

GUIDANCE

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

Made Available Under

The American Recovery and Reinvestment Act of 2009



April 2009

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

**Funds under Title I, Part A of the
Elementary and Secondary Education Act of 1965
Made Available Under
The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)**

CONTENTS

INTRODUCTION..... 8

A. ALLOCATION OF TITLE I, PART A ARRA FUNDS TO STATES..... 9

A-1. What is the purpose of the new Title I, Part A funds under the ARRA?..... 9

A-2. What factors should an SEA and LEA take into consideration in determining how to use the new Title I, Part A funds under the ARRA to carry out its purposes? 9

A-3. When will ED award Title I, Part A ARRA funds to States?10

A-4. How do the Title I, Part A ARRA funds relate to the Title I, Part A funds made available through the regular FY 2009 appropriation?.....10

A-5. For which LEAs did ED allocate Title I, Part A ARRA funds?10

A-6. What data did ED use to calculate that portion of a State’s FY 2009 Title I, Part A allocation provided through the ARRA?11

A-7. Will ED revise that portion of a State’s FY 2009 Title I, Part A allocation provided through the ARRA when all October 2008 caseload data are available?.....11

A-8. How did ED calculate a State’s FY 2009 Title I, Part A allocation, including that portion provided under the ARRA?.....11

A-9. Did ED allocate Title I, Part A ARRA funds on the basis of children living in local institutions for delinquent children to support activities authorized in Title I, Part D, Subpart 2 of the ESEA?12

A-10. Where are ED’s FY 2009 Title I, Part A allocations to each State and LEA, including that portion provided through the ARRA, posted?12

A-11. Are the Bureau of Indian Education and the Outlying Areas entitled to receive Title I, Part A funds provided through the ARRA?.....13

B. ALLOCATION OF TITLE I, PART A ARRA FUNDS FROM STATES TO LEAs.....13

***In General*.....13**

B-1. Which LEAs are eligible for Title I, Part A ARRA funds?13

B-2. Must an SEA adjust ED-determined Title I, Part A ARRA allocations?13

B-3. What procedures must an SEA follow to adjust the Title I, Part A Targeted Grant and FIG allocations ED determines for LEAs in the State?.....13

B-4. How does an SEA apply the variable hold-harmless rates of 85, 90, and 95 percent, as well as the one-time-only 100 percent hold-harmless rate for certain LEAs, when adjusting the ED-determined FY 2009 Title I, Part A allocations?14

B-5.	Can ED provide examples of the steps an SEA uses to adjust the ED-determined FY 2009 LEA Title I, Part A allocations?.....	15
B-6.	What data does an SEA use to determine eligibility for Title I, Part A ARRA funds?	18
B-7.	May an SEA, with approval from ED to use an alternative method under 34 C.F.R. § 200.74 to distribute Title I, Part A funds to small LEAs with fewer than 20,000 total residents, use that alternative method to distribute Title I, Part A ARRA funds to those LEAs?	18
B-8.	Does the fact that the Title I, Part A ARRA funds are part of the FY 2009 Title I, Part A appropriation mean that an SEA must allocate them to an LEA on the basis of the LEA’s FY 2009 application?.....	18
B-9.	May an SEA issue to an LEA a single grant award that lists separately the amount provided through the ARRA and the amount under the regular FY 2009 Title I, Part A appropriation?.....	19
B-10.	Must an SEA allocate Title I, Part A ARRA funds to LEAs on the basis of children living in local institutions for delinquent children to support activities authorized in Title I, Part D, Subpart 2 of the ESEA?	19
	<i>Allocations to Charter School LEAs and Other Special LEAs</i>	19
B-11.	Are charter school LEAs and other special LEAs eligible for Title I, Part A ARRA funds?..	19
B-12.	How does an SEA allocate Title I, Part A ARRA funds to charter school LEAs and other special LEAs?.....	20
B-13.	What data does an SEA use to adjust ED-determined Title I, Part A ARRA allocations for charter school LEAs and other special LEAs when Census poverty data are not available?..	20
B-14.	In adjusting ED-determined Title I, Part A ARRA allocations for a charter school LEA or other special LEA, when does an SEA determine eligibility and what data does the SEA use to determine the LEA’s Title I, Part A ARRA eligibility and allocations?.....	20
B-15.	If a new charter school LEA is scheduled to open, for example, in September 2009, must an SEA allocate Title I, Part A ARRA funds to that LEA?	21
	<i>State Reservations of Title I, Part A ARRA Funds</i>	21
B-16.	What provisions govern the reservation of Title I, Part A ARRA funds by an SEA?	21
B-17.	Must an SEA reserve four percent of the State’s Title I, Part A ARRA funds for school improvement activities under section 1003(a) of the ESEA?.....	21
B-18.	Do the requirements in section 1003(b) of the ESEA concerning the distribution of school improvement funds to LEAs apply to funds an SEA reserves from its Title I, Part A ARRA funds?.....	22
B-19.	Does the provision in section 1003(d) of the ESEA concerning unused funds reserved for section 1003(a) school improvement activities apply to the Title I, Part A ARRA funds an SEA reserves for this purpose?	22
B-20.	Because section 1003(g) of the ESEA does not contain a similar provision regarding “unused funds,” may an SEA allocate its section 1003(g) funds first in order to take advantage of the greater flexibility regarding section 1003(a) funds?	22
B-21.	When must an SEA distribute section 1003(a) funds reserved from its FY 2009 Title I, Part A allocation, including that portion provided through the ARRA?	23
B-22.	May an SEA reserve funds from its Title I, Part A ARRA funds for State administration?....	23
B-23.	May an SEA reserve funds from its Title I, Part A ARRA funds for a State Academic Achievement Awards program required in section 1117(b)(1) of the ESEA?	24

C. FISCAL ISSUES.....	24
<i>Maintenance of Effort.....</i>	24
C-1. Must an LEA maintain fiscal effort to receive Title I, Part A funds, including Title I, Part A ARRA funds?	24
C-2. What fiscal years are compared to determine whether an LEA has maintained effort in order to receive its FY 2009 allocation under Title I, Part A, including Title I, Part A ARRA funds?	25
C-3. If an LEA’s expenditures decrease in SY 2008-09 or SY 2009-10, for which years will this failure to maintain effort affect its Title I, Part A allocations?.....	25
C-4. May an LEA request a waiver of the maintenance of effort requirement from ED?.....	26
C-5. Must a State maintain effort to receive Title I, Part A ARRA funds?.....	26
C-6. To what extent may a State or an LEA use State Fiscal Stabilization Funds to meet the Title I, Part A maintenance of effort requirements?.....	27
C-7. How would treating State Fiscal Stabilization Funds as non-Federal funds affect maintaining effort under Title I, Part A?	27
<i>Supplement, Not Supplant.....</i>	28
C-8. Do the supplement, not supplant requirements in sections 1120A(b) and (d) and 1114(a)(2)(B) of the ESEA apply to Title I, Part A ARRA funds?	28
C-9. May Title I, Part A ARRA funds be used to support activities that were previously supported with non-Federal funds without violating the supplement, not supplant requirement?.....	28
C-10. Does an SEA take into consideration an LEA’s use of State Fiscal Stabilization Funds in determining whether the LEA has violated the Title I, Part A supplement, not supplant requirements?	29
<i>Comparability.....</i>	30
C-11. Must a school receiving Title I, Part A ARRA funds meet the comparability requirements in section 1120A(c) of the ESEA?	30
C-12. Are State Fiscal Stabilization Funds included in an LEA’s determination of comparability?.....	30
<i>Period of Availability.....</i>	30
C-13. What is the period of availability of Title I, Part A ARRA funds?.....	30
<i>Carryover</i>	30
C-14. May an LEA carry over Title I, Part A ARRA funds that remain unobligated after September 30, 2010?	30
C-15. When do Title I, Part A ARRA funds become subject to the carryover provision?	30
C-16. If an SEA awards Title I, Part A ARRA funds to LEAs for use in SY 2008-09, do any unobligated funds become carryover as of September 30, 2009?.....	31
C-17. Does the carryover limitation in section 1127 of the ESEA apply to Title I, Part A ARRA funds?.....	31
C-18. Are school improvement funds appropriated under the ARRA and awarded to an LEA under section 1003(g) or section 1003(a) of the ESEA subject to the carryover limitation?..	31

C-19. May an SEA waive the carryover limitation in section 1127(a) of the ESEA with respect to Title I, Part A ARRA funds?.....	31
C-20. Will ED consider waiving the provision in section 1127(b) of the ESEA that prohibits an SEA from waiving the carryover limitation more than once every three years?.....	31
<i>Financial Management</i>	32
C-21. Are there rules that govern the amount of Title I, Part A ARRA funds that an SEA or LEA may draw down at any one time?.....	32
<i>Indirect Costs</i>	32
C-22. How might Title I, Part A ARRA funds affect an SEA’s or LEA’s indirect cost recoveries?.....	32
D. USES OF TITLE I, PART A ARRA FUNDS WITHIN AN LEA	32
<i>In General</i>	32
D-1. Which Title I, Part A requirements apply to Title I, Part A ARRA funds?.....	32
<i>Reservation for Homeless Children</i>	33
D-2. Must an LEA reserve Title I, Part A ARRA funds for homeless children who do not attend Title I schools?	33
<i>Reservation for Children Living in Local Institutions for Neglected Children</i>	33
D-3. Must an LEA reserve Title I, Part A ARRA funds for children living in local institutions for neglected children?	33
<i>Reservation for Children Living in Local Institutions for Delinquent Children and Neglected or Delinquent Children in Community Day School Programs</i>	33
D-4. May an LEA reserve Title I, Part A ARRA funds to provide services for children living in local institutions for delinquent children and for neglected or delinquent children in community day school programs?.....	33
<i>Reservation to Provide Financial Incentives to Teachers</i>	34
D-5. May an LEA reserve Title I, Part A ARRA funds to provide financial incentives to teachers?.....	34
<i>Equitable Services for Private School Children</i>	34
D-6. Do the Title I, Part A requirements that an LEA provide equitable services to eligible private school children and their teachers and families apply to the Title I, Part A ARRA funds?.....	34
D-7. Must an LEA consult with private school officials <i>prior</i> to deciding how to use its Title I, Part A ARRA funds?	34
D-8. If an LEA receives a waiver of one or more of the “set-aside” requirements under D-11, must the LEA include the Title I, Part A funds that are no longer subject to the set-aside in providing equitable services for eligible private school children?.....	34

***“Set-aside” Requirements*35**

D-9. Must an LEA meet the specific “set-aside” requirements in Title I, Part A with respect to Title I, Part A ARRA funds?.....35

D-10. Are the Title I, Part A ARRA funds an LEA receives included in the LEA’s allocation under Subpart 2 for purposes of determining whether the LEA’s allocation exceeds \$500,000 and that the LEA is, therefore, subject to the set-aside for parent involvement?35

D-11. Will ED consider waiving one or more of the “set-aside” requirements in Title I, Part A as they apply to funds allocated under the ARRA?.....35

D-12. Does the requirement in section 1116(b)(10)(D) of the ESEA that prohibits an LEA from reducing the Title I, Part A allocation to a school identified for corrective action or restructuring by more than 15 percent when reserving funds for public school choice and SES apply to Title I, Part A ARRA funds?.....36

D-13. Do the Title I, Part A ARRA funds an LEA receives count in the base to determine the per-child amount available for providing SES?.....36

D-14. Will ED consider waiving the inclusion of Title I, Part A ARRA funds in the base an LEA must use to determine its per-child amount for providing SES?36

***Expanding the Number of Title I, Part A Schools*.....36**

D-15. May an LEA allocate Title I, Part A ARRA funds to eligible schools that are not currently being served?.....36

***Compliance with Civil Rights Requirements*37**

D-16. Does the receipt of Title I, Part A ARRA funds require an SEA and LEAs to comply with civil rights laws?.....37

E. TRANSPARENCY, ACCOUNTABILITY, AND REPORTING37

E-1. How will ED ensure transparency in the implementation of Title I, Part A ARRA funds by SEAs and LEAs?37

E-2. What information is a State required to include in its quarterly reports under the ARRA?....37

E-3. Are there reporting requirements that apply only to the receipt of Title I, Part A ARRA funds?.....38

E-4. How must an SEA or LEA account for Title I, Part A ARRA funds?.....38

E-5. What are the shared responsibilities of LEAs, SEAs, and ED for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?38

F. PROCESS FOR OBTAINING A WAIVER.....39

F-1. What entities may apply for a waiver that relates to the use of Title I, Part A ARRA funds?39

F-2. Are there specific requirements of Title I, Part A that ED will consider waiving with respect to ARRA funds?39

F-3. May the Secretary waive statutory or regulatory requirements for charter school LEAs?39

F-4. How long will a waiver that affects the use of Title I, Part A ARRA funds be in effect?40

F-5. Are there any statutory and regulatory requirements that may not be waived?.....40

F-6. May an Ed-Flex State waive the requirements set forth in F-2 with respect to Title I, Part A ARRA funds?41

ACRONYMS AND ABBREVIATIONS

ARRA	American Recovery and Reinvestment Act of 2009
CFDA	Catalogue of Federal Domestic Assistance
ED	U.S. Department of Education
EFIG	Education Finance Incentive Grant formula
ESEA	Elementary and Secondary Education Act of 1965
FY	Fiscal year
GEPA	General Education Provisions Act
HHS	U.S. Department of Health and Human Services
LEA	Local educational agency
OMB	U.S. Office of Management and Budget
SEA	State educational agency
SES	Supplemental educational services
SY	School year

**Funds under Title I, Part A of the
Elementary and Secondary Education Act of 1965
Made Available Under
The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)**

INTRODUCTION

The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) provides \$10 billion in new funding for programs under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA). The U.S. Department of Education (ED) will allocate these funds to eligible local educational agencies (LEAs) through the Targeted Grant and Education Finance Incentive Grant formulas authorized in sections 1125 and 1125A of the ESEA. These funds, which are in addition to the \$14.5 billion in Title I, Part A funds Congress provided under Public Law 111-8, the Department of Education Appropriations Act, 2009 (the regular fiscal year (FY) 2009 appropriation), provide assistance to LEAs and schools that have high concentrations of students from families that live in poverty in order to help improve teaching and learning for students most at risk of failing to meet State standards.

The Title I, Part A funds made available under the ARRA provide an unprecedented opportunity for educators to implement innovative strategies to improve education for academically at-risk students and to close the achievement gap in Title I schools while stimulating the economy. The additional resources for Title I, Part A will enable LEAs not only to serve more students beyond the approximately 20 million currently served but also to help boost the quality of the services provided. State and LEA Title I, Part A FY 2009 allocations, including that portion provided through the ARRA, are available at:

<http://www.ed.gov/about/overview/budget/tables.html?src=rt>.

The purpose of this guidance is to provide information about the allocation, use, and reporting of Title I, Part A ARRA funds. This guidance provides ED's interpretation of various statutory provisions and does not impose any requirements beyond those included in the ARRA and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

ED will provide additional or updated program guidance as necessary. If you are interested in commenting on this guidance, please send your comments to OESEGuidanceDocument@ed.gov.

A. ALLOCATION OF TITLE I, PART A ARRA FUNDS TO STATES

A-1. What is the purpose of the new Title I, Part A funds under the ARRA?

The ARRA provides \$10 billion in new funding for programs under Title I, Part A of the ESEA to provide additional assistance to LEAs and schools that have high concentrations of students from families that live in poverty in order to help improve teaching and learning for students most at risk of failing to meet State standards and to close the achievement gap. Four principles guide the distribution and use of ED's ARRA funds, including the Title I, Part A funds: (1) spend funds quickly to save and create jobs; (2) improve student achievement through school improvement and reform; (3) ensure transparency, reporting, and accountability; and (4) invest one-time ARRA funds thoughtfully to minimize the "funding cliff."

Because the ARRA funds constitute a large increase in Title I, Part A funding that will likely not be available at the same level beyond September 30, 2011, schools and LEAs have a unique opportunity to improve teaching and learning and should focus these funds on short-term investments with the potential for long-term benefits rather than make ongoing commitments that they might not be able to sustain once ARRA funds are expended.

A-2. What factors should an SEA and LEA take into consideration in determining how to use the new Title I, Part A funds under the ARRA to carry out its purposes?

ED has provided some examples of possible uses of Title I, Part A funds available through the ARRA in the Title I, Part A Fact Sheet [available at <http://www.ed.gov/policy/gen/leg/recovery/factsheet/title-i.html>]. In the coming weeks, ED will provide more extensive guidance than the information provided here concerning the use of ARRA funds to improve student achievement.

ED expects SEAs to use Title I, Part A ARRA funds available through the four percent reservation for school improvement under section 1003(a) of the ESEA, the five percent reservation for administration, evaluation and technical assistance under section 1003(g) of the ESEA, and the optional reservation for State Academic Achievement Awards under section 1117(c)(2)(A) of the ESEA on short-term investments with the potential for long-term benefits, such as building sustainable capacity at the State and local levels to improve achievement in Title I schools, particularly those Title I schools in improvement, corrective action, and restructuring.

ED expects LEAs to use their Title I, Part A ARRA funds to implement evidence-based strategies that will help build sustainable capacity for improving teaching and learning in Title I schools, recognizing that the amount of funds available will support interventions at a level of intensity not always possible in the past. In making decisions about the uses of these funds, ED encourages LEAs to give particular consideration to early childhood education and programs serving secondary schools, areas for which they may not have

had sufficient resources in the past. ED also encourages LEAs to think creatively about the various tools that Title I, Part A provides for improving teaching and learning, including schoolwide programming and the authority under section 1113(c)(4) of the ESEA to provide financial incentives and rewards for teachers in Title I schools for the purpose of attracting and retaining qualified teachers.

A-3. When will ED award Title I, Part A ARRA funds to States?

ED awarded each State 50 percent of the funds from its FY 2009 Title I, Part A allocation provided through the ARRA on April 1, 2009 on the basis of the State’s existing approved ESEA Consolidated State Application. ED expects to award the remaining Title I, Part A ARRA funds by September 30, 2009 after each State submits, for review and approval by ED, additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA. ED will issue specific guidance for preparing and submitting this information in the coming weeks.

A-4. How do the Title I, Part A ARRA funds relate to the Title I, Part A funds made available through the regular FY 2009 appropriation?

The Title I, Part A ARRA funds are in addition to the Title I, Part A funds made available through the regular FY 2009 Title I, Part A appropriation that ED will award on July 1 and October 1, 2009. Together, the two grant awards under the ARRA and the two grant awards under the regular FY 2009 appropriation will constitute a State’s total FY 2009 Title I, Part A allocation. However, because there are special reporting requirements under the ARRA that require each State and LEA to account for these funds separately, ED has created a unique Catalogue of Federal Domestic Assistance (CFDA) number for the Title I, Part A ARRA funds. Therefore, for FY 2009, ED is awarding Title I, Part A funds through four separate grant awards as shown in the following table:

Funding Source	CFDA #	Amount Appropriated	Date of Award
ARRA – Title I, Part A Funds	84.389A	\$10,000,000,000	1. April 1, 2009 (\$5,000,000,000) 2. By September 30, 2009, after States submit additional information (\$5,000,000,000)
Regular FY 2009 Appropriation–Title I, Part A Funds	84.010A	\$14,492,401,000	3. July 1, 2009 (\$3,651,225,000) 4. October 1, 2009 (\$10,841,176,000)

A-5. For which LEAs did ED allocate Title I, Part A ARRA funds?

An LEA is eligible to receive Title I, Part A ARRA funds if it is eligible under the statutory eligibility criteria established in sections 1125(a)(1) and 1125A(c) of the ESEA for Targeted Grants and Education Finance Incentive Grants (EFIG), respectively. ED, therefore, allocated Title I, Part A ARRA funds to each LEA that has at least 10 formula children and in which those formula children comprise at least 5 percent of the LEA’s

school-aged population (*i.e.*, children aged 5-17, inclusive), based on the data described in A-6. Because ED has Census poverty data only for LEAs that are on the Census Bureau's list based on school districts' school year (SY) 2007-08 boundaries, ED's allocations may not accurately reflect LEAs that have merged, divided, are newly established since SY 2007-08, or do not have geographic boundaries, such as charter school LEAs and special LEAs. Each State must adjust ED's allocations to account for its current universe of LEAs eligible for Targeted and EFIG Grants. See B-2.

A-6. What data did ED use to calculate that portion of a State's FY 2009 Title I, Part A allocation provided through the ARRA?

ED used the most recent data available in March 2009 to calculate that portion of a State's FY 2009 Title I, Part A allocation provided through the ARRA. To obtain a count of formula children, ED used updated 2007 Census data and October 2008 caseload data for children living in local institutions for neglected or delinquent children (N or D institutions), as reported by each State to ED. Because October 2008 caseload data were not fully available in March 2009 for the remaining elements of the formula child count, ED used October 2007 caseload counts of children in foster homes and children in families above poverty receiving assistance under the Temporary Assistance for Needy Families (TANF) program, as reported by each State last year to the U.S. Department of Health and Human Services (HHS). ED also used FY 2006 State per-pupil expenditure (SPPE) data.

A-7. Will ED revise that portion of a State's FY 2009 Title I, Part A allocation provided through the ARRA when all October 2008 caseload data are available?

No. ED will award the remaining Title I, Part A ARRA funds by September 30, 2009 based on the best available data it had in March 2009 when it first awarded ARRA funds.

ED will, however, use complete October 2008 caseload data to revise each State's preliminary allocation with respect to the funds available under the regular FY 2009 Title I, Part A appropriation, which, along with the ARRA funds, make up the State's total FY 2009 Title I, Part A allocation.

A-8. How did ED calculate a State's FY 2009 Title I, Part A allocation, including that portion provided under the ARRA?

Because the Title I, Part A ARRA funds are in addition to the Title I, Part A funds made available under the regular FY 2009 Title I, Part A appropriation, the Title I, Part A ARRA funds are a supplemental appropriation. Therefore, in determining each State's and LEA's FY 2009 Title I, Part A allocation, including that portion provided under the ARRA through the Targeted Grant and EFIG formulas, ED followed the steps described below:

Step 1: ED calculated Basic Grant and Concentration Grant allocations for each State and LEA from funds available for those formulas under the regular FY 2009 Title I, Part A appropriation.

Step 2: ED calculated Targeted Grant and EFIG allocations for each State and LEA based on the combined amount made available for those formulas under the ARRA and the regular FY 2009 Title I, Part A appropriation.

Step 3: ED calculated Targeted Grant and EFIG allocations for each State and LEA based on the amount made available for those formulas under the regular FY 2009 Title I, Part A appropriation only.

Step 4: ED subtracted the allocations calculated in Step 3 under each formula from the allocations calculated in Step 2 to determine the amount of each State's and LEA's Targeted Grant and EFIG allocations provided through the ARRA. Steps 3 and 4 are necessary because ARRA funds must be tracked separately. Accordingly, an SEA must inform each LEA as to what portion of its Title I, Part A funds was provided through the ARRA.

A-9. Did ED allocate Title I, Part A ARRA funds on the basis of children living in local institutions for delinquent children to support activities authorized in Title I, Part D, Subpart 2 of the ESEA?

Yes. The count of children living in local institutions for delinquent children is an integral part of the Title I, Part A formula used to allocate Targeted Grant and EFIG funds made available under the ARRA. For those States that reported a count of children living in local institutions for delinquent children, the amount of funds generated by those children under each formula is aggregated and included as a separate Part D, Subpart 2 "LEA" in the LEA allocations ED calculated for each State.

A-10. Where are ED's FY 2009 Title I, Part A allocations to each State and LEA, including that portion provided through the ARRA, posted?

ED's FY 2009 Title I, Part A allocations to each State and LEA, including that portion provided through the ARRA, are posted at <http://www.ed.gov/about/overview/budget/tables.html?src=rt>. These allocations are preliminary with respect to funds from the regular FY 2009 Title I, Part A appropriation; the funds provided through the ARRA are final allocations. See A-6 and A-7.

Please note that the actual amounts that LEAs receive will be smaller than shown in these tables due to State-level adjustments to ED's allocations. A State educational agency (SEA) must adjust ED's allocations, for example, to reflect LEA boundary changes since SY 2007-08 and to provide allocations to newly created LEAs or LEAs, such as charter school LEAs, without geographic boundaries that are not on ED's list. See B-2. An SEA must also reserve funds for school improvement activities under section 1003(a) of the

ESEA (see B-17) and may reserve funds for State administrative activities (see B-22) and State Academic Achievement Awards (see B-23).

A-11. Are the Bureau of Indian Education and the Outlying Areas entitled to receive Title I, Part A funds provided through the ARRA?

Yes. Under section 1121(a) of the ESEA, ED reserved Title I, Part A ARRA funds for the Bureau of Indian Education and the Outlying Areas. The amounts available for those entities are posted at <http://www.ed.gov/about/overview/budget/tables.html?src=rt>.

B. ALLOCATION OF TITLE I, PART A ARRA FUNDS FROM STATES TO LEAs

In General

B-1. Which LEAs are eligible for Title I, Part A ARRA funds?

As noted in A-5, only an LEA that is eligible to receive an allocation under the Targeted Grant and FIG formulas in sections 1125 and 1125A of the ESEA is eligible to receive Title I, Part A ARRA funds. To be eligible, an LEA must have at least 10 formula children and those children must comprise at least 5 percent of the LEA's school-aged population (*i.e.*, children aged 5-17, inclusive) (Sections 1125(a)(1) and 1125A(c) of the ESEA and 34 C.F.R. § 200.71(c) and (d)).

B-2. Must an SEA adjust ED-determined Title I, Part A ARRA allocations?

Yes. As noted in A-5, ED's list of LEAs might not match the current universe of LEAs for many States. Each SEA, therefore, must adjust ED's Title I, Part A ARRA allocations to account for LEA boundary changes, newly created LEAs since SY 2007-08, and eligible LEAs, such as charter schools, that do not have geographic boundaries and, thus, are not included in ED's calculations. In addition, an SEA must adjust ED's allocations in order to reserve funds under section 1003(a) of the ESEA for school improvement activities. If the State so chooses, it may also reserve a portion of its Title I, Part A funds for State administration and the State Academic Achievement Awards program under section 1117(b)(1) of the ESEA (see B-22 and B-23). Because of the separate ARRA recordkeeping requirements, an SEA must identify the portion of an LEA's FY 2009 Title I, Part A allocation provided through the ARRA, as illustrated in B-5.

B-3. What procedures must an SEA follow to adjust the Title I, Part A Targeted Grant and FIG allocations ED determines for LEAs in the State?

An SEA must follow the applicable procedures outlined in 34 C.F.R. §§ 200.70 – 200.75 and § 200.100 when adjusting ED-determined LEA allocations. ED's *Guidance on State Educational Agency Procedures For Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education* provides more detail on how to adjust ED-determined LEA allocations

[available at:
<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>].

Under these procedures, an SEA must:

- Determine the number of Title I formula children and the eligibility of each LEA (e.g., charter school LEAs and newly created LEAs) not on the Census Bureau's list of LEAs that ED used to determine LEA allocations.
- Adjust the ED-determined allocations based on the number of formula children to establish allocations under each Title I, Part A formula for all eligible LEAs (including those not on the Census Bureau's list) within the State, ensuring that each LEA receives its proper hold-harmless amount under each formula (see B-4).

The Title I, Part A ARRA funds are FY 2009 funds that are in addition to the Title I, Part A funds made available under the regular FY 2009 appropriation. Therefore, an SEA must adjust each LEA's total Targeted Grant and EFIG allocations. At the same time, because an SEA and its LEAs must account for ARRA funds separately, the SEA must be able to identify how much of each LEA's final allocation came from ARRA funds.

- From the total allocation determined for each LEA, reserve funds for school improvement and, if an SEA so chooses, for State administration and for the State Academic Achievement Awards program. (Note that, in reserving funds for school improvement, an SEA may not decrease the amount of funds an LEA receives under Title I, Part A, Subpart 2 below the amount the LEA received under that subpart in the preceding year. If an SEA reserves funds for the State Academic Achievement Awards program, it may either proportionately reduce each LEA's total allocation while ensuring no LEA receives less than its hold-harmless percentage or proportionately reduce each LEA's total allocation even if an LEA falls below its hold-harmless percentage. See 34 C.F.R. § 200.100(d). If an SEA reserves funds for State administration, the SEA may not exceed the cap in section 1004(b) of the ESEA (see B-22).)

B-4. How does an SEA apply the variable hold-harmless rates of 85, 90, and 95 percent, as well as the one-time-only 100 percent hold-harmless rate for certain LEAs, when adjusting the ED-determined FY 2009 Title I, Part A allocations?

As noted in A-4 and A-8, Title I, Part A funds provided through the ARRA are FY 2009 funds that, along with Title I, Part A funds under the regular FY 2009 appropriation, make up a State's and an eligible LEA's total FY 2009 Title I, Part A allocation. An LEA's hold-harmless amount, therefore, is based on the total amount made available to the LEA through the Targeted Grant and EFIG formulas, respectively--that is, the combination of Title I, Part A funds made available under the ARRA and Title I, Part A funds made available under the regular FY 2009 appropriation.

Therefore, when adjusting the ED-determined LEA Targeted Grant allocations, an SEA must ensure that the total amount of Targeted Grant funds allocated to an LEA in FY 2009 (*i.e.*, the sum of the Targeted Grant funds allocated through the regular appropriation and the funds allocated through the ARRA) is not less than the LEA's requisite hold-harmless amount for its Targeted Grant. Likewise, an SEA must ensure that the total amount of EFIG funds allocated to an LEA in FY 2009 (*i.e.*, the sum of the EFIG funds allocated through the regular appropriation and the funds allocated through the ARRA) is not less than the LEA's requisite hold-harmless amount for EFIG. In other words, the respective hold harmless is applied once to the sum of the amounts available through the ARRA and the regular FY 2009 appropriation for each formula, not separately with respect to the ARRA funds and the regular appropriation. An SEA must also apply the requisite LEA hold-harmless amounts for Basic Grants and Concentration Grants, both of which are funded through the regular FY 2009 appropriation only, when adjusting the ED-determined allocations for these two Title I, Part A formulas.

When adjusting ED-determined FY 2009 Title I, Part A allocations, an SEA must ensure that each LEA receives its requisite hold-harmless amount under each formula. Most LEAs are guaranteed at least 85, 90, or 95 percent of their FY 2008 allocation under each of the four Title I, Part A formulas (see section 1122(c) of the ESEA). Certain LEAs, however, are guaranteed 100 percent of their FY 2008 allocation under each formula. Public Law 110-366 provides that, in the case of an LEA that serves an area covered by a presidentially declared disaster related to "severe storms, tornadoes, or flooding in the Midwest or hurricanes in the Gulf of Mexico in calendar year 2008," the LEA must receive under each of the four Title I, Part A formulas not less than the amount made available for the LEA in FY 2008. ED has indicated in its allocations those LEAs that are subject to this special 100 percent hold-harmless provision, which applies only to FY 2009 funds (*i.e.*, to an LEA's total FY 2009 Title I, Part A allocation, including the portion provided through the ARRA). To determine which special LEAs (*i.e.*, LEAs not on ED's list of LEAs) to which the special 100 percent hold-harmless guarantee applies, an SEA must refer to ED's allocation table that lists the regular LEAs identified as subject to the 100 percent hold-harmless requirement. The SEA would apply the 100 percent hold-harmless provision to any special LEA located in the same county or parish as a regular LEA that is subject to the 100 percent hold-harmless rate.

B-5. Can ED provide examples of the steps an SEA uses to adjust the ED-determined FY 2009 LEA Title I, Part A allocations?

Yes. The following tables illustrate the steps outlined in B-2 through B-4 that an SEA uses to adjust ED-determined FY 2009 Title I, Part A allocations for each formula, including, in particular, an LEA's Targeted Grant and EFIG allocations that contain funds provided through the ARRA that must be identified separately.

TARGETED GRANTS

	(1) FY 2008 (SY 2008-09) State- Determined Targeted Grant Allocation	(2) FY 2009 ED-Determined Targeted Grant Allocation (Regular Approp. + ARRA) ¹	(3) State- Adjusted FY 2009 Targeted Grant Allocation (Regular Approp. + ARRA) ²	(4) Percentage of FY 2008 State- Determined Targeted Grant Allocation	(5) FY 2009 ED-Determined Targeted Grant Allocation (Regular Approp. Only) ³	(6) State- Adjusted FY 2009 Targeted Grant Allocation (Regular Approp. Only) ²	(7) State- Adjusted FY 2009 ARRA Targeted Grant Allocation (Col (3) - Col (6))
	\$10,283,943	\$26,977,186	\$26,977,186	262.3%	\$10,896,752	\$10,896,752	\$16,080,434
LEA 1	1,718,414	5,744,285	5,685,795	330.9%	2,266,544	2,243,466	3,442,329
LEA 2	7,265,495	18,845,547	18,653,656	256.7%	7,435,959	7,360,244	11,293,412
LEA 3	462,964	416,668	416,668	90.0%	416,668	416,668	0
LEA 4	737,070	1,970,687	1,950,621	264.6%	777,581	769,664	1,180,957
Special LEA	100,000		270,447	270.4%		106,711	163,736

¹ The amount shown in this column corresponds to the sum of column (4) and column (7) shown in the LEA allocation table for each State that ED released on April 1, 2009.

² No LEA receives less than its hold-harmless amount based on its FY 2008 State-determined Targeted Grant allocation.

³ The amount shown in this column corresponds to the amount in column (7) shown in the LEA allocation table for each State that ED released on April 1, 2009.

EDUCATION FINANCE INCENTIVE GRANTS

	(1) FY 2008 (SY 2008-09) State- Determined EFIG Allocation	(2) FY 2009 ED-Determined EFIG Allocation (Regular Approp. + ARRA) ¹	(3) State- Adjusted FY 2009 EFIG Allocation (Regular Approp. + ARRA) ²	(4) Percentage of FY 2008 State- Determined EFIG Allocation	(5) FY 2009 ED-Determined EFIG Allocation (Regular Approp. Only) ³	(6) State- Adjusted FY 2009 EFIG Allocation (Regular Approp. Only) ²	(7) State- Adjusted FY 2009 ARRA EFIG Allocation (Col (3) - Col (6))
	\$10,614,755	\$26,775,844	26,775,844	252.3%	\$10,906,104	\$10,906,104	\$15,869,740
LEA 1	1,756,982	5,698,718	5,642,525	321.1%	2,266,544	1,815,658	3,826,867
LEA 2	7,530,806	18,696,052	18,511,699	245.8%	7,435,959	7,782,306	10,729,393
LEA 3	473,355	426,020	426,020	90.0%	426,020	426,020	0
LEA 4	753,612	1,955,054	1,935,776	256.9%	777,581	778,780	1,156,996
Special LEA	100,000		259,824	259.8%		103,340	156,484

- ¹ The amount shown in this column corresponds to the sum of column (5) and column (8) shown in the LEA allocation table for each State that ED released on April 1, 2009.
- ² No LEA receives less than its hold-harmless amount based on its FY 2008 State-determined FIG allocation.
- ³ The amount shown in this column corresponds to the amount in column (8) shown in the LEA allocation table for each State that ED released on April 1, 2009.

BASIC GRANTS

	(1) FY 2008 (SY 2008-09) State-Determined Basic Allocation	(2) FY 2009 ED-Determined Basic Allocation (Regular Approp. Only) ¹	(3) State-Adjusted FY 2009 Basic Allocation (Regular Approp. Only) ²	(4) Percentage of FY 2008 State-Determined Basic Allocation
	\$19,098,729	\$17,808,474	\$17,808,474	93.2%
LEA 1	\$3,658,424	\$4,053,303	\$4,008,067	109.6%
LEA 2	12,061,262	10,838,745	10,725,243	88.9%
LEA 3	1,287,520	1,058,768	1,082,932	90.0%
LEA 4	1,891,523	1,757,659	1,738,043	91.9%
Special LEA	200,000		185,814	92.9%

- ¹ The amount shown in this column corresponds to column (2) shown in the LEA allocation table for each State that ED released on April 1, 2009.
- ² No LEA receives less than its hold-harmless amount based on its FY 2008 State-determined Basic Grant allocation.

CONCENTRATION GRANTS

	(1) FY 2008 (SY 2008-09) State-Determined Conc. Allocation	(2) FY 2009 ED-Determined Conc. Allocation (Regular Approp. Only) ¹	(3) State-Adjusted FY 2009 Conc. Allocation (Regular Approp. Only) ²	(4) Percentage of FY 2008 State- Determined Conc. Allocation
	\$4,439,180	\$4,011,769	\$4,011,769	90.37%
LEA 1	943,814	990,214	978,351	103.66%
LEA 2	3,113,207	2,722,613	2,689,997	86.41%
LEA 3	332,159	298,943	298,943	90.00%
LEA 4	0	0	0	
Special LEA	50,000		44,478	88.96%

- ¹ The amount shown in this column corresponds to column (3) shown in the LEA allocation table for each State that ED released on April 1, 2009.
- ² No LEA receives less than its hold-harmless amount based on its FY 2008 State-determined Concentration Grant allocation.

TOTAL STATE-ADJUSTED FY 2009 TITLE I, PART A ALLOCATIONS TO LEAS FROM ALL SOURCES

	(1) State-Adjusted FY 2009 Basic Allocation (Regular Approp. Only) ¹	(2) State-Adjusted FY 2009 Conc. Allocation (Regular Approp. Only) ²	(3) State-Adjusted FY 2009 Targeted Grant Allocation (Regular Approp. Only) ³	(4) State-Adjusted FY 2009 EFIG Allocation (Regular Approp. Only) ⁴	(5) State-Adjusted FY 2009 ARRA Targeted Grant Allocation ⁵	(6) State-Adjusted FY 2009 ARRA EFIG Allocation ⁶	(7) Final Total State-Adjusted FY 2009 Allocation For All Formulas
	\$17,808,474	\$4,011,769	\$10,896,752	\$10,906,104	\$16,080,434	\$15,869,740	\$75,573,273
LEA 1	4,008,067	798,351	2,243,466	1,815,658	3,442,329	3,826,867	16,314,739
LEA 2	10,717,782	2,698,997	7,360,244	7,782,306	11,293,412	10,729,393	50,573,134
LEA 3	1,158,768	298,943	416,668	426,020	0	0	2,300,398
LEA 4	1,738,943	0	769,664	778,780	1,180,957	1,156,996	5,624,439
Special LEA	185,814	44,478	106,711	103,340	163,736	156,484	760,563

¹ From column (3) of the Basic Grants table

² From column (3) of the Concentration Grants table

³ From column (6) of the Targeted Grants table

⁴ From column (6) of the EFIG table

⁵ From column (7) of the Targeted Grants table

⁶ From column (7) of the EFIG table

B-6. What data does an SEA use to determine eligibility for Title I, Part A ARRA funds?

The Title I, Part A ARRA allocations calculated by ED are final. See A-6 and A-7. Subject to the adjustments that an SEA must make to allocate funds to eligible LEAs that are not on ED's list (see B-14), an SEA must base eligibility for Title I, Part A ARRA funds for the LEAs on ED's list on the data ED used to allocate those funds--*i.e.*, the data available to ED in March 2009. This is true even if an LEA's formula count changes when ED makes final Title I, Part A allocations under the regular FY 2009 appropriation or if an SEA awards ARRA funds in two parts.

B-7. May an SEA, with approval from ED to use an alternative method under 34 C.F.R. § 200.74 to distribute Title I, Part A funds to small LEAs with fewer than 20,000 total residents, use that alternative method to distribute Title I, Part A ARRA funds to those LEAs?

Yes. The provisions in 34 C.F.R. § 200.74 apply to the distribution of Title I, Part A ARRA funds to small LEAs with fewer than 20,000 total residents.

B-8. Does the fact that the Title I, Part A ARRA funds are part of the FY 2009 Title I, Part A appropriation mean that an SEA must allocate them to an LEA on the basis of the LEA's FY 2009 application?

No. The fact that Title I, Part A ARRA funds are FY 2009 funds does not preclude an SEA from awarding some or all of those funds to an LEA on the basis of an amended FY 2008 application.

B-9. May an SEA issue to an LEA a single grant award that lists separately the amount provided through the ARRA and the amount under the regular FY 2009 Title I, Part A appropriation?

An SEA may choose how it wishes to structure the grant awards it issues and decide if it wants to include Title I, Part A ARRA funds and the regular FY 2009 Title I, Part A appropriation in one grant award or two. However, because of the separate CFDA numbers assigned to Title I, Part A ARRA and FY 2009 appropriation funds and the need to account for these funds separately, an SEA and its LEAs must be able to differentiate how much of their total FY 2009 Title I, Part A resources comes from each source.

B-10. Must an SEA allocate Title I, Part A ARRA funds to LEAs on the basis of children living in local institutions for delinquent children to support activities authorized in Title I, Part D, Subpart 2 of the ESEA?

Yes. The count of children in local institutions for delinquent children is an integral part of the Title I, Part A formulas used to allocate Targeted Grant and EFIG funds made available under the ARRA. For those States that reported counts of children living in local institutions for delinquent children, the amount of funds generated by those children under each formula is shown in the LEA allocations ED calculates for each State. Based on these allocations, the SEA must make subgrants to LEAs with high numbers or percentages of delinquent children in accordance with section 1422 of the ESEA.

Allocations to Charter School LEAs and Other Special LEAs

B-11. Are charter school LEAs and other special LEAs eligible for Title I, Part A ARRA funds?

Yes. Charter school LEAs and other special LEAs that are not on ED's list of LEAs are eligible for Title I, Part A ARRA funds on the same basis as other LEAs in the State. Charter school LEAs and special LEAs, like all other LEAs, must have at least 10 formula children and those children must comprise at least 5 percent of the school-aged population in the LEA (*i.e.*, children aged 5-17, inclusive) to be eligible to receive Title I, Part A ARRA funds.

B-12. How does an SEA allocate Title I, Part A ARRA funds to charter school LEAs and other special LEAs?

Except as noted in B-15, an SEA must treat charter school LEAs and other special LEAs like any other LEA in the State when determining Title I, Part A eligibility and allocations. The SEA would allocate Title I, Part A ARRA funds to these special LEAs by:

- Determining the number of Title I formula children in each charter school LEA and special LEA, including deriving a Census poverty count (see B-13);
- Determining whether the LEA is eligible for Targeted Grant and EFIG funds; and
- Using these data to determine allocations for these special LEAs along with the other LEAs in the State.

See ED's *Guidance on State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education* for more detail on how to adjust ED-determined LEA allocations [available at:

<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>].

B-13. What data does an SEA use to adjust ED-determined Title I, Part A ARRA allocations for charter school LEAs and other special LEAs when Census poverty data are not available?

Because Census poverty data are not available for charter school LEAs or special LEAs, a State must derive a Census poverty count for each such LEA. An SEA may, for example, use another source of poverty data, such as current-year data from the school lunch program and current-year enrollment data, to derive a Census count of poverty children and a comparable count of the total population of children aged 5 through 17, inclusive. Based on these derived data, the SEA determines the number of Census poverty children who transfer from a regular LEA on ED's list to a special LEA, determines the special LEA's eligibility under the Targeted Grant and EFIG formulas, and calculates how much funding will transfer from the regular LEA to the special LEA. ED's *Guidance on State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education* provides several examples of how an LEA can derive Census poverty data [available at:

<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>].

B-14. In adjusting ED-determined Title I, Part A ARRA allocations for a charter school LEA or other special LEA, when does an SEA determine eligibility and what data does the SEA use to determine the LEA's Title I, Part A ARRA eligibility and allocations?

An SEA uses the best available data at the time it adjusts ED-determined Title I, Part A ARRA allocations for LEAs not on ED's list.

B-15. If a new charter school LEA is scheduled to open, for example, in September 2009, must an SEA allocate Title I, Part A ARRA funds to that LEA?

Yes. Section 5206 of the ESEA requires an SEA to take necessary measures to ensure that a newly opening or a significantly expanding charter school LEA receives the funds to which it is entitled within five months after opening or expanding even if the identity of the children in the LEA needed to determine allocations may not be available at the time the charter school LEA opens or expands. For more details and guidance on how to address issues concerning newly opening or significantly expanding charter school LEAs, see the regulations concerning charter schools at 34 C.F.R. Part 76, Subpart H [available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-33119-filed.pdf] and guidance on how an SEA allocates funds to charter schools that are opening for the first time or significantly expanding enrollment [available at http://www.uscharterschools.org/pdf/fr/sea_guidance_main.pdf].

Therefore, if a new or significantly expanding charter school LEA has given the SEA notice 120 days in advance of its scheduled date of opening, then, assuming the new charter school LEA is eligible, the SEA must allocate Title I, Part A ARRA funds to that LEA. The charter school LEA must provide the SEA with a reasonable estimate of its total enrollment and of the number of children it enrolls from low-income families. Based on this estimate, the SEA may make a preliminary determination of the charter school LEA's Title I eligibility and allocation. After the school opens, the SEA must adjust the charter school LEA's allocation, as necessary, based on actual data.

State Reservations of Title I, Part A ARRA Funds

B-16. What provisions govern the reservation of Title I, Part A ARRA funds by an SEA?

The following provisions, which are explained more fully in B-17 through B-23, govern the reservation of Title I, Part A ARRA funds by an SEA:

- Section 1003(a) of the ESEA (reservation for school improvement activities).
- Section 1004 of the ESEA (cap on reservation for State administration).
- Section 1117(c)(2)(A) of the ESEA (permissible reservation for State Academic Achievement Awards).
- Section 1552 of the ARRA (authority for ED to regulate to raise the cap on State administration to help defray costs of data collection under the ARRA).

B-17. Must an SEA reserve four percent of the State's Title I, Part A ARRA funds for school improvement activities under section 1003(a) of the ESEA?

An SEA must reserve, for school improvement activities under section 1003(a) of the ESEA, four percent of the total amount the State receives for its FY 2009 Title I, Part A allocation, including funds made available under the regular FY 2009 Title I, Part A appropriation and the Title I, Part A funds made available under the ARRA. An SEA has flexibility in how much of this reserve it takes from its Title I, Part A ARRA funds versus

how much it takes from funds received under the regular FY 2009 appropriation so long as the amount reserved equals four percent of its total FY 2009 allocation, including the portion provided through the ARRA. Regardless of how much an SEA takes from either source of funding, the SEA must account separately for school improvement funds reserved from the ARRA. See generally Section E.

B-18. Do the requirements in section 1003(b) of the ESEA concerning the distribution of school improvement funds to LEAs apply to funds an SEA reserves from its Title I, Part A ARRA funds?

Yes. An SEA must allocate not less than 95 percent of the amount reserved under section 1003(a) of the ESEA directly to LEAs for schools identified for school improvement, corrective action, and restructuring under section 1116(b) of the ESEA, regardless of whether it reserves that amount from its regular Title I, Part A funds or from its Title I, Part A ARRA funds. The SEA may, however, with the approval of its LEAs, directly provide for these activities or arrange for their provision through other entities such as school support teams or educational service agencies.

B-19. Does the provision in section 1003(d) of the ESEA concerning unused funds reserved for section 1003(a) school improvement activities apply to the Title I, Part A ARRA funds an SEA reserves for this purpose?

Yes. If, after consultation with LEAs in the State, an SEA determines that the amount of funds reserved to carry out school improvement activities under section 1003(a) of the ESEA is greater than the amount needed to provide the assistance described in section 1003(b), the SEA must allocate the excess amount to LEAs in accordance with:

- The relative allocations the SEA made to LEAs for FY 2009 under Title I, Part A, including allocations made from regular Title I, Part A funds and from the Title I, Part A ARRA funds; or
- Section 1126(c) of the ESEA related to reallocating excess Title I, Part A funds. Section 1126(c) authorizes an SEA to reallocate excess Title I, Part A funds to LEAs that have additional need for those funds in accordance with criteria established by the SEA.

B-20. Because section 1003(g) of the ESEA does not contain a similar provision regarding “unused funds,” may an SEA allocate its section 1003(g) funds first in order to take advantage of the greater flexibility regarding section 1003(a) funds?

Yes. Section 1003(g)(7) of the ESEA requires an SEA to allocate at least 95 percent of the funds it receives under section 1003(g) to LEAs for schools identified for school improvement, corrective action, and restructuring. Under section 1003(g)(5), each LEA must receive no less than \$50,000 or more than \$500,000 for each participating school. Section 1003(g) does not have an “unused funds” provision as does section 1003(d). Given the large increase in section 1003(g) funds under the ARRA, in combination with those in the regular FY 2009 appropriation, an SEA may wish to allocate its section

1003(g) funds to its LEAs before allocating the funds it reserves under section 1003(a). Depending on how many schools it has in improvement, corrective action, and restructuring, the SEA may be able to provide sufficient section 1003(g) funds for school improvement activities based on the SEA's priorities, thereby enabling it to have "unused funds" under section 1003(a) that the SEA may then reallocate, for example, to LEAs in improvement with no schools in improvement or to LEAs with schools on the SEA's "watch list."

B-21. When must an SEA distribute section 1003(a) funds reserved from its FY 2009 Title I, Part A allocation, including that portion provided through the ARRA?

A State has flexibility as to when it distributes its section 1003(a) funds. An SEA may want to wait until it knows its total allocation of Title I, Part A funds under the ARRA and the regular FY 2009 appropriation. At that point, the SEA can calculate the four percent to reserve for school improvement based on its total FY 2009 allocation and distribute school improvement funds reserved from both sources at the same time while ensuring that no LEA receives less than the amount allocated to it in the preceding year.

B-22. May an SEA reserve funds from its Title I, Part A ARRA funds for State administration?

Yes, so long as the total amount an SEA reserves for State administration does not exceed the amount permitted under section 1004(b) of the ESEA.

Section 1004(b) provides that, when the appropriation in any fiscal year for Title I, Part A, Part C (Migrant Education), and Part D (State Agency Neglected and Delinquent Program) exceeds \$14 billion, the maximum amount an SEA may reserve for the administration of Title I programs in that year is based on the amount it would have received if only \$14 billion were appropriated for Title I, Parts A, C, and D. As it did last year, ED will provide a table showing how much would be allocated to each State under Title I, Parts A, C, and D if \$14 billion were appropriated for FY 2009. An SEA that chooses to reserve funds for administrative costs must use that amount as the base for determining how much it may reserve for State administration from its FY 2009 Title I, Part A funds. An SEA has flexibility in how much of this reserve it takes from Title I, Part A ARRA funds versus how much it takes from funds received under the regular FY 2009 appropriation so long as the amount reserved does not exceed the total amount permitted under section 1004(b). Regardless of how much an SEA takes from either source of funding, the SEA must account separately for any State administrative funds reserved from the ARRA.

Note that, using the authority in section 1552 of the ARRA, ED intends to propose, for public comment, regulations to adjust the cap on State administrative funds under Title I, Part A (and other programs, as appropriate) to help SEAs defray the costs of the data collection requirements in the ARRA. ED may issue a final regulation that makes these adjustments only after following the notice-and-comment rule making requirements in the Administrative Procedure Act. Each SEA that chooses to reserve a portion of its

Title I, Part A funds for State administration must use the amount in the table provided by ED to determine how much it may reserve for such administrative costs until a final regulation adjusting the administrative cap, if any, is effective.

Please note that ED may not waive the cap on State administrative funds. See 9401(c)(1) of the ESEA.

B-23. May an SEA reserve funds from its Title I, Part A ARRA funds for a State Academic Achievement Awards program required in section 1117(b)(1) of the ESEA?

Yes. An SEA may reserve a portion of its Title I, Part A ARRA funds for a State Academic Achievement Awards program. Section 1117(c)(2)(A) of the ESEA authorizes an SEA to reserve not more than five percent of the funds the State receives under Title I, Part A, Subpart 2 in excess of its prior year's allocation for the State Academic Achievement Awards program required in section 1117(b)(1) of the ESEA. If an SEA reserves funds for this purpose, it must distribute not less than 75 percent of the amount reserved to schools in the highest quartile of schools in the State based on the percentage of students from low-income families (Section 1117(c)(4) of the ESEA). An SEA has flexibility in how much of this reserve it takes from its Title I, Part A ARRA funds versus how much it takes from funds received under the regular FY 2009 appropriation so long as the amount reserved does not exceed five percent of the total increase over its FY 2008 Title I, Part A allocation. Regardless of how much an SEA takes from either source of funding, the SEA must account separately for any State Academic Achievement Awards funds reserved from the ARRA.

C. FISCAL ISSUES

Maintenance of Effort

C-1. Must an LEA maintain fiscal effort to receive Title I, Part A funds, including Title I, Part A ARRA funds?

Yes. Under sections 1120A(a) and 9521 of the ESEA, an LEA may receive funds under Title I, Part A for any fiscal year only if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year were not less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding fiscal year. If an LEA fails to meet the maintenance of effort requirement, the SEA must reduce the amount of funds allocated under Title I, Part A, including the ARRA funds (as well as the allocations of the other ESEA programs covered by the maintenance of effort requirement), in any fiscal year in the exact proportion by which the LEA failed to maintain expenditures at 90 percent of the second preceding year's level. In reducing an LEA's allocation because it fails to meet the maintenance of effort requirement, the SEA must use the measure most favorable to the LEA. For a more detailed discussion, see the section in the Title I Fiscal Guidance on the

maintenance of effort requirement [available at <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>].

C-2. What fiscal years are compared to determine whether an LEA has maintained effort in order to receive its FY 2009 allocation under Title I, Part A, including Title I, Part A ARRA funds?

As illustrated in the following table, an SEA must compare expenditures of State and local funds for free public education in FY 2008 (SY 2007-08) with those expenditures from FY 2007 (SY 2006-07) when determining whether an LEA has maintained effort with respect to receiving its FY 2009 Title I, Part A allocation, including its Title I, Part A ARRA funds.

Fiscal Year Appropriation	Funds first become available	First Preceding Fiscal Year	Second Preceding Fiscal Year
FY 2009	February 17, 2009 (ARRA) July 1, 2009 (regular appropriation)	FY 2008 (SY 2007-08)	FY 2007 (SY 2006-07)
FY 2010	July 1, 2010	FY 2009 (SY 2008-09)	FY 2008 (SY 2007-08)
FY 2011	July 1, 2011	FY 2010 (SY 2009-10)	FY 2009 (SY 2008-09)

Thus, to receive its full allocation of FY 2009 Title I, Part A ARRA funds that became available on February 17, 2009 and Title I, Part A funds that will become available on July 1, 2009 under the regular appropriation, an LEA’s expenditures of State and local funds for free public education in FY 2008 (SY 2007-08) must be at least 90 percent of those expenditures in FY 2007 (SY 2006-07).

As a result, if an LEA’s expenditures first decreased in SY 2008-09 because of the economic downturn, that decrease in expenditures would not affect the LEA’s maintenance of effort with respect to receiving its FY 2009 Title I, Part A allocation (either with respect to the ARRA or the regular appropriation). However, absent a waiver, it could affect the LEA’s ability to maintain effort and receive its full FY 2010 allocation (available July 1, 2010) because maintenance of effort would compare expenditures in FY 2009 (SY 2008-09) with FY 2008 (SY 2007-08). See C-3.

C-3. If an LEA’s expenditures decrease in SY 2008-09 or SY 2009-10, for which years will this failure to maintain effort affect its Title I, Part A allocations?

As the table in C-2 illustrates, a decrease in an LEA’s expenditures in SY 2008-09 (which are compared to expenditures in SY 2007-08) will affect maintenance of effort with respect to the allocation of Title I, Part A funds that will become available on July 1, 2010 under the FY 2010 appropriation. Similarly, a decrease in an LEA’s expenditures in SY 2009-10 (which are compared to SY 2008-09) will affect maintenance of effort with respect to the allocation of Title I, Part A funds that will become available on July 1, 2011 under the FY 2011 appropriation. As noted in C-2, decreasing expenditures in SY

2008-09 would not affect maintenance of effort with respect to Title I, Part A funds made available under the FY 2009 appropriation, including the Title I, Part A ARRA funds.

C-4. May an LEA request a waiver of the maintenance of effort requirement from ED?

Yes. ED may waive the maintenance of effort requirement if ED determines that a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State (Section 9521(c) of the ESEA). A waiver of the annual maintenance of effort requirement is for one year. If an LEA receives a waiver, its Title I, Part A allocation (as well as its allocations under other covered programs) would not be reduced due to its failure to maintain fiscal effort.

In deciding whether to grant an LEA a waiver of the maintenance of effort requirement, ED will consider the extent of the exceptional or uncontrollable circumstances cited. For example, if financial problems related to the economic downturn are cited, ED will consider the extent of the decline in available financial resources, in view of the ARRA, as well as changes in demand for services. ED will be concerned if the local government through which the LEA receives resources reduces the proportion of total revenues spent on education and will take that fact into consideration as well.

C-5. Must a State maintain effort to receive Title I, Part A ARRA funds?

Yes. To receive Title I, Part A EFIG funds under the ARRA, a State must meet the maintenance of effort requirements in section 1125A(e) of the ESEA. A State maintains effort if either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provision of free public education for the preceding fiscal year were not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year (Section 1125A(e)(1) of the ESEA). ED may waive this requirement, for one fiscal year at a time, if ED determines that a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State (Section 1125A(e)(3) of the ESEA).

In deciding whether to grant a State a waiver of the maintenance of effort requirement, ED will consider the extent of the exceptional or uncontrollable circumstances cited. For example, if financial problems related to the economic downturn are cited, ED will consider the extent of the decline in available financial resources, in view of the ARRA, as well as changes in demand for services. ED will be concerned if the State reduces the proportion of total revenues spent on education and will take that fact into consideration as well.

C-6. To what extent may a State or an LEA use State Fiscal Stabilization Funds to meet the Title I, Part A maintenance of effort requirements?

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

Accordingly, the Secretary will permit a State or an LEA to treat State Fiscal Stabilization Funds as non-Federal funds for maintenance of effort purposes of other Federal programs, including Title I, Part A, only if the following criteria are met:

- The State first demonstrates to ED, on the basis of auditable data, that it is complying with the State Fiscal Stabilization program maintenance of effort requirements, unless the Secretary has granted a waiver of those requirements pursuant to the criterion in Section 14012(c) of the ARRA; and
- The State or LEA has available for inspection auditable data demonstrating that the portion of its State Fiscal Stabilization Funds that it seeks to treat as non-Federal funds to meet the Title I, Part A maintenance of effort requirements was spent in such a manner that, had the State Fiscal Stabilization Funds been non-Federal funds, those funds would have been permitted to be used in determining the State’s or LEA’s compliance with the Title I, Part A maintenance of effort requirements.

In addition, the Secretary will be concerned if a State reduces the proportion of total State revenues that are spent on education, and will take that into consideration in deciding whether to allow a State or LEA to treat State Fiscal Stabilization Funds as non-Federal funds for Title I, Part A maintenance of effort purposes. If a State did reduce the proportion of total State revenues spent on education, the Secretary will consider whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases, the extent of the decline in available financial resources, and any changes in demand for services.

ED intends to issue further guidance on the process for obtaining the Secretary’s “prior approval” to use State Fiscal Stabilization Funds to meet the maintenance of effort requirements of other programs, including Title I, Part A.

C-7. How would treating State Fiscal Stabilization Funds as non-Federal funds affect maintaining effort under Title I, Part A?

Expenditures of State Fiscal Stabilization Funds in SY 2008-09 would first affect maintenance of effort with respect to SY 2010-11 Title I, Part A allocations; expenditures in SY 2009-10 would first affect maintenance of effort with respect to SY 2011-12 Title I, Part A allocations; and expenditures in SY 2010-11 would first affect maintenance of effort with respect to SY 2012-13 Title I, Part A allocations. Counting

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

Supplement, Not Supplant

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

Yes.

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

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

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

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

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

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

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

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

Comparability

C-11. Must a school receiving Title I, Part A ARRA funds meet the comparability requirements in section 1120A(c) of the ESEA?

Yes.

C-12. Are State Fiscal Stabilization Funds included in an LEA's determination of comparability?

No. To meet the Title I, Part A comparability requirements, an LEA must use State and local funds in each Title I school to provide services that, taken as a whole, are at least comparable to the services it provides in non-Title I schools. Because State Fiscal Stabilization Funds are Federal funds, they are not included in comparability determinations.

Period of Availability

C-13. What is the period of availability of Title I, Part A ARRA funds?

Title I, Part A ARRA funds are FY 2009 funds. Accordingly, they have an initial period of availability through September 30, 2010. As explained in C-14, Title I, Part A ARRA funds that are not obligated by that date remain available for obligation by SEAs and LEAs (subject to the carryover limitation in section 1127 of the ESEA) until September 30, 2011. See C-17. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. 76.707 [Available at <http://www.ed.gov/policy/fund/reg/edgarReg/edgar.html>].

Carryover

C-14. May an LEA carry over Title I, Part A ARRA funds that remain unobligated after September 30, 2010?

Yes. Subject to the limitation described in C-17, an LEA may, under section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. § 1225(b)), carry over any unobligated Title I, Part A ARRA funds to the subsequent fiscal year--that is, the year ending September 30, 2011.

C-15. When do Title I, Part A ARRA funds become subject to the carryover provision?

Title I, Part A ARRA funds are FY 2009 funds. Accordingly, their initial period of availability ends on September 30, 2010, and all unobligated Title I, Part A ARRA funds become carryover as of that date. Subject to the limitation described in C-17, an LEA may carry over any unobligated Title I, Part A ARRA funds to the fiscal year ending September 30, 2011.

C-16. If an SEA awards Title I, Part A ARRA funds to LEAs for use in SY 2008-09, do any unobligated funds become carryover as of September 30, 2009?

No. Because Title I, Part A ARRA funds are FY 2009 funds, their initial period of availability extends through September 30, 2010.

C-17. Does the carryover limitation in section 1127 of the ESEA apply to Title I, Part A ARRA funds?

Yes. Unless it is granted a waiver, an LEA must obligate at least 85 percent of its total FY 2009 Title I, Part A funds, including its Title I, Part A ARRA funds, by September 30, 2010 (Section 1127(a) of the ESEA). An LEA must obligate all of its Title I, Part A FY 2009 funds, including its Title I, Part A ARRA funds, by September 30, 2011. For more detail on the Title I, Part A carryover requirements, see the carryover section in the Title I Fiscal Guidance [available at: <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>].

C-18. Are school improvement funds appropriated under the ARRA and awarded to an LEA under section 1003(g) or section 1003(a) of the ESEA subject to the carryover limitation?

No. The carryover limitation only applies to Title I, Part A funds allocated under Subpart 2 of Title I, Part A—*i.e.*, under the Basic Grant, Concentration Grant, Targeted Grant, and FIG formulas. Neither section 1003(g) nor section 1003(a) funds are allocated under Subpart 2. Therefore, school improvement funds are available for obligation through September 30, 2011 without limitation.

C-19. May an SEA waive the carryover limitation in section 1127(a) of the ESEA with respect to Title I, Part A ARRA funds?

Yes. An SEA may waive the 15 percent carryover limitation for an LEA once every three years if (1) it determines that the LEA's request is reasonable and necessary; or (2) a supplemental appropriation under Title I, Part A becomes available. Title I, Part A ARRA funds are a supplemental appropriation under Title I, Part A.

C-20. Will ED consider waiving the provision in section 1127(b) of the ESEA that prohibits an SEA from waiving the carryover limitation more than once every three years?

Yes. The Secretary will consider waiving the provision in section 1127(b) of the ESEA prohibiting an SEA from granting a waiver of the carryover limitation more than once every three years. See generally Section F.

Financial Management

C-21. Are there rules that govern the amount of Title I, Part A ARRA funds that an SEA or LEA may draw down at any one time?

Yes. An SEA must have an effective system for managing the flow of funds that ensures that it and its LEAs are able to draw down funds as needed to pay program costs but that also minimizes the time that elapses between the transfer of the funds and their disbursement by the SEA or LEAs, in accordance with U.S. Department of the Treasury regulations at 31 C.F.R. Part 205. (See 34 C.F.R. § 80.21(b).) An SEA and LEAs must promptly, but at least quarterly, remit to ED interest earned on advances. (34 C.F.R. § 80.21(i).) ED will take appropriate actions against SEAs and LEAs that fail to comply with this requirement.

Indirect Costs

C-22. How might Title I, Part A ARRA funds affect an SEA's or LEA's indirect cost recoveries?

To obtain indirect cost recoveries, an SEA or LEA is allowed to apply its currently negotiated indirect cost rate to obligations incurred under the ARRA. The negotiated indirect cost rate for the current fiscal year is based on actual cost information from a prior fiscal year. Therefore, applying the currently negotiated indirect cost rate to the increased funding under the ARRA (which was not considered in the rate calculation) could result in an over-recovery of indirect costs in the current period. Such an over-recovery will be adjusted in a future fiscal year, thereby reducing indirect cost recoveries during that future period. To avoid a future compounding effect of fewer program dollars and reduced indirect costs, ED recommends that an SEA or LEA closely monitor the potential impact of the ARRA on its indirect cost recoveries and consider making appropriate adjustments during the current period. Those adjustments will lessen the dollar impact in future years and allow for stability in future budgets.

D. USES OF TITLE I, PART A ARRA FUNDS WITHIN AN LEA

In General

D-1. Which Title I, Part A requirements apply to Title I, Part A ARRA funds?

All applicable requirements in the ESEA, the Title I, Part A regulations, other applicable laws and regulations, and OMB circulars (such as OMB Circular A-87 related to cost principles for State, local, and Indian tribal governments and OMB Circular A-133 related to audits conducted under the Single Audit Act) apply to the use of Title I, Part A ARRA funds.

In this section, we highlight the provisions that specifically permit or require using a portion of Title I, Part A funds for a particular purpose.

Reservation for Homeless Children

D-2. Must an LEA reserve Title I, Part A ARRA funds for homeless children who do not attend Title I schools?

As noted in D-1, all Title I requirements apply to the use of Title I, Part A ARRA funds. Under section 1113(c)(3)(A) of the ESEA, an LEA must reserve such funds as are necessary to provide services comparable to those provided to children participating in Title I, Part A programs for homeless children who do not attend participating schools. These services may include providing educationally related support services to children in shelters and other locations where children may live. In implementing this requirement, an LEA must consider its total Title I, Part A allocation, including that portion provided through the ARRA.

Reservation for Children Living in Local Institutions for Neglected Children

D-3. Must an LEA reserve Title I, Part A ARRA funds for children living in local institutions for neglected children?

Yes. Under section 1113(c)(3)(B) of the ESEA, an LEA must reserve such funds as are necessary to provide services comparable to those provided to children participating in Title I, Part A programs for children living in local institutions for neglected children. Included in an LEA's allocation of Title I, Part A ARRA funds are funds generated by the number of children living in local institutions for neglected children that are located within the LEA. With these funds, the LEA must provide comparable services to neglected children living in eligible institutions. Such services, however, do not need to be a dollar-for-dollar match.

Reservation for Children Living in Local Institutions for Delinquent Children and Neglected or Delinquent Children in Community Day School Programs

D-4. May an LEA reserve Title I, Part A ARRA funds to provide services for children living in local institutions for delinquent children and for neglected or delinquent children in community day school programs?

Yes. Under section 1113(c)(3)(C) of the ESEA, an LEA may reserve, if appropriate, Title I, Part A ARRA funds to provide services for children living in local institutions for delinquent children and for neglected or delinquent children attending community day school programs.

Reservation to Provide Financial Incentives to Teachers

D-5. May an LEA reserve Title I, Part A ARRA funds to provide financial incentives to teachers?

Yes. As authorized in section 1113(c)(4) of the ESEA, an LEA may reserve not more than 5 percent of the funds the LEA receives under Subpart 2 of Title I, Part A, including Title I, Part A ARRA funds, to provide financial incentives and rewards to teachers who serve in Title I schools that are identified for school improvement, corrective action, and restructuring for the purpose of attracting and retaining qualified and effective teachers.

Equitable Services for Private School Children

D-6. Do the Title I, Part A requirements that an LEA provide equitable services to eligible private school children and their teachers and families apply to the Title I, Part A ARRA funds?

Yes. As noted in D-1, all Title I requirements apply to the use of Title I, Part A ARRA funds, including those requiring equitable services for eligible private school children and their teachers and families. See ED's guidance on this topic [available at <http://www.ed.gov/programs/titleiparta/psguidance.doc>]. Note that ED may not waive the statutory and regulatory requirements relating to providing equitable services to private school children. See section 9401(c)(5) of the ESEA.

D-7. Must an LEA consult with private school officials *prior* to deciding how to use its Title I, Part A ARRA funds?

Yes. Under section 1120(b) of the ESEA, an LEA must consult with private school officials during the design and development of the LEA's Title I, Part A programs. That consultation must include meetings of LEA and private school officials and must occur before the LEA makes any decision that affects the opportunities of eligible private school children to participate in Title I, Part A programs.

D-8. If an LEA receives a waiver of one or more of the "set-aside" requirements under D-11, must the LEA include the Title I, Part A funds that are no longer subject to the set-aside in providing equitable services for eligible private school children?

Yes, to the same extent and under the same conditions as regular Title I, Part A funds are used for equitable services for eligible private school children.

“Set-aside” Requirements

D-9. Must an LEA meet the specific “set-aside” requirements in Title I, Part A with respect to Title I, Part A ARRA funds?

Yes. Title I, Part A has several requirements under which an LEA must spend a specific amount of funds, usually Title I, Part A funds, on a particular activity. Those that are currently applicable are the requirements to spend:

- If a school is identified for school improvement, 10 percent of the school’s Title I, Part A funds for professional development that, among other requirements, directly addresses the academic achievement problem that caused the school to be identified (Section 1116(b)(3)(A)(iii)(I)).
- If an LEA is identified for improvement, 10 percent of the LEA’s Title I, Part A, Subpart 2 allocation to address the professional development needs of the LEA’s instructional staff (Section 1116(c)(7)(A)(iii)).
- One percent for parent involvement activities if the LEA receives more than \$500,000 under Title I, Part A, Subpart 2 (Section 1118(a)(3)(A)).
- An amount equal to at least 20 percent of the LEA’s Title I, Part A, Subpart 2 allocation for choice-related transportation and supplemental educational services (SES), assuming there is sufficient demand for these services (Section 1116(b)(10)).

Each of these “set-aside” requirements is based on an LEA’s Title I, Part A, Subpart 2 allocation. Title I, Part A ARRA funds are allocated under the Targeted Grant and EFIG formulas of Subpart 2.

D-10. Are the Title I, Part A ARRA funds an LEA receives included in the LEA’s allocation under Subpart 2 for purposes of determining whether the LEA’s allocation exceeds \$500,000 and that the LEA is, therefore, subject to the set-aside for parent involvement?

Yes.

D-11. Will ED consider waiving one or more of the “set-aside” requirements in Title I, Part A as they apply to funds allocated under the ARRA?

Yes. Except as noted in the next paragraph, ED will consider a request to waive one or more of the “set-aside” requirements in Title I, Part A as they apply to funds provided through the ARRA. In other words, under such a waiver, some or all of the ARRA funds would not be included in the base on which an LEA calculates its set-aside amount. For example, an LEA in improvement might request a waiver to exclude its ARRA funds from the base on which it calculates the 10 percent of its Title I, Part A, Subpart 2 allocation that it must spend on professional development. See Section F.

With respect to waiving the requirement to set aside one percent of an LEA’s Title I, Part A allocation for parent involvement under section 1118 of the ESEA, section 9401(c)(6)

of the ESEA prohibits ED from waiving any statutory or regulatory requirements relating to parent participation and involvement. Accordingly, ED may not waive the requirement that an LEA spend one percent of its Title I, Part A, Subpart 2 allocation on parent involvement activities.

D-12. Does the requirement in section 1116(b)(10)(D) of the ESEA that prohibits an LEA from reducing the Title I, Part A allocation to a school identified for corrective action or restructuring by more than 15 percent when reserving funds for public school choice and SES apply to Title I, Part A ARRA funds?

Yes. The requirement in section 1116(b)(10)(D) that prohibits an LEA from reducing the Title I, Part A allocation of any school identified for corrective action or restructuring by more than 15 percent due to application of the 20 percent obligation regarding choice-related transportation and SES applies if an LEA receives Title I, Part A funds through the regular FY 2009 appropriation as well as the ARRA and reserves Title I funds for public school choice and SES under section 1116 of the ESEA. See K-5 in ED's guidance on SES for the two methods an LEA may use to meet this requirement [available at <http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>].

D-13. Do the Title I, Part A ARRA funds an LEA receives count in the base to determine the per-child amount available for providing SES?

Yes. Under section 1116(e)(6) of the ESEA, an LEA must make available for SES for each child receiving those services the lesser of the amount of the LEA's allocation under Title I, Part A, Subpart 2 divided by the LEA's Census poverty count or the actual costs of SES received by the child. Title I, Part A ARRA funds are allocated under the Targeted Grant and EFIG formulas of Subpart 2.

D-14. Will ED consider waiving the inclusion of Title I, Part A ARRA funds in the base an LEA must use to determine its per-child amount for providing SES?

Yes. See Section F.

Expanding the Number of Title I, Part A Schools

D-15. May an LEA allocate Title I, Part A ARRA funds to eligible schools that are not currently being served?

Yes. An LEA may allocate Title I, Part A ARRA funds to eligible schools, such as high schools, that are not currently being served, provided the LEA allocates those funds consistent with section 1113 of the ESEA and 34 C.F.R. § 200.78. For more information, see ED's guidance on within-LEA Title I allocations [available at <http://www.ed.gov/programs/titleiparta/wdag.doc>].

Compliance with Civil Rights Requirements

D-16. Does the receipt of Title I, Part A ARRA funds require an SEA and LEAs to comply with civil rights laws?

Yes. The receipt of Federal funds, including Title I, Part A ARRA funds, obligates an SEA and LEAs to comply with civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability and age. For information on applicable civil rights laws, see the *Notice on Civil Rights Obligations Applicable to the Distribution of Funds under the American Recovery and Reinvestment Act of 2009* [available at: <http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html>].

E. TRANSPARENCY, ACCOUNTABILITY, AND REPORTING

E-1. How will ED ensure transparency in the implementation of Title I, Part A ARRA funds by SEAs and LEAs?

As part of the process of ensuring transparency, ED will keep the public fully apprised of all activities that occur throughout a State's implementation of the ARRA with respect to Title I, Part A funds. For example, detailed information concerning how SEAs and LEAs use their Title I, Part A ARRA funds will be available in the quarterly reports required under Section 1512 of the ARRA at www.Recovery.gov (see E-2).

E-2. What information is a State required to include in its quarterly reports under the ARRA?

A State is required to submit reports containing the information required under section 1512(c) of the ARRA. At a minimum, section 1512(c) of the ARRA requires a State to report the total amounts of Title I, Part A ARRA funds received and expended or obligated; the project's or activity's name, description, and evaluation of its completion status on which Title I, Part A ARRA funds are used; and an estimate of the number of jobs that were saved or created with those funds.

The first report is due no later than ten days after the initial calendar quarter in which the State first receives Title I, Part A ARRA funds, or July 10, 2009. Thereafter, a State must submit reports no later than the tenth day after the end of each calendar quarter.

ED is currently developing a common reporting form that will describe for States a streamlined quarterly process for reporting on the use of Title I, Part A ARRA funds. ED is also developing additional guidance on the ARRA reporting requirements that will be available in the near future. Additionally, OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

E-3. Are there reporting requirements that apply only to the receipt of Title I, Part A ARRA funds?

Yes. Each LEA that receives Title I, Part A ARRA funds must file with the SEA, no later than December 1, 2009, a school-by-school listing of its per-pupil educational expenditures from State and local sources during the 2008-09 school year. Each SEA must report this information to the Secretary by March 31, 2010. ED will issue guidance in the near future regarding this reporting requirement.

E-4. How must an SEA or LEA account for Title I, Part A ARRA funds?

Because there are separate reporting requirements with respect to Title I, Part A ARRA funds, the use of those funds must be accounted for, and reported on, separately from an SEA's or LEA's regular FY 2009 Title I, Part A funds. ED has assigned a new CFDA number (84.389A) to the Title I, Part A ARRA funds in order to facilitate separate accounting for the funds.

E-5. What are the shared responsibilities of LEAs, SEAs, and ED for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?

SEAs and LEAs must maintain accurate, complete, and reliable documentation of all Title I, Part A ARRA expenditures. The ARRA contains stringent reporting requirements and requires that information on the uses of funds be available publicly on www.Recovery.gov.

An SEA has important oversight responsibilities and must monitor grant and subgrant activities to ensure compliance with all applicable Federal requirements. If an SEA or LEA fails to comply with requirements governing the use of Title I, Part A funds, ED may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or in part, Title I, Part A funds or recovering misspent funds following an audit.

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

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

F. PROCESS FOR OBTAINING A WAIVER

F-1. What entities may apply for a waiver that relates to the use of Title I, Part A ARRA funds?

Under section 9401 of the ESEA, an SEA, LEA, Indian tribe, or school (through its LEA) may apply for a waiver of any statutory or regulatory requirement in Title I, Part A, except as specified in section 9401(c) of the ESEA (see F-5). ED will issue additional guidance regarding the information that must be included in a request and the process for submitting the request in the near future. Although eligible entities may apply for a waiver at any time, ED recommends that they submit requests after the guidance is available to ensure that those requests contain all the relevant information.

No SEA or LEA is obligated to apply for a waiver of any statutory or regulatory provision.

F-2. Are there specific requirements of Title I, Part A that ED will consider waiving with respect to ARRA funds?

Yes. ED will consider, in particular, waiving the following requirements with respect to ARRA funds:

- (a) A school in improvement's responsibility to spend 10 percent of its Title I funds on professional development (Section 1116(b)(3)(A)(iii)).
- (b) An LEA in improvement's responsibility to spend 10 percent of its Title I, Part A, Subpart 2 allocation on professional development (Section 1116(c)(7)(A)(iii)).
- (c) An LEA's obligation to spend an amount equal to at least 20 percent of its Title I, Part A, Subpart 2 allocation on transportation for public school choice and on SES (Section 1116(b)(10)).
- (d) An LEA's responsibility to calculate the per-pupil amount for SES based on an LEA's FY 2009 Title I, Part A, Subpart 2 allocation (Section 1116(e)(6)).
- (e) The prohibition on an SEA's ability to grant to its LEAs waivers of the carryover limitation more than once every three years (Section 1127(b)).
- (f) The Title I, Part A maintenance of effort requirements (Sections 1125A(e), 9521).

F-3. May the Secretary waive statutory or regulatory requirements for charter school LEAs?

Yes. Consistent with an LEA's charter, ED may waive Title I, Part A statutory and regulatory requirements for a charter school LEA on the same basis as other LEAs using the procedures required under sections 9401 and 9521(c) of the ESEA.

F-4. How long will a waiver that affects the use of Title I, Part A ARRA funds be in effect?

ED intends to grant waivers of the requirements set forth in F-2, as those requirements relate to the use of Title I, Part A ARRA funds, for a period of two years, the period of time the Title I, Part A ARRA funds are available for obligation. The period of availability to obligate Title I, Part A ARRA funds expires on September 30, 2011.

F-5. Are there any statutory and regulatory requirements that may not be waived?

Under the waiver authority in Section 9401(c) of the ESEA, ED may not waive any statutory or regulatory requirements relating to:*

- allocation and distribution of funds to States, LEAs, or other recipients of ESEA funds.
- comparability of services.
- use of Federal funds to supplement, not supplant non-Federal funds.
- equitable participation of private school students and teachers.
- parent participation and involvement.
- applicable civil rights requirements.
- requirements for a charter school under subpart 1 of Part B of Title V.
- the prohibition regarding State aid in section 9522; use of funds for religious worship or instruction in section 9505; and activities in section 9526.
- selection of school attendance areas or schools under section 1113(a) and (b), except the Secretary may grant a waiver to allow a school attendance area or school to participate in Title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the LEA that meets the requirements of section 1113(a) or (b).

* Note that, although section 9401 of the ESEA does not give ED the authority to waive maintenance of effort, ED may waive the Title I, Part A maintenance of effort requirements for SEAs and LEAs, respectively, under sections 1125A(e)(3) and 9521(c) of the ESEA.

F-6. May an Ed-Flex State waive the requirements set forth in F-2 with respect to Title I, Part A ARRA funds?

A State that has waiver authority under the Education Flexibility Partnership Act of 1999 (20 U.S.C. 5891b) (Colorado, Delaware, Kansas, Massachusetts, Maryland, North Carolina, Oregon, Pennsylvania, Texas, and Vermont) is not permitted, among other things, to waive the maintenance of effort requirement or any statutory or regulatory requirement related to section 1111 or section 1116 of the ESEA. As a result, an Ed-Flex State may not waive most of the requirements set forth in F-2, because they either relate to section 1116 (*e.g.*, SES and professional development) or to maintenance of effort. An Ed-Flex State may waive the limitation on carryover more than once every three years, as well as many other requirements.