAs with high poverty rates or states with comparatively equal levels of spending per pupil among their LEAs).

The House and Senate bills would have provided \$11 billion in supplemental appropriations for Title I-A Grants to LEAs. The House bill would have made \$5.5 billion available on July 1, 2009, and \$5.5 billion available on July 1, 2010. The Senate bill would have made the entire \$11 billion available in FY2009. Under both bills, funds would have been allocated through the Targeted Grant and EFIG formulas only. Half of the available funds for a given fiscal year would have been appropriated through each formula. For example, for funds made available under the House bill on July 1, 2009, \$2.75 billion would have been appropriated through the Targeted grant formula and \$2.75 billion would have been appropriated through the EFIG formula.

While both bills would have required funds to be used for the purposes authorized in Title I-A of the ESEA, the Senate bill would also have added requirements for LEAs receiving these funds. First, LEAs would have been required to use at least 15% of the funds received for activities serving children who are not yet at a grade level at which the LEA provides a free public education and to support preschool programs for children.¹⁴ Second, the Senate bill would have required each LEA to file a school-by-school listing of per pupil expenditures from state and local sources for the 2008-2009 school year with the state educational agency (SEA) by December 1, 2009.

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The ARRA provides \$10 billion in supplemental FY2009 appropriations for Title I-A. As with both the House and Senate bills, the funds will be provided equally through the Targeted Grant and EFIG formulas only (i.e., \$5 billion through each formula). One feature of these formulas is that LEAs with an estimated school-age child poverty rate of less than 5.0% are not eligible for grants. According to H.Rept. 111-16, these funds should be available to LEAs during school year

¹³ For detailed information about the Title I-A formula, see CRS Report RL34721, *Elementary and Secondary Education Act: An Analytical Review of the Allocation Formulas*, by Wayne C. Riddle and Rebecca R. Skinner.

¹⁴ With respect to the preschool programs, the LEA may provide the services directly or through a subcontract with the local Head Start agency or an agency operating an Even Start program, an Early Reading First program, or another comparable public early childhood development program.

2009-2010 and 2010-2011 to help LEAs “mitigate the effect of the recent reduction in local revenues and state support for education.” While the ARRA did not retain the Senate provision that at least 15% of funds received by LEAs had to be used for preschool programs, the ARRA does retain the Senate provision requiring reporting on per-pupil expenditures. More specifically, each LEA is required to file a school-by-school listing of per-pupil expenditures from state and local sources during the 2008-2009 school year by December 1, 2009.¹⁵ Further, the ARRA requires the SEA to report these data to the Secretary of Education (hereafter referred to as the Secretary) by March 31, 2010.

Title I-A School Improvement Grants

School Improvement Grants (authorized under ESEA, Section 1003(g)) provide supplementary funds to states and LEAs for school improvement purposes. States are eligible to apply for these grants, which are allocated in proportion to each state’s share of funds received under ESEA Title I, Parts A, C (Migrant Education Program), and D (Neglected and Delinquent Children and Youth). States must use at least 95% of the funds received to make subgrants to LEAs. Subgrants made to LEAs must be between \$50,000 and \$500,000 for each school, and must be renewable for up to two additional years if schools meet the goals of their school improvement plans. Subgrants must be used by LEAs to support school improvement (ESEA, Sections 1116 and 1117). LEAs with the lowest-achieving schools and the greatest commitment to ensuring that such funds are used to provide “adequate resources” to enable the lowest-achieving schools to meet the goals under school and LEA improvement plans must be given priority in the awarding of subgrants. In FY2008, this program received an annual appropriation of \$491 million. In addition to separately appropriated funds, states are generally required to reserve 4% of their Title I-A grants to LEAs for school improvement activities.

The House bill would have appropriated \$2 billion in supplemental appropriations for School Improvement Grants with \$1 billion becoming available on July 1, 2009, and the remaining funds becoming available on July 1, 2010. The Senate bill would have appropriated \$1.4 billion in supplemental appropriations for this program and made all funds available in FY2009. In addition, the Senate, but not the House bill, would have required ED to encourage states to use 40% of their allocations for middle and high schools.

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The ARRA provides \$3 billion in supplemental FY2009 appropriations for School Improvement Grants. According to H.Rept. 111-16, these funds should be available to LEAs during school year 2009-2010 and 2010-2011 to help LEAs “mitigate the effect of the recent reduction in local revenues and state support for education.” The ARRA requires each LEA to file a school-by-school listing of per-pupil expenditures from state and local sources during the 2008-2009 school year by December 1, 2009.¹⁶ SEAs are then required to report these data to the Secretary by March 31, 2010. In addition, according to H.Rept. 111-16, ED is required to encourage states to use 40% of their School Improvement Grants for middle and high schools. Education Technology

¹⁵ These data would support analyses of the impact, and likely aid in the administration, of the ESEA Title I-A comparability requirement that is discussed later in this report (under Fiscal Accountability). LEAs receiving School Improvement Grants (see subsequent discussion) must also meet this requirement.

¹⁶ This is identical to a requirement for LEAs receiving Title I-A funds.

The EdTech program provides grants to SEAs and LEAs to increase access to educational technology, support the integration of technology into instruction, enhance technological literacy, and support technology-related professional development of teachers. Funds are allocated to states in proportion to Title I-A grants, with a state minimum grant amount of 0.5% of total funding for state grants. At least 95% of state grants must be allocated to LEAs (and consortia of LEAs and other entities)—50% by formula, in proportion to Title I-A grants, and 50% competitively. In FY2008, this program received an annual appropriation of \$267 million.

Both the House and Senate bills would have appropriated \$1 billion in supplemental appropriations for EdTech. The House bill would have made \$500 million available on July 1, 2009, and the remaining funds available on July 1, 2010, while the Senate would have made all funds available in FY2009.

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The ARRA provides \$650 million in supplemental FY2009 appropriations for EdTech. According to H.Rept. 111-16, these funds should be available to LEAs during school year 2009-2010 and 2010-2011 to help LEAs “mitigate the effect of the recent reduction in local revenues and state support for education.”

Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation

Under the Credit Enhancement program, competitive grants are awarded to enhance the availability of financing for the acquisition, construction, or renovation of public charter school facilities. Grants are made to at least three entities that have been approved by the Secretary as having demonstrated innovative methods of assisting charter schools in addressing the costs of acquiring, constructing, and renovating facilities by enhancing the availability of loans or bond financing.¹⁷ The House bill would have provided a one-time grant of \$25 million in supplemental appropriations for this program. The Senate bill would not have appropriated additional funds for this program.

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The ARRA does not provide funds for the Credit Enhancement program.

Fund for the Improvement of Education

ESEA Title V-D authorizes a series of competitive grant programs intended to support a variety of innovative K-12 educational activities. It includes both a broad authority for innovative activities selected at the discretion of the Secretary of Education, and a series of required studies, in Subpart 1. It also authorizes a number of specific activities (e.g., Elementary and Secondary

¹⁷ In FY2008, this program did not receive any funds through annual appropriations. However, language was included in the Consolidated Appropriations Act (P.L. 110-161, Division G, Title III) allowing the Secretary to use up to \$25 million of the funds appropriated for Public Charter Schools (ESEA, Title V-B) specifically for the Credit Enhancement program.

School Counseling Programs, Partnerships in Character Education, Smaller Learning Communities) in Subparts 2 through 21. In FY2008, Title V-D-1 received an annual appropriation of \$122 million.

The House bill, but not the Senate bill, would have provided \$200 million in supplemental FY2009 appropriations specifically for Subpart 1 activities to be used for purposes specified in FY2008 appropriations.¹⁸ These funds had to be used to provide competitive grants to LEAs, states, or partnerships of an LEA, state, or both and at least one non-profit organization to develop and implement performance-based teacher and principal compensation systems in high-need schools under the Teacher Incentive Fund (TIF) program.¹⁹ These systems would have had to consider gains in student academic achievement as well as classroom evaluations conducted at multiple times during the school year among other factors and provide educators with incentives to take on leadership roles and additional responsibilities. Up to 5% of the \$200 million would have been available for technical assistance, training, peer review of applications, program outreach, and evaluation activities. Further, the House bill specified that a portion of these funds had to be used by the Institute of Education Sciences (IES) to conduct an evaluation of the impact of performance-based teacher and principal compensation systems supported by the competitive grants on teacher and principal recruitment in high-need schools and subjects.

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The ARRA provides \$200 million in supplemental FY2009 appropriations for the same purposes required in the House bill.²⁰ The ARRA, however, permits the Secretary to reserve up to 1% of the \$200 million for management and oversight of the activities supported with the funds appropriated.

Impact Aid Section 8007

The Impact Aid program compensates LEAs for “substantial and continuing financial burden” resulting from federal activities. These activities include federal ownership of certain lands, as well as the enrollments in LEAs of children of parents who work or live on federal land (e.g., children of parents in the military and children living on Indian lands). Section 8007 specifically provides funds for construction and facilities upgrading to certain LEAs with high percentages of children living on Indian lands or children of military parents. These funds are used to make formula and competitive grants. In FY2008, \$18 million was appropriated for Section 8007 payments.

Under the statute, 40% of the funds appropriated under Section 8007 are used to make construction payments by formula to LEAs receiving Impact Aid Section 8003 payments²¹ and in

¹⁸ The provisions related to the competitive grants to LEAs are included in the Department of Education Appropriations Act, 2008 under the heading of “Innovation and Improvement” (P.L. 110-161).

¹⁹ While the relevant provisions in the fifth proviso included in the Department of Education Appropriations Act, 2008, under the heading of “Innovation and Improvement” (P.L. 110-161) specified that \$99 million was to be used for these purposes, it appears that all of the funds provide through the House bill would have been used for this purpose; that is, the \$200 million would have been used the way the \$99 million were to be used.

²⁰ H.Rept. 111-16 specifies that the \$200 million is to be used for the TIF program.

²¹ Section 8003(b) authorizes payments to LEAs to compensate them for the cost of serving certain groups of federally connected children.

which students living on Indian land constitute at least 50% of the LEA's total student enrollment or military students living on or off base constitute at least 50% of the LEA's total student enrollment. The funds available for construction payments are divided equally between these two groups of LEAs (20% of the total Section 8007 appropriation going to each group). The remaining 60% of Section 8007 appropriations are used to make school facility emergency and modernization competitive grants. Emergency repair grants must be used to repair, renovate, or alter a K-12 public school facility to ensure the health and safety of students and staff. Modernization grants may be used to relieve overcrowding or upgrade facilities to support a "contemporary educational program."²²

The House bill would have provided \$100 million in supplemental appropriations for Section 8007 in FY2009. The Senate bill would not have appropriated funds for this purpose.

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The ARRA provides \$100 million supplemental FY2009 appropriations for Impact Aid Section 8007. While 40% of the Section 8007 funds will be made available by formula and 60% of the Section 8007 funds will be made available by competitive grant (as is done in current law), the ARRA modifies some of the eligibility and priority criteria for receiving funds. For example, the 40% of funds provided through formula grants will be based on each LEA's proportion of military children and children living on Indian lands. In addition, the ARRA drops the requirements that at least 50% of an LEA's student enrollment must be composed of military children or children living on Indian lands to receive a grant, and that the 40% of funds available be divided equally between LEAs enrolling at least 50% military children and those enrolling at least 50% children living on Indian lands.²³ According to H.Rept. 111-16, modifications to the current statutory provisions were made to allow for the greater participation of LEAs serving both military students and students living on Indian lands and to allow funding to be better targeted to LEAs with "shovel ready" projects.

IDEA Programs Included in the ARRA

IDEA is the major federal statute that supports special education and related services for children with disabilities.²⁴ As a condition of accepting IDEA funding, the act requires that states and LEAs provide a free appropriate public education (FAPE) to each eligible child with a disability. The IDEA is divided into four parts. Part A contains the general provisions, including the purposes of the act and definitions. Part B, the most often discussed part of the act, contains provisions relating to the education of school aged children (grants to states) and a state grant program for preschool children with disabilities (Section 619). Part C authorizes state grants for programs serving infants and toddlers with disabilities, while Part D contains the requirements for various national activities designed to improve the education of children with disabilities. In FY2008, IDEA, Part B Grants to States received an annual appropriation of \$10.9 billion;²⁵

²² U.S. Department of Education, Purpose of the Impact Aid Section 8007B Discretionary Construction Grant Program, at [<http://www.ed.gov/programs/8007b/index.html>].

²³ See Sec. 805 for additional information about how funds would be distributed under Impact Aid Section 8007.

²⁴ For additional information about IDEA, see CRS Report RL32085, *Individuals with Disabilities Education Act (IDEA): Current Funding Trends*, by Ann Lordeman.

²⁵ The FY2008 annual appropriation for IDEA, Part B (Section 619) was \$374 million.

IDEA, Part C received an annual appropriation of \$436 million; and IDEA, Part D received an annual appropriation of \$225 million.

Both the House and Senate bills would have provided supplemental FY2009 appropriations for IDEA, Part B (grants to states) and Part C. For Part B, the House bill would have provided a total of \$13 billion with \$6 billion made available on July 1, 2009, and \$7 billion made available on July 1, 2010. The Senate bill, as detailed in its report (S.Rept. 111-3) would have provided \$13 billion for FY2009.

Actual and proposed Part B grants to states are often discussed in terms of the percent of the “excess” cost of educating children with disabilities that the federal government will pay. The metric for determining this excess cost is based on the national average per-pupil expenditure (APPE). In 1975, with the enactment of the Education for All Handicapped Children Act (P.L. 94-142), it was determined that the federal government would pay up to 40% of this excess cost.²⁶ For FY2008, the estimated percentage of APPE provided by the federal government under IDEA, Part B was 17.2%. The estimated percentage for FY2009 based on regular appropriations and funding provided through the House bill would have been 26.3%. For FY2010, based on regular appropriations and funding provided through the House bill, the estimated percentage would have been 26.8%. The estimated percentage based on the Senate bill and regular appropriations for FY2009 would have been 37.6%.

For Part C, the House bill would have provided a total of \$600 million for Part C with \$300 million becoming available on July 1, 2009, and the remaining funds becoming available on July 1, 2010. The Senate bill, as detailed in its report (S.Rept. 111-3), would have provided \$500 million for FY2009. Under Part C, the Secretary is required to reserve 15% of any funds appropriated in excess of \$460 million for incentive grants to states to continue early intervention services until kindergarten as described in Section 635(c).

The Senate bill would have required that each LEA receiving funds for Part B use not less than 15% of the funds for special education and related services for preschool children (Section 619.) The House bill had no comparable provision.

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The ARRA provides \$11.3 billion in supplemental FY2009 appropriations for IDEA Part B, which will be available during school years 2009-2010 and 2010-2011. The estimated percentage of the “excess” cost of educating children with disabilities that the federal government will pay based on the ARRA and regular appropriations for FY2009 is 34.2%.

The ARRA also provides \$500 million in FY2009 funds for IDEA Part C, which will be available during school years 2009-2010 and 2010-2011. Like both the House and Senate bills, the ARRA specifies that any funds remaining after the incentive grants are awarded are to be allocated to states by formula in accordance with section 643(e).

²⁶ “In 1975, when the Act was originally enacted, Congress established the goal of providing up to 40% of the national average per pupil expenditure to assist States and local educational agencies with the excess costs of educating students with disabilities” H.Rept. 108-77, p.93

Finally, the ARRA provides \$400 million for the IDEA preschool program (Section 619). Special issues have arisen with respect to the share of IDEA funds provided under H.R. 1 that might be allocated to outlying areas²⁷ or the Bureau of Indian Affairs.²⁸

Funding for McKinney-Vento Homeless Assistance in the ARRA

This program, also known as the Education for Homeless Children and Youth program, provides assistance to SEAs to ensure that all homeless children and youth have equal access to the same free, appropriate public education, including public preschool education, that is provided to other children and youth.²⁹ Funds are allocated to states in proportion to ESEA Title I-A grants, with a state minimum of \$150,000 or 0.25% of total grants, whichever is greater. In FY2008, \$64 million was appropriated for this program.³⁰

Competitive grants made by SEAs to LEAs under this program must be used to facilitate the enrollment, attendance, and success in school of homeless children and youth. The LEAs may use the funds for activities such as tutoring, supplemental instruction, and referral services for homeless children and youth, as well as providing them with medical, dental, mental, and other health services. In order to receive funds, each state must submit a plan indicating how homeless children and youth will be identified, how assurances will be put in place that homeless children will participate in federal, state, and local food programs if eligible, and how the state will address such problems as transportation, immunization, residency requirements, and the lack of birth certificates or school records.

The House bill would have provided a total of \$66 million for this program in supplemental FY2009 appropriations, with \$33 million becoming available on July 1, 2009, and \$33 million becoming available on July 1, 2010. These funds would have been allocated to states using the formula authorized in current statute. States would have made subgrants to LEAs on a competitive basis as is done under current law. The Senate bill would have provided \$70 million

²⁷ In making allocations to outlying areas and freely associated states under Part B, and to outlying areas under Part C, in the past, while the Secretary has had authority to reserve up to 1% of the total appropriation for grants to these entities, the practice has been to increase the previous year allocation by the rate of inflation according to the Consumer Price Index–Urban (CPI-U). If the Secretary continues this practice, funding for outlying areas and freely associated states would be provided entirely through the FY2009 regular appropriation, and they would receive no additional funds under H.R. 1. However, it appears that under the authority of IDEA, Part B, Section 611(b)(1), and under Part C, Section 643(a)(1), the Secretary would be permitted to provide up to 1% of the FY2009 appropriation and stimulus for the outlying areas and freely associated states.

²⁸ Regarding the Part B allocation to the Bureau of Indian Affairs (BIA), while IDEA requires the Secretary to reserve 1.226% of the Part B appropriation (Section 611(b)(2)), regular appropriations acts have specified that the Secretary is to reserve the lesser of the amount allocated for the previous year adjusted for inflation or the amount allocated for the previous year adjusted by the percentage increase in the funds appropriated for Part B. The Senate bill, but not the House bill, also contained this provision. Regarding the Part C allocation to BIA, IDEA requires the Secretary to reserve 1.25% of the total amount available to states under Part C for payments to BIA (Section 643(b)(1)). Neither the Senate nor the House bill would have changed this provision. The ARRA specifies that the total amount for BIA under Part B and the total amount under Part C for FY2009 “under this and all other acts ... whenever enacted” shall be the FY2008 amount for each of these set-asides increased by the amount of inflation.

²⁹ For more information about this program, see CRS Report RL30442, *Homelessness: Targeted Federal Programs and Recent Legislation*, coordinated by Libby Perl, pp. 4-5.

³⁰ The program also received \$15 million under the Continuing Appropriations Resolution, 2009 (Division B, Title I, Chapter 7 of P.L. 110-329) to provide additional funding to LEAs whose enrollment of homeless students increased as a result of natural disasters that occurred in 2008.

for this program in supplemental FY2009 appropriations. These funds would not have been allocated to states using the current formula. Rather, funds would have been allocated in proportion to the number of homeless students identified by the state during the 2007-2008 school year relative to the number of homeless students identified nationally during the 2007-2008 school year. States would have made subgrants to LEAs on a competitive basis or using a formula based on the number of homeless students identified by LEAs in the state.

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The ARRA provides \$70 million in supplemental FY2009 appropriations for this program. According to H.Rept. 111-16, these funds should be available to LEAs during school year 2009-2010 and 2010-2011 to help LEAs “mitigate the effect of the recent reduction in local revenues and state support for education.” Grants will be allocated to states in proportion to the number of homeless students identified by the state during the 2007-2008 school year relative to the number of homeless students identified nationally during the 2007-2008 school year, rather than under existing statutory provisions. SEAs will make subgrants to LEAs on a competitive basis or using a formula based on the number of homeless students identified by LEAs in the state. The Secretary is required to make grants to states not later than 60 days after the date of enactment. Subsequently, SEAs must make subgrants to LEAs not later than 120 days after receiving funds from the Secretary.

School Modernization, Renovation, and Repair

Currently, there are no federal education programs dedicated to providing grants for the modernization, renovation, or repair of elementary and secondary schools (hereafter referred to as funds for school renovation). The House bill, but not the Senate bill, would have provided a dedicated source of funding in FY2009 for these purposes.³¹

The House bill would have provided \$14 billion in supplemental FY2009 appropriations for school renovation. After a reservation of 1% for the outlying areas and the Secretary of the Interior to provide assistance to Bureau of Indian Affairs schools, and a reservation of \$6 million for the Secretary of Education for administration and oversight, the remaining funds would have been allocated to each state in proportion to the amount of FY2008 Title I-A funding received by all the LEAs in the state relative to the total amount received by all the LEAs in every state. States would have been permitted to reserve up to 1% of their allocations for providing technical assistance; developing a database that includes an inventory of public school facilities in the state and their modernization, renovation, and repair needs; and developing a school energy efficiency quality plan. The remaining funds would have been allocated to LEAs in proportion to the amount of FY2008 Title I-A funding received by the LEA relative to the total amount of funding received by all LEAs in the state. The minimum grant amount for LEAs would have been \$5,000. Under general provisions (Sec. 1109), the House bill would have prohibited any funds from being used for an aquarium, zoo, golf course, or swimming pool.

³¹ For more information about federal support for school construction and renovation, see CRS Report RS22894, *School Construction, Modernization, Renovation, and Repair Issues*, by Gail McCallion.

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The ARRA does not include a dedicated source of federal funds for school modernization. School modernization, however, is an allowable use of funds under the State Fiscal Stabilization Fund (see subsequent discussion).

Funding for Higher Education

The ARRA provides supplemental appropriations for several programs authorized under the Higher Education Act (HEA). It provides \$16 billion in discretionary appropriations for the Federal Pell Grant program, the Federal Work-Study (FWS) program, and the Teacher Quality Partnership Grant program, and for the administration of federal student aid programs authorized under Title IV of the HEA. The ARRA also provides \$1.474 billion in mandatory appropriations for the Federal Pell Grant program.

The House bill would have provided \$16.276 billion in discretionary funding for the Federal Pell Grant program, the FWS program, and the Teacher Quality Partnership Grant program, and for the administration of federal student aid programs. It would also have provided \$1.514 billion in mandatory funding for the Federal Pell Grant program. The House bill would have amended the federal student loan programs by increasing borrowing limits on Stafford Loans made to undergraduate students. In addition, the House bill would have provided \$6 billion in discretionary funding for a new program of grants to state higher education agencies (SEAs) for higher education facility modernization, renovation and repair.

The Senate bill would have provided \$13.980 in discretionary funding for the three HEA programs (the Federal Pell Grant program, the Federal Perkins Loan program, the Teacher Quality Enhancement Grant program), but would not have provided any funding for higher education modernization, renovation, and repair. Funding for higher education as proposed under the House and Senate bills, and as enacted under the ARRA, is briefly discussed below.

Federal Pell Grant Program

Under the Federal Pell Grant program, grants are made available to low-income undergraduate students to help offset their costs associated with obtaining a postsecondary education.³² The Pell Grant program is the largest source of federal grant aid to postsecondary students. Pell Grants are portable, in that the grant aid follows students to the eligible postsecondary education institutions in which they enroll. The Pell Grant award amount is primarily based on the financial resources that a student and the student's family are expected to contribute toward postsecondary education expenses—the student's expected family contribution (EFC). The Pell Grant award is considered to be the foundation of a student's financial aid package because all other forms of federal student aid (e.g., federal student loans) are awarded after the Pell Grant award amount has been determined.

Both discretionary and mandatory appropriations fund the Federal Pell Grant program; and in general, annual appropriations measures specify maximum individual Pell Grant award amounts.

³² The Federal Pell Grant program is authorized under the Title IV, Part A, Subpart 1 of the HEA.

A mandatory Pell Grant add-on has the effect of increasing the individual Pell Grant award amount above the amount available from funds provided in discretionary appropriation measures.³³ For FY2008, \$14.215 billion in discretionary funding, and \$2.030 billion in mandatory funding was provided for the Pell Grant program. For the 2008-2009 award year, the maximum appropriated Pell Grant award amount was \$4,731. This was comprised of a discretionary maximum award amount of \$4,241, and a mandatory add-on of \$490.³⁴

The House bill would have provided \$15.636 billion for the Federal Pell Grant program, to be made available through September 30, 2011. These funds would have been in addition to discretionary funds anticipated to be appropriated for the Federal Pell Grant program as part of a separate FY2009 discretionary appropriations measure under which the appropriated maximum Pell Grant award amount would be \$4,360.³⁵ As a result of both appropriations measures, the discretionary maximum Pell Grant award amount for the 2009-2010 award year would have been increased to \$4,860. Combined with the mandatory add-on of \$490, under the House bill, the maximum Pell Grant award amount for the 2009-2010 award year would have been increased to \$5,350.

The House bill also would have increased the mandatory appropriations provided for the Federal Pell Grant program for FY2009 by \$683 million, from \$2.090 billion to \$2.773 billion; and for FY2010 by \$831 million, from \$3.030 billion to \$3.861 billion.

The Senate bill would have provided \$13.869 billion for the Federal Pell Grant program, to be made available through September 30, 2011. These funds would be provided in addition to amounts anticipated to be separately appropriated for FY2009. Funding provided under the Senate bill would have increased the maximum Pell Grant award amount by \$281 above the maximum award amount to be provided for the 2009-2010 award year. For the 2010-2011 award year, the Senate bill would have also increased the maximum Pell Grant award amount by \$400 above the 2008-2009 award year maximum Pell Grant award amount (\$4,731). Finally, the Senate bill specified that funds would have been provided to reduce or eliminate the Pell Grant shortfall.

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The ARRA provides \$15.64 billion in supplemental discretionary appropriations for the Federal Pell Grant program for FY2009. The ARRA also provides \$1.474 billion in mandatory appropriations for the Federal Pell Grant program, with \$683 million provided for FY2009, and \$831 million provided for FY2010. For the 2009-2010 award year, the maximum Pell Grant award will be \$5,350. This will consist of a discretionary maximum award amount of \$4,860 (funded by the combination of appropriations provided under the ARRA and appropriations anticipated to be provided under a separate FY2009 appropriations measure) and an add-on of \$490 (funded by mandatory appropriations). The mandatory appropriations provided for FY2010

³³ Mandatory funding for Pell Grant add-ons was enacted under the College Cost Reduction and Access Act (CCRAA; P.L. 110-84). For additional information on the CCRAA, see CRS Report RL34077, *Student Loans, Student Aid, and FY2008 Budget Reconciliation*, by Adam Stoll, David P. Smole, and Charmaine Mercer.

³⁴ For additional information on the Federal Pell Grant program and maximum award amounts, see CRS Report RL34654, *The Higher Education Opportunity Act: Reauthorization of the Higher Education Act*, by David P. Smole et al.

³⁵ Draft report language to the American Recover and Reinvestment Act, pp. 59-60, available from the House Committee on Appropriations, at [<http://appropriations.house.gov/pdf/RecoveryReport01-15-09.pdf>].

are to assure sufficient funding for the statutorily specified mandatory add-on of \$690 for the 2010-2011 award year.

Federal Work-Study Program

The FWS program is a need-based federal student aid program that provides undergraduate, graduate, and professional students the opportunity for paid employment in a field related to their course of study or in community service.³⁶ Students receive FWS aid as compensation for the hours they have worked. FWS aid may be provided to any student demonstrating financial need. Awards typically are based on factors such as each student's financial need, the availability of FWS funds, and whether a student requests FWS employment and is willing to work.

Federal funding for the FWS program is provided to institutions of higher education (IHEs) for the purpose of making available need-based federal student aid to students enrolled at those IHEs. Funds are awarded to IHEs according to a complex two-stage procedure, with a portion of funds allocated based on what the IHE received in prior years, and a portion based on an institutional need-based allocation formula.³⁷ Under the FWS program, students are compensated with a combination of federal funding and a matching amount provided by the student's employer, which may be the IHE or another entity. In most instances, the maximum federal share of compensation is 75%. For FY2008, \$980.5 million was provided for the FWS program.

The House bill would have provided \$490 million in supplemental FY2009 appropriations for the FWS program, with funding to remain through September 30, 2011. Of this amount, \$245 million would have been made available on October 1, 2009. The Senate bill would not have provided any supplemental funding for the FWS program.

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The ARRA provides \$200 million in supplemental discretionary appropriations for the FWS program for FY2009. This funding is in addition to any amount that may be provided for the FWS program under a separate FY2009 appropriations measure.

Federal Perkins Loan Program

The Federal Perkins Loan program operates as an institutional revolving loan fund under which IHEs make available low-interest (5%) federal student loans to undergraduate, graduate, and professional students enrolled in participating institutions. Undergraduate students may borrow up to \$5,000 per year; and graduate and professional students may borrow up to \$8,000 per year. Borrowers of Perkins Loans who are employed in certain public service jobs may qualify for loan cancellation benefits.

³⁶ The Federal Work-Study program is authorized under Title IV, Part C of the HEA. For additional information on the FWS program, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

³⁷ The allocation procedures for the FWS program are examined in CRS Report RL32775, *The Campus-Based Financial Aid Programs: A Review and Analysis of the Allocation of Funds to Institutions and the Distribution of Aid to Students*, by David P. Smole.

Under the Federal Perkins Loan program, federal funding is authorized to be provided for federal capital contributions to the revolving loan funds of participating IHEs. Federal funding for Perkins Loan federal capital contributions is provided to IHEs according to a two-stage formula similar to that used for the FWS program—IHEs are first allocated funds based on what they received in prior years, and any funds remaining from the annual appropriation are subsequently allocated to IHEs according to an institutional need-based allocation formula.³⁸ (Separately, federal funding is also provided to IHEs to reimburse them for the cost of cancelling loans made to students who become employed in public service jobs.) For FY2008, no funding was provided for Federal Perkins Loan program federal capital contributions, and \$64.3 million was provided to reimburse IHEs for Federal Perkins Loan cancellations.

The Senate bill would have provided \$61 million for the Federal Perkins Loan program to be allocated to participating institutions as federal capital contributions to their revolving loan funds. The House bill would not have provided any funding for the Federal Perkins Loan program.

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No funding is provided for the Federal Perkins Loan program under the ARRA.

Student Aid Administration

The House bill would have provided \$50 million in FY2009 supplemental appropriations to the Department of Education for student aid administration of the Federal Pell Grant program, the Academic Competitiveness (AC) grant and National Science and Mathematics Access to Retain Talent (SMART) grant program, the Federal Supplemental Educational Opportunity Grant (FSEOG) program, the Federal Family Education Loan (FFEL) program, the FWS program, the William D. Ford Federal Direct Loan (DL) program, and the Federal Perkins Loan program. (For FY2008, \$695.8 million was provided for student aid administration.) The House bill also would have required funds from the supplemental appropriation to be available for an independent audit of the federal student loan purchase programs enacted under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA; P.L. 110-227), and authorized under HEA, § 459A.³⁹ The Senate bill would not have provided any supplemental funding specifically for student aid administration.

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The ARRA provides \$60 million in FY2009 supplemental appropriations to the Department of Education for student aid administration of the Federal Pell Grant program, the AC/SMART grant program, the FSEOG program, FFEL program, the FWS program, the DL program, and the Federal Perkins Loan program.

³⁸ The allocation procedures for Federal Perkins Loan program federal capital contributions are examined in CRS Report RL32775, *The Campus-Based Financial Aid Programs: A Review and Analysis of the Allocation of Funds to Institutions and the Distribution of Aid to Students*, by David P. Smole.

³⁹ For additional information on the Secretary's temporary authority to purchase federal student loans made under the FFEL program, see CRS Report RL34452, *The Ensuring Continued Access to Student Loans Act of 2008*, by David P. Smole.

Teacher Quality Partnership Grant Programs

Title II, Part A of the HEA authorizes Teacher Quality Partnership Grants for improving teacher education programs, strengthening teacher recruitment efforts, and providing training for prospective teachers.⁴⁰ For FY2008, \$33.7 million was provided for the Title II-A program. The House bill would have provided \$100 million in supplemental FY2009 appropriations for Teacher Quality Partnership Grants; and the Senate bill would have provided \$50 million.

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The ARRA provides \$100 million in supplemental FY2009 appropriations for Teacher Quality Partnership Grants.

Higher Education Modernization, Renovation, and Repair

For FY2009, the House bill would have provided \$6 billion for a new grant program to support higher education facility modernization, renovation, and repair, with \$6 million to be reserved for the Secretary of Education for administration and oversight.⁴¹ Grants would have been allocated to SEAs in the 50 states, the District of Columbia, and each of the outlying areas in proportion to the number of full-time equivalent (FTE) undergraduate students enrolled in public and private not-for-profit postsecondary education schools in each jurisdiction.

According to the House bill, SEAs would have used grant funds to make subgrants to public and private not-for-profit postsecondary schools to modernize, renovate, or repair facilities that are primarily used for instruction, research, or student housing. SEAs would have been required to give priority in the awarding of subgrants to minority serving institutions (e.g., those eligible for assistance under Title III or Title V of the HEA), to IHEs that have been impacted by a major disaster or emergency declared by the President, and to IHEs that would carry out projects to increase their energy efficiency and that would comply with the United States Green Building Council Leadership in Energy and Environmental Design (LEED) green building rating system.

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The ARRA does not include a dedicated source of federal funds for higher education facilities modernization. Facilities modernization, however, is an allowable use of funds under the State Fiscal Stabilization Fund (see subsequent discussion).

Federal Student Loans

The federal government operates two major student loan programs: the FFEL program, authorized under Title IV, Part B of the Higher Education Act (HEA), and the DL program,

⁴⁰ For additional information on Teacher Quality Enhancement programs authorized under the HEA, see CRS Report RL31882, *Teacher Quality Enhancement Grants (Title II, Part A of the Higher Education Act): Overview and Reauthorization Issues*, by Jeffrey J. Kuenzi.

⁴¹ For a more detailed description of the proposal for higher education modernization, renovation, and repair, see CRS Report RS22894, *School Construction, Modernization, Renovation, and Repair Issues*, by Gail McCallion.

authorized under Title IV, Part D of the HEA.⁴² These programs make available loans to undergraduate, graduate and professional students, and the parents of undergraduate dependent students, to help them finance the costs of postsecondary education. The loans made through the FFEL and DL programs are low-interest loans, with maximum interest rates for each type of loan established by statute. Subsidized Stafford Loans are need-based loans and are only available to students demonstrating financial need. The Secretary pays the interest that accrues on Subsidized Stafford Loans while borrowers are in school, during a six-month grace period, and during authorized periods of deferment. Unsubsidized Stafford Loans and PLUS Loans are non-need-based loans and are available to borrowers without regard to their financial need. Borrowers are fully responsible for paying the interest that accrues on these loans.

The amounts students may borrow in need-based Subsidized Stafford Loans and non-need-based Unsubsidized Stafford Loans are constrained by statutory loan limits. One set of limits applies to the annual and aggregate amounts students may borrow in Subsidized Stafford Loans. Another set of limits applies to the total annual and aggregate amounts students may borrow in combined Subsidized Stafford Loans and Unsubsidized Stafford Loans (hereafter, referred to as total Stafford Loans). The terms and conditions for Subsidized Stafford Loans are more favorable to students than for Unsubsidized Stafford Loans.

Until the enactment of the ECASLA, the same annual Subsidized Stafford Loan limits and total Stafford Loan limits applied to dependent undergraduate students for each comparable educational level. However, annual total Stafford Loan limits that were higher than annual Subsidized Stafford Loan limits applied to independent undergraduate students, graduate and professional students, and dependent undergraduate students whose parents are unable to obtain PLUS Loans, for each comparable educational level.

The ECASLA increased annual and aggregate borrowing limits for total Stafford Loans for dependent undergraduate students, independent undergraduate students, and dependent undergraduate students whose parents are unable to obtain a PLUS Loan, effective for loans first disbursed on or after July 1, 2008. Technical changes to these amended loan limits were made under the Higher Education Opportunity Act (HEOA; P.L. 110-315). In general, the ECASLA increased annual total Stafford Loan limits by \$2,000 for most undergraduate student borrowers. The ECASLA also increased aggregate borrowing limits by \$8,000 for dependent undergraduate students; and by \$11,500 for independent undergraduate students.⁴³

The House bill would have further increased annual and aggregate total Stafford Loan limits for undergraduate student borrowers for loans first disbursed on or after January 1, 2009. In general, annual total Stafford Loan limits would have been increased by an additional \$2,000 for most undergraduate student borrowers. Also, aggregate total Stafford Loan borrowing limits would have been increased by an additional \$8,000 for all undergraduate student borrowers. The Senate bill would not have made any changes to loan limits.

⁴² For additional information on FFEL and DL program loans, see CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

⁴³ For a complete history of changes to loan limits for Stafford Loans, see Table B-2 in CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

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Under the ARRA, no changes are made to Stafford Loan limits.

FFEL Program Special Allowance Payments

Under the FFEL program, lenders receive a federal subsidy on the loans they make when the interest rate paid by borrowers does not provide them a statutorily specified level of return. This is called the special allowance payment (SAP).⁴⁴ The SAP amount is determined quarterly under a statutory formula. The special allowance paid for each loan is dependent on the formula in effect when the loan was disbursed. The federal government pays any special allowance due lenders from the time the loan is disbursed through the entire repayment period. On loans for which the first disbursement was made on or after January 1, 2000, the SAP is determined through the use of a series of special allowance payment formulas indexed to three-month Commercial Paper (CP) rates.

The House bill would have made a technical amendment to the SAP formula by temporarily changing the index used from the three-month CP rate to the three-month London Inter-Bank Offered Rate (LIBOR) for United States dollars. This change would have been applicable to loans first disbursed on or after January 1, 2000 and would have been effective for the quarter beginning October 1, 2008, and ending December 31, 2008. The Senate bill would not have made any changes to the SAP formula.

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Under the ARRA, no changes are made to the SAP formula.

Funding for the Institute of Education Sciences

IES is charged with conducting research, evaluation, and dissemination activities in areas of demonstrated national need. Its activities are designed to inform education practice and policy.⁴⁵ Only the House bill would have provided \$250 million in FY2009 to carry out Section 208 of the Educational Technical Assistance Act (ETTA; P.L. 107-279). Section 208 authorizes a competitive grant program for SEAs to support the design, development, and implementation of statewide longitudinal data systems to enable states to use, manage, and analyze individual student data in ways consistent with the ESEA. The House bill specified that these statewide data systems could include data systems that contain postsecondary and workforce information. Up to \$5 million of the funds could have been used for state data coordinators or for awards to public or private organizations to improve data collection.

⁴⁴ For additional information on lender subsidies provided under the FFEL program, see CRS Report RL34578, *Economics of Guaranteed Student Loans*, by D. Andrew Austin.

⁴⁵ For more information about IES, see [<http://www.ed.gov/about/offices/list/ies/index.html?src=oc>].

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The ARRA includes \$250 million for IES to carry out Section 208 of the ETTA. Similar to the House bill, the ARRA allows statewide data systems to include postsecondary education and workforce information and allows up to \$5 million of the funds appropriated to be used for state data coordinators and for awards to public or private organizations to improve data collection.

State Fiscal Stabilization Fund

Both the House and Senate bills would have provided supplemental FY2009 appropriations for a State Fiscal Stabilization Fund. The total amount provided would have been \$79 billion under the House bill and \$39 billion under the Senate bill. The House bill would have made \$39.5 billion available on July 1, 2009, and another \$39.5 billion available on July 1, 2010, while the Senate bill would have made \$39 billion available in FY2009. Both the House and Senate bills would have made reservations from these funds prior to making grants to states. Under the House bill, from the total annual appropriation, up to 0.5% would have been reserved for the outlying areas. The Secretary could have reserved up to \$12.5 million each year for administration and oversight, including program evaluation. In addition, the Secretary would have been required to reserve \$7.5 billion annually to provide State Incentive Grants and establish an Innovation Fund.⁴⁶ The Senate bill would also have reserved up to 0.5% of the total appropriation for the outlying areas. It also would have allowed the Secretary to reserve \$25 million for administration and oversight—the same level that the House bill would have allowed over the two-year period during which funds would have been made available. Finally, the Senate bill would have required the Secretary to reserve \$7.5 billion to provide State Incentive Grants and establish an Innovation Fund.⁴⁷

After making these reservations, \$31.790 billion would have been made available on July 1, 2009, and on July 1, 2010, under the House bill for grants to states, while \$31.280 billion would have remained for grants to states in FY2009 under the Senate bill. Under both bills, these funds would have been allocated to states using two population measures: 61% of each state's grant would have been based on the state's relative population of individuals ages 5 to 24, and 39% of each state's grant would have been based on the state's relative total population.

Under the House bill, once funds were received at the state level, the state's governor would have been required to use at least 61% of the state's allocation to support elementary, secondary, and postsecondary education, while under the Senate bill all funds would have been used for this purpose as well as for early childhood education programs. Under both bills, the governor would have been required to use these funds to provide the amount of funds, through the state's principal elementary and secondary education funding formula, that was needed to restore state funding for elementary and secondary education to its FY2008 level. The Senate bill also would have allowed funds to be used to pay for state formula increases for FY2009-FY2011, as well as funding state equity and adequacy adjustments that were enacted before July 1, 2008.

In addition, under both bills the governor would have been required to use these funds to provide the amount of funds to public institutions of higher education in the state needed to restore state support for postsecondary education (not including support for capital projects or for research and

⁴⁶ Under the House bill, the establishment of an Innovation Fund is left to the Secretary's discretion.

⁴⁷ Under the Senate bill, the establishment of an Innovation Fund is left to the Secretary's discretion.

development) to the FY2008 level. If the amount of funds provided through the State Fiscal Stabilization Fund was insufficient to restore state support for elementary, secondary, and postsecondary education to the FY2008 levels, plus formula increases and equity/adequacy adjustments for elementary and secondary education under the Senate bill, the governor would have been required to allocate funds between elementary and secondary education and postsecondary education in proportion to the relative shortfall in state support at each level of education. If, however, funds remained after restoring funds to the FY2008 level, the governor would have been required to use the remainder of the 61% of the state allocation (House bill) or all remaining funds (Senate bill) to provide grants to LEAs based on their share of Title I-A funding for the most recent year for which data were available.

Under the House bill, the governor would have been able to use up to 39% of the state funds for public safety and government services. These funds, however, could have been used to provide additional assistance for elementary and secondary education and for public institutions of higher education. As noted earlier, under the Senate bill, all funds provided to states under the State Fiscal Stabilization Fund would have been used for education.

In applying for funds from the State Fiscal Stabilization Fund, both bills would have required states to provide four assurances to ED. It is unclear how many states would have been able to provide all of the required assurances. Both the House and Senate bills would have required that the state agree to maintain support for elementary and secondary education at least at the level provided in FY2006, for FY2009 and FY2010; and the state agree to maintain support for public institutions of higher education at least at the FY2006 level, for FY2009 and FY2010. They both also would have required that the state establish a longitudinal data system as described in Section 6401(e)(2)(D) of the America COMPETES Act.⁴⁸

Both bills would have required states to provide assurances related to the equitable distribution of teachers between high- and low-poverty schools, but they approached this assurance in different ways. Under the House bill, the state would have been required to take actions to comply with requirements in ESEA, Section 1111(b)(8)(C) related to the provision of highly qualified teachers in schools receiving Title I-A funding to eliminate inequities in the distribution of teachers between high- and low-poverty schools and ensure that low-income and minority children are not taught at higher rates than other students by inexperienced, unqualified, or out-of field teachers. Under the Senate bill, states would have been required to take action, including implementing activities authorized in ESEA, Section 2113(c), such as reforming teacher and principal certification and establishing alternative routes for teacher state certification, to increase the number and improve the distribution of “effective” teachers and principals in high-poverty schools and LEAs.

Finally, under both the House and Senate bills, the state would have had to agree to enhance the quality of its state assessments used to measure student achievement in reading, mathematics, and science through activities described in ESEA, Section 6112(a), including collaborating with institutions of higher education or other organizations to improve the quality, validity, and reliability of state assessments. Second, the state would have been required to agree to comply with requirements in the ESEA and IDEA related to the inclusion of children with disabilities and limited English proficient students in state assessments, the development of valid and reliable

⁴⁸ For more information about the requirements of the America COMPETES Act, see CRS Report RL34328, *America COMPETES Act: Programs, Funding, and Selected Issues*, by Deborah D. Stine.

assessments for those students, and the provision of accommodations to facilitate their participation in state assessments. The Senate bill only would have required states to improve state academic content standards and student academic achievement standards consistent with requirements in the America COMPETES Act.⁴⁹ The applicable requirements in the America COMPETES Act focus on identifying and making changes to a state's secondary school academic content and academic achievement standards in order to align these standards with the knowledge and skills necessary for success in credit-bearing postsecondary education coursework, the 21st century workforce, and the Armed Forces without the need for remediation. Further, the Senate bill would have required states to ensure compliance with requirements related to schools identified for corrective actions and restructuring under ESEA Title I-A.⁵⁰

As noted earlier, each bill would have required the Secretary to reserve \$7.5 billion to provide State Incentive Grants and, at his or her discretion, establish an Innovation Fund. State Incentive Grants would have been awarded by the Secretary to states that made significant progress in meeting the requirements described in the preceding paragraph. At least 50% of each state grant would have been allocated to LEAs in proportion to their ESEA Title I-A grants for the most recent year. If the Secretary choose to establish an Innovation Fund, up to \$325 million of the funds made available on July 1, 2009, and on July 1, 2010, (House bill) or \$650 million for FY2009 (Senate bill) could have been reserved for discretionary grants to eligible entities (states, LEAs or schools under the House bill; LEAs or partnerships between nonprofit organizations and LEAs or schools under the Senate bill). Grants would have been made by the Secretary to eligible grantees demonstrating significant gains in closing academic achievement gaps between pupil groups, and grantees would use these funds to expand their activities and serve as models for best practices.

Both the House and Senate bills included comparable provisions regarding the authorized uses of funds by educational agencies, schools, and institutions of higher education (IHEs) under the proposed State Fiscal Stabilization program. Funds for elementary and secondary education could have been used for any purpose authorized under the ESEA, IDEA, or the Carl. D. Perkins Career and Technical Education Act (Perkins Act). Together, these acts cover a very wide range of K-12 educational activities, including the hiring of teachers and paraprofessionals. Funds could not have been used for capital expenditures except those authorized under those acts (such uses are highly limited). No funds could have been used to provide financial assistance for pupils to attend private schools except (under the Senate bill) to provide special education and related services to pupils with disabilities as authorized by the IDEA.

Under both the House and Senate bills, funds for higher education could have been used by public IHEs for educational and general expenditures, including expenditures "to mitigate the need to raise tuition and fees for in-State students." Funds could not have been used by IHEs to raise their endowments or for construction, renovation, or repair of facilities.

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The ARRA provides \$53.6 billion in supplemental FY2009 appropriations for a State Fiscal Stabilization Fund. The specific provisions associated with this fund include provisions from both

⁴⁹ Ibid.

⁵⁰ For more information about these requirements, see CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)*, by Gail McCallion et al.

the House and Senate bills. This section provides a summary of the key aspects of the State Fiscal Stabilization Fund under P.L. 111-5.

From the \$53.6 billion appropriated for the State Fiscal Stabilization Fund, the Secretary may reserve up to 0.5% for the outlying areas (i.e., maximum reservation of \$268 million). These funds are to be distributed to the outlying areas based on their respective needs as determined by the Secretary of Education in consultation with the Secretary of the Interior. Outlying areas are required to use to funds for activities consistent with those authorized under the State Fiscal Stabilization Fund under such terms and conditions as determined by the Secretary of Education.

The Secretary is also permitted or required to make two additional reservations of funds. First, the Secretary may reserve up to \$14 million for administration and oversight of the State Fiscal Stabilization fund, including for program evaluation purposes. Second, the Secretary must reserve \$5 billion to provide State Incentive Grants and establish an Innovation Fund.⁵¹

Assuming that each of these reservations are made at the maximum level, \$48.318 billion will be available for grants to states. These funds will be allocated to states using two population measures: 61% of each state's grant will be based on the state's relative population of individuals ages 5 to 24, and 39% of each state's grant will be based on the state's relative total population.

Once funds are received at the state level, the state's governor must use 81.8% of the state's allocation to support elementary, secondary, and postsecondary education, and, as applicable, early childhood education programs and services. The governor must use these funds to provide the amount of funds, through the state's principal elementary and secondary education funding formula, needed to restore state funding for elementary and secondary education in FY2009, FY2010, and FY2011 through the formula to the greater of the FY2008 or FY2009 level, and, if applicable, to allow state formula increases to support elementary and secondary education for FY2010 and FY2011 to be implemented and to fund the phasing in of state equity and adequacy adjustments if these increases were enacted in state law prior to October 1, 2008.⁵² The governor is also required to use these funds to provide the amount of funds needed to restore state support for public IHEs (excluding tuition and fees paid by students)⁵³ to the greater of FY2008 or FY2009 level for FY2009, FY2010, and FY2011.

If the amount of funds provided through the State Fiscal Stabilization Fund is insufficient to restore state support for elementary, secondary, and postsecondary education to the greater of the FY2008 or FY2009 level, plus support formula increases and equity/adequacy adjustments, if applicable, for FY2009, FY2010, and FY2011, the governor is required to allocate funds between elementary and secondary education and postsecondary education in proportion to the relative shortfall in state support at each level of education. If, however, funds remained after restoring state support for education, the governor is required to use the remainder of the 81.8% of the state allocation to provide grants to LEAs based on their share of Title I-A funding for the most recent year for which data are available.

⁵¹ Under the ARRA, the establishment of an Innovation Fund is left to the Secretary's discretion.

⁵² For the purposes of determining the level of state support that must be restored, the term "fiscal year" has the meaning given to this term under state law.

⁵³ This exclusion was not included under the House or Senate Bill.

The governor is required to use the remaining 18.2% of the state allocation for “public safety and other government services,” which may include assistance for elementary and secondary education and public IHEs, and for modernization, renovation, and repair of public school facilities and IHEs’ facilities. Funds used for the latter purposes may be, but are not required to be, consistent with a recognized green building rating system. If the governor chooses to use these funds for IHEs, the governor shall not consider type or mission of an IHE and shall consider any IHE in the state for facility modernization, renovation, or repair funding if the IHE meets the Higher Education Act (HEA), Section 101 definition of an IHE and is eligible to participate in the federal student aid programs authorized by Title IV of the HEA.⁵⁴ In addition, an LEA is strictly prohibited from engaging in any school modernization, renovation, or repair that is inconsistent with state law.⁵⁵

The ARRA includes specific provisions related to the use of funds by LEAs and IHEs. Funds for elementary and secondary education can be used for any activity authorized under the ESEA, IDEA, the Adult and Family Literacy Act, or the Carl. D. Perkins Career and Technical Education Act (Perkins Act), or for the modernization, renovation, and repair of school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building system. No funds may be used to provide financial assistance for pupils to attend private schools, except (according to H.Rept. 111-16) as authorized by ESEA, IDEA, the Adult and Family Literacy Act, or the Perkins Act. LEAs are prohibited from using State Fiscal Stabilization Funds for: (1) maintenance costs; (2) stadiums or other facilities used primarily for athletic contests or other exhibitions or other events for which admission is charged to the general public; (3) the purchase or upgrade of vehicles; or (4) the improvement of stand-alone facilities whose purpose is not the education of children.

Public IHEs that receive State Fiscal Stabilization Funds must use the funds for: (1) education and general expenditures, and in such a way “to mitigate the need to raise tuition and fees for in-State students,” or (2) modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, or repairs that are consistent with a recognized green building rating system. It should be noted that these required uses of funds appear to apply only to public IHEs. Non-public IHEs meeting the aforementioned criteria may receive funds from the 18.2% of state funds available for public safety and other government services, so it is unclear how these IHEs may use any funds received. The ARRA includes several prohibitions on the use of funds by IHEs that apply to all IHEs. Funds may not be used to increase an IHE’s endowment. In addition, funds may not be used for: (1) the maintenance of systems, equipment, or facilities; (2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or other exhibitions or other events for which admission is charged to the general public; or (3) modernization, renovation, or repair of facilities used for sectarian or religious instruction or in which a substantial portion of the functions of the facilities are religious in nature.

⁵⁴ Section 101 of the HEA recognizes IHEs as those that are legally authorized by the state; are accredited or preaccredited by an agency or association recognized by ED, are nonprofit institutions, award a bachelor’s degree or provide at least a two-year program that is accepted as credit toward the completion of a bachelor’s degree, and enroll as regular students only individuals who have graduated from a secondary institution or hold the equivalent of a high school diploma. The statute also recognizes institutions offering not less than a one-year program of training in preparation for employment and institutions admitting students beyond the age of compulsory secondary school attendance.

⁵⁵ This prohibition applies to any funds received by an LEA under either the 81.8% of funds or the 18.2% of funds.

In applying for funds from the State Fiscal Stabilization Fund, the ARRA requires states to submit an application to the Secretary that provides information required by the Secretary as well as five assurances (discussed below), baseline data demonstrating states' current status with respect to each of the five assurances, and a discussion of how the State Fiscal Stabilization Funds will be used, including whether the state will use funds to meet maintenance of effort requirements under ESEA and IDEA. The four assurances that the state must provide focus on state support for education, equity in teacher distribution, data collection, standards and assessments, and support for struggling schools. Each of the five assurances is discussed below.

1. Maintenance of effort: The state must agree to maintain support for elementary and secondary education and for public institutions of higher education (not including support for capital projects or for research or development or tuition and fees paid by students) at least at the level of support provided in FY2006 for FY2009, FY2010, and FY2011.
2. Achieving equity in teacher distribution: The state must provide an assurance related to the equitable distribution of teachers between high- and low-poverty schools. The state must take actions to comply with requirements in ESEA, Section 1111(b)(8)(C) related to the provision of highly qualified teachers in schools receiving Title I-A funding to eliminate inequities in the distribution of teachers between high- and low-poverty schools and ensure that low-income and minority children are not taught at higher rates than other students by inexperienced, unqualified, or out-of field teachers.
3. Improving collection and use of data: The state is required to establish a longitudinal data system as described in Section 6401(e)(2)(D) of the America COMPETES Act.⁵⁶
4. Standards and assessments: The state must agree to enhance the quality of its state assessments used to measure student achievement in reading, mathematics, and science through activities described in ESEA, Section 6112(a), including collaborating with institutions of higher education or other organizations to improve the quality, validity, and reliability of state assessments. Second, the state must agree to comply with requirements in the ESEA and IDEA related to the inclusion of children with disabilities and limited English proficient students in state assessments, the development of valid and reliable assessments for those students, and the provision of accommodations to facilitate their participation in state assessments. Third, the state must agree to improve state academic content standards and student academic achievement standards consistent with requirements in the America COMPETES Act.⁵⁷ The applicable requirements in the America COMPETES Act focus on identifying and making changes to a state's secondary school academic content and academic achievement standards in order to align these standards with the knowledge and skills necessary for success in credit-bearing postsecondary education coursework, the 21st century workforce, and the Armed Forces without the need for remediation.

⁵⁶ For more information about the requirements of the America COMPETES Act, see CRS Report RL34328, *America COMPETES Act: Programs, Funding, and Selected Issues*, by Deborah D. Stine.

⁵⁷ *Ibid.*

5. Supporting struggling schools: The state must ensure compliance with requirements related to schools identified for corrective actions and restructuring under ESEA Title I-A.⁵⁸

As noted earlier, the ARRA requires the Secretary to reserve \$5 billion to provide State Incentive Grants and, at his or her discretion, establish an Innovation Fund. The Secretary may reserve 1% of the funds not being used for Innovation Fund to provide technical assistance to states in meeting the aforementioned assurances. The remaining funds will be used to provide State Incentive Grants in FY2010 to states that have made “significant progress” in meeting last four assurances discussed above. By historical standards, this is an unusually large amount of funding to be allocated at the Secretary’s discretion.

In order to receive a State Incentive Grant, states must submit an application to the Secretary. The application must describe (1) the state’s progress in meeting the last four assurances discussed above; (2) strategies the state is using to ensure that economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency (hereafter referred to as subgroups of students) are making progress toward meeting state student academic achievement standards; (3) the achievement and graduation rates of public elementary and secondary education students and strategies being employed to ensure the aforementioned subgroups of students are making progress toward meeting state student academic achievement standards; (4) how the state would use its grant funding to improve student academic achievement; (5) and the state plan for evaluating state progress in closing achievement gaps. The Secretary will determine which states receive grants and the amount of those grants based on information provided in the state application and other such criteria determined by the Secretary, which may include a state’s need for assistance in meeting the last four assurances discussed above. Each state that receives a State Incentive Grant must use at least 50% of the grant to provide subgrants to LEAs based on each LEAs relative share of funding under Title I-A for the most recent year.

The Secretary is permitted to use up to \$650 million of the \$5 billion reserved for additional programs to establish an Innovation Fund. The Innovation Fund will be used to provide academic achievement awards to LEAs or partnerships between a nonprofit organization and one or more LEAs or a consortium of schools (hereafter referred to as eligible entities). To be eligible to receive an award, an eligible entity must: (1) have “significantly closed” the achievement gaps among the aforementioned subgroups of students and students overall; (2) have exceeded the state’s annual measurable objectives for two or more consecutive years or demonstrated success in “significantly” increasing student achievement based on another measure; (3) have made “significant improvement” in other areas (e.g., graduation rates, recruitment of high-quality teachers) that can be demonstrated with “meaningful” data; and (4) demonstrate that they have established partnerships with the private sector and that the private sector is contributing matching funds to help bring “results to scale.” Funds received by eligible entities will be used to allow eligible entities to expand their work and serve as best practice models, work in partnership with the private sector and philanthropic community, and identify and document best practices that can be shared and replicated.

⁵⁸ For more information about these requirements, see CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)*, by Gail McCallion et al.

States receiving funds under the State Fiscal Stabilization Fund are required to submit a report to the Secretary based on a timetable established by the Secretary that discusses how funds were used, how funds were distributed, the estimated number of jobs saved or created using the State Fiscal Stabilization Fund, tax increases that were averted, the state's progress in meeting the aforementioned assurances, increases in tuition and fees at public IHEs, changes in enrollment in public IHEs, and each modernization, renovation, and repair project funded. The Secretary is required to submit a report to the relevant authorizing and appropriating committees no later than six months following the submission of the state reports that evaluates the information contained in the state reports and the uses of funds that states included in their application for funds. In addition, the Government Accountability Office (GAO) is required to evaluate the State Incentive Grants and Innovation Fund, if applicable, programs.

Fiscal Accountability

In its consideration of education-related provisions in economic stimulus funding proposals, some of the debate in Congress has centered on the extent to which states and LEAs should be given added flexibility with respect to certain fiscal accountability requirements that current statutes place on states and/or LEAs with respect to the use of federal education funds. A related issue is whether funds provided under the State Fiscal Stabilization Fund could be treated in some cases as “non-federal” funds in determining whether states and LEAs meet certain fiscal accountability requirements.

A long-standing principle of federal aid to elementary and secondary education is that federal funding should add to, not substitute for, state and local education funding – i.e., that federal funds should provide a net increase in financial resources for specific types of educational services (such as the education of disadvantaged pupils or pupils with disabilities), rather than effectively providing general subsidies to state and local governments. All of the fiscal accountability requirements included in federal elementary and secondary education programs are intended to provide that all federal funds represent a net increase in the level of financial resources available to serve eligible pupils, and that they do not ultimately replace funds that states or LEAs would provide in the absence of federal aid.

One or more of three types of fiscal accountability requirements are applicable to major federal K-12 education aid programs. The first two of these are common to many federal assistance programs, while the third is unique to ESEA Title I-A. To meet the first requirement, *maintenance of effort (MOE)*, recipient LEAs must provide, from state and local sources, a level of funding (either aggregate or per pupil) in the preceding year that is at least a specified percentage of the amount in the second preceding year. A second fiscal accountability requirement provides that federal funds must be used to *supplement, and not supplant (SNS)*, state and local funds that would otherwise be available for the education of pupils eligible to be served under the federal program in question. SNS provisions prohibit states and/or LEAs from using federal funds: (1) to provide services that state and/or local funds have provided or purchased in the past, (2) to provide services that are required to be provided under federal, state, or local law, or (3) to provide services for some pupils (e.g., those eligible under specific federal programs) that are provided to other pupils with non-federal funds.

The third, distinctive, fiscal requirement under ESEA Title I-A is *comparability*—services provided with state and local funds in schools participating in ESEA Title I-A must be comparable to those in non-Title I-A schools of the same LEA. (If all of an LEA's schools

participate in Title I-A, then services funded from state and local revenues must be “substantially comparable” in each school of the LEA.) Since the comparability requirement only applies to ESEA Title I-A, and is not currently a subject of debate or proposed waiver authority with respect to the ARRA, it will not be discussed further in this report.

With respect to current major federal K-12 education programs, for *MOE*, the requirement is that in order to be eligible to receive *ESEA Title I-A* grants, *LEAs* must spend, from state and local sources, in the preceding year an amount equal to at least 90% of the amount in the second preceding year, on either an aggregate or per pupil basis (whichever is more beneficial to the LEA). The ESEA provision is based on total state and local funding for public K-12 education, not funding for specific purposes. If the requirement is not met, the LEA still receives a grant that is reduced by the proportion to which the requirement is not met. The MOE requirement for Title I-A and other ESEA programs may be waived by the Secretary in cases of “exceptional or uncontrollable circumstances” or a “precipitous decline in the financial resources” (ESEA Section 9521).

In the case of IDEA, MOE applies to both SEAs and LEAs, and in general is based on 100%, not 90%, of previous spending levels. However, the IDEA includes a provision allowing LEAs, and possibly some states, to reduce funding by an amount of up to 50% of annual increases in IDEA allocations, if these funds are used for specified purposes.⁵⁹ In addition, the MOE provision under IDEA is based on spending for special education services for pupils with disabilities, not total state and local spending. As under the ESEA, if the MOE requirement is not met, the SEA or LEA still receives a grant that is reduced by the proportion to which the requirement is not met. In addition, the state MOE requirement under IDEA may be waived by the Secretary in cases of “exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State” (IDEA, Section 612(a)(18)(C)(i)). Further, the state SNS requirements under IDEA may be waived *only if* “the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education” (FAPE) and the Secretary of Education concurs with this evidence (IDEA Section 612(a)(17)(C)). Beyond this, it might be argued that IDEA incorporates an effective MOE at the level of services to individual pupils, with its requirement that FAPE be provided to pupils with disabilities in participating states.

In contrast to MOE, SNS is applied to both SEAs and LEAs under Title I-A, and there is generally no authority for the Secretary of Education to waive SNS under ESEA, and only a very restrictive authority to do so under IDEA, as it contingent upon the requirement in the previous sentence. Authority to waive SNS, as well as MOE, under ESEA programs was granted to areas affected by the 2005 Gulf Coast hurricanes for FY2006 and 2007.⁶⁰ In particular, the broad waiver authorities included in ESEA Title IX, Part D, and the Education Flexibility Partnership Act of 1999 (P.L. 106-25, as amended) specifically exempt all three fiscal accountability

⁵⁹ For an explanation of this provision, see CRS Report RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by Richard N. Apling and Nancy Lee Jones, pages 15-16. The LEA level MOE under IDEA may also be reduced to adjust for certain enrollment or staffing trends or “costly expenditures for long-term purchases.” (See IDEA, Section 613(a)(2)(B) and (C)).

⁶⁰ See CRS Report RL33236, *Education-Related Hurricane Relief: Legislative Action*, by Rebecca R. Skinner et al., p. 8.

provisions from authority to be waived (beyond the specific MOE waiver authority noted above).⁶¹

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The conference version of the ARRA implicitly applies current statutory provisions regarding MOE and SNS to increased appropriations for ESEA Title I-A and the IDEA. For the State Fiscal Stabilization program, a MOE based on state-source revenues for public K-12 education and higher education in *FY2006* would apply to states, but there is no SNS requirement at any level and no MOE requirement for LEAs with respect to funds provided under this program. The MOE requirement for the Fiscal Stabilization program could be waived or modified by the Secretary of Education for any of FY2009-FY2011 if the Secretary determines that the state receiving the waiver will not provide a lower *percentage* of the total funds available for elementary and secondary education than in the preceding fiscal year.

In addition, under the conference version of the ARRA, states or LEAs may, with prior approval of the Secretary, treat State Fiscal Stabilization Fund grants used for education as “non-federal funds” for purposes of meeting MOE requirements under *any* ED program, including ESEA Title I-A and the IDEA, for FY2009, FY2010, or FY2011. Required levels of state and local funding in subsequent years will not be reduced as a result of this provision. This might allow approved states to reduce their level of spending for K-12 education without jeopardizing their eligibility for funding under the IDEA or Title I-A and other ESEA programs. However, the potential impact of this authority is not fully clear, particularly since SNS requirements would continue to apply to ESEA Title I-A, IDEA, and similar programs.

State Funding Estimates

Earlier versions of this report included estimated state grants for various education programs. CRS prepared those state grant estimates to support congressional decision-making by providing comparisons of the relative impact of alternative formulas or funding levels on the legislative process. These estimates were also provided to inform Members of Congress seeking information on legislation being considered for a vote. After a measure is enacted, however, it is the responsibility of the executive branch (e.g., U.S. Department of Education) to develop allocations and implement the law. CRS estimates produced during legislative consideration of a bill may differ from actual allocations due to differences in data used (e.g., actual allocations calculated by executive branch agencies may be based on data that are not yet available or have recently become available) or differences in interpretation of statutory language. Once executive branch agencies develop state allocations for formula grants (e.g., Title I-A Grants to LEAs), the executive branch agencies are the authoritative sources on grant amounts. CRS estimates are no longer included in this report because ED has released estimated state grants under the ARRA.⁶²

⁶¹ See CRS Report RL31583, *K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs*, by Wayne C. Riddle, pages 8-12.

⁶² The U.S. Department of Education’s estimated state grants under the ARRA are available online at [<http://www.ed.gov/about/overview/budget/statetables/09arrastatetables.pdf>].

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