Guidance for Grantees and Auditors

State Fiscal Stabilization Fund Program

In response to questions received from some of the auditors working on single audits, we are providing this background information and guidance primarily based on guidance already provided on the State Fiscal Stabilization Fund (SFSF) Program. It is specifically geared to clarifying matters that should be helpful in light of the auditors' questions on recordkeeping, documentation and reporting. The specific information concerning references to OMB cost principles, including time distribution and time and effort requirements, supersedes question III-D-4 on a local educational agency's use of funds in the Department's April 1, 2009 SFSF guidance. This document also provides supplemental guidance on the applicability of the cost principles to Government Services funds and Education Stabilization funds provided to institutions of higher education. We may update this guidance periodically to continue to be as helpful as possible to grantees and auditors.

Program Overview

- The State Fiscal Stabilization Fund (SFSF) program has two components: the Education Stabilization Fund and the Government Services Fund.
- Under the SFSF program, the U.S. Department of Education (Department) makes awards directly to Governors.
- The purpose of the SFSF program is to help stabilize State and local budgets in order minimize and avoid reductions in education and other essential services in exchange for a State's commitment to advance essential education reforms.
- The Governor must use the Education Stabilization funds to restore State support for elementary and secondary education and public institutions of higher education (IHEs).
- The Department is making SFSF awards to States in two phases. In Phase I, a State received at least 67 percent of its total Education Stabilization allocation and 100 percent of its Government Services allocation. In Phase II, each State will apply for the remainder of its Education Stabilization allocation.

Education Stabilization Fund

Restoration Amounts

- A Governor must allocate 100 percent of the Education Stabilization funds to local educational agencies (LEAs) and public IHEs. A Governor may not retain any portion of the Education Stabilization funds for State purposes.

- For each of Fiscal Years (FYs) 2009, 2010, and 2011, a Governor must restore the levels of State support for elementary and secondary education and for public IHEs to the greater of the FY 2008 or FY 2009 levels of such support. (See Section III-B of the SFSF guidance, including information on prior enacted formula increases and adequacy and equity adjustments.) The Governor does not have to restore support for each individual public IHE but must restore the aggregate level of support for public IHEs within the State. Further, a State, LEA, or IHE does not have to use SFSF funds to restore specific activities for which support may have been reduced.

- Special rules apply if a State enacted, prior to October 1, 2008, formula increases to support elementary and secondary education for FYs 2010 or 2011 or State adequacy and equity adjustments. (See SFSF guidance at p. 9. This guidance is on the Department's Internet website at the following web address: http://www.ed.gov/programs/statestabilization/guidance.pdf

- In its Phase I application, a State provided data on the levels of State support for elementary and secondary education and public IHEs. (See SFSF Phase I application Part 5, Section A.) These data were used to determine the "restoration calculations" (i.e., the amount of funds to be provided to LEAs and public IHEs).

- The restoration calculations determine the amount of funds that will ultimately be provided to LEAs and public IHEs over the period of the program but do not dictate the timing of the release of those funds. The Governor does not need to release in a particular fiscal year the amount indicated in the Phase I application needed to restore support for elementary and secondary education or public IHEs in that year.

Application Requirements

- To receive funding, an LEA must have on file with the State an application that includes the assurances required under Section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. §1232e). Among other things, the LEA must assure that it will (1) administer the program in accordance with all applicable statutes and regulations; and (2) use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, the funds.

- A Governor has the discretion to determine whether an IHE must submit an application before receiving Education Stabilization funds.

- A Governor may not direct how an LEA may use its Education Stabilization funds. A Governor has some discretion in limiting a public IHE's use of Education Stabilization funds in order to mitigate the need for an increase in tuition and fees for in-state students.

LEA Uses of Funds

- Subject to limited statutory prohibitions, an LEA may use Education Stabilization funds for any activity that is authorized under the following Federal education acts:

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

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

- Because the ESEA includes the broad Impact Aid authority (*see* Title VIII of the ESEA), an LEA may use Education Stabilization funds for activities that would be allowable under Impact Aid. This flexibility applies to all LEAs that receive Education Stabilization funds, and is not limited to those LEAs that also receive Impact Aid funds. Most funds that the Department awards under Impact Aid are considered to be general aid to LEAs. Thus, under the Impact Aid authority, an LEA may use Education Stabilization funds for educational purposes consistent with State and local requirements, subject to ARRA and other applicable Federal requirements. (See SFSF guidance at pp. 19-20.)

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

- An LEA may not use Education Stabilization funds to supplement or restore its local "rainy day" fund because such a transfer would not constitute an obligation of the funds. However, an LEA may use Education Stabilization funds to pay down past debt for expenditures that would be allowable under the program. However, an LEA may not pay

down past debt incurred for otherwise unallowable Education Stabilization Fund expenditures.

- An LEA may not use Education Stabilization funds for –

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

- In addition, there are other prohibitions in section 1604 of the American Recovery and Reinvestment Act of 2009 (ARRA) – for example, prohibitions against using funds for an aquarium, zoo, golf course, or swimming pool – that apply to the use of Stabilization funds by any entity.

IHE Uses of Funds

- A public IHE may use Education Stabilization funds for –

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

- A public IHE that receives Education Stabilization funds is not precluded from increasing tuition or fees for in-State students. There is a presumption that the amount of any increases is reduced by the IHEs receipt of Education Stabilization funds. Furthermore, an IHE does not have to demonstrate that ARRA funds were insufficient to cover budget shortfalls prior to increasing tuition and fees for in-state students.

- While an IHE may use Education Stabilization funds for the modernization, renovation, or repair activities, it may not use those funds to support new construction. Construction is a *capital* expenditure and not a general expenditure.

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

- An IHE may not use Education Stabilization funds to supplement or restore its "rainy day" fund because such a transfer would not constitute an obligation of the funds. However, an IHE may use Education Stabilization funds to pay down existing debt unless the Governor restricts the IHE from doing so on the basis that this would not help mitigate the need for increases in tuition and fees paid by in-State students.

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

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

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

Government Services Fund

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

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

- A Governor may use the State's Government Services Fund to support administrative costs associated with implementing the ARRA, including costs related to monitoring subgrantees and complying with the ARRA reporting requirements.

- A State may use its Government Services funds for construction or infrastructure support.

- A State may not use its Government Services Fund allocation to pay down past debt. In addition, a Governor may not use the Government Services funds to supplement or restore the State's "rainy day" fund because such a transfer would not constitute an obligation of those funds.

- A Governor is prohibited from using Government Services funds for –

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

Pre-Award Costs

- Upon request, the Department has authorized States to use SFSF funds to support allowable obligations that were incurred as of February 17, 2009, the date of enactment of ARRA.

- An entity charging pre-award costs to the SFSF program must maintain the same documentation that it maintains for post-award costs. (See Section on "Recordkeeping, Documentation, and Reporting" below.)

Maintenance of Effort

- A State must maintain State support for elementary and secondary education, in each of fiscal years (FYs) 2009, 2010, 2011, at least at the level that the State provided in FY 2006.

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

- The ARRA authorizes the Secretary of Education to waive these maintenance-of-effort (MOE) requirements if a State demonstrates that it has provided for elementary, secondary, and public higher education, for the fiscal year under consideration, a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for that purpose in the preceding fiscal year.

- A State may establish its level of State support for elementary and secondary education solely on the basis of the amount of funds provided through its primary elementary and secondary education funding formula(e), but is not required to do so. The formula(e) must include the State's base or foundation formula(e). A State may also include categorical and other support that is not provided through the primary funding formula(e).

- A State may demonstrate that it is maintaining its level of State support for elementary and secondary education on either an aggregate basis or a per-student basis. It is not necessary for a State to maintain its level of support under each individual formula or program.

- State support for public IHEs must include the principal funding mechanisms through which a State provides assistance to public IHEs. For example, the support would include State appropriations for public higher education. The data must exclude support for capital projects (such as construction or modernization activities) and research and development, and tuition and fees paid by students.

- A State may quantify its level of State support for public higher education by providing data in addition to that provided on the appropriations enacted by the State legislature for public IHEs. For example, a State may include data such as funding under State auspices for non-appropriated support (e.g., tobacco settlement funds and lotteries) specifically set aside for public higher education and interest or earnings received from State-endowments pledged to public IHEs.

- A State may demonstrate that it is maintaining its level of State support for public IHEs on either an aggregate basis or on a full-time-equivalent enrollment basis. It is not necessary for a State to maintain its level of State support for individual categories of activities.

- In Part IV of its Application for Initial Funding under the SFSF program, each State assured that it would meet either the MOE requirements or the criterion for a waiver of those requirements. In addition, States provided baseline MOE data. In its SFSF Phase II application, a Governor must provide an attestation that the State has met the MOE requirements as the Governor assured in Phase I and must reaffirm and/or update the MOE baseline data provided in the Phase I application.

Recordkeeping, Documentation, and Reporting

- An entity that receives SFSF funds must maintain records that separately track and account for those funds. In accordance with the requirements of Section 443(a) of GEPA (20 U.S.C. §1232f (a)), each recipient of SFSF funds must maintain records that fully disclose how those funds were used, the total cost of the activity for which the funds were used, the share of that cost provided by other sources, and such other records as will facilitate an effective audit. It would be impermissible, for example, for an IHE to maintain documentation that the SFSF funds were transferred into a general account without further documenting how the SFSF funds were specifically used.

- SFSF differs from other Department programs in that one of its primary purposes is to provide Federal support for expenditures that are typically paid for with non-Federal resources.

- The SFSF program provides resources to support education and other services that may have occurred even in the absence of Federal funds. There is no State- or local-level supplanting prohibition. Furthermore, if it so chooses, an entity may use SFSF funds to pay the full amount of its indirect costs. Thus, an LEA or IHE that receives Education Stabilization funds may use those funds to pay its indirect costs. Similarly, a State or an entity that receives Government Services funds may use those funds to pay its indirect costs.

- The SFSF program supports a broad array of activities (e.g., general expenditures, operating expenditures, salaries, and government services). Similar to Impact Aid funds, SFSF funds are essentially general aid. Thus, the specific cost principles in the OMB Circulars do not apply to SFSF funds. However, SFSF funds must be spent consistent with applicable State and local requirements and the statutory provisions of ARRA.

- Because of the unique characteristics of this program as described above, while the specific requirements in the OMB Circulars that apply cost principles, such as OMB Circulars A-21 and A-87, do not apply to SFSF funds, expenditures attributed to the SFSF program must still be "reasonable and necessary," and consistent with applicable State and local requirements.

- States, LEAs, and IHEs must maintain documentation demonstrating the amount of SFSF funds, if any, used to support salaries. Because of the nature of the SFSF program, there are no specific Federal time and effort requirements that apply to individuals whose salaries may be supported with SFSF funds. Thus, the entities must maintain documentation to support the time and effort of these individuals in the same manner that it supports the time and effort of individuals performing similar duties who are paid with State or local funds. For the purposes of the SFSF program only, entities may demonstrate, at a minimum, that an aggregate amount of funds was used to support a group of salary expenses. For example, an IHE may use Education Stabilization funds to

support an entire pool of salaries as long as those salaries are considered to be general and education expenses.

- At a minimum to show that these costs are "reasonable and necessary," as with other similarly situated employees, the entities must maintain contemporaneous documentation to show that individuals for whom salary is paid, worked sufficient hours to justify the salary, the level of salaries were similar to other employees who performed similar work and were paid from other sources, and that the individuals were not paid more than once for the same work. Thus, the documentation should be able to demonstrate that the costs were reasonable for the service provided, that the service was actually provided, and that no other funds were paid for the same service.

- Because the SFSF program does not support specific cost objectives or activities, an individual whose salary is paid in whole or part with SFSF funds is not required to maintain separate time distribution records. An individual whose salary is supported with both SFSF funds and State funds is not required to maintain records documenting the amount of time spent on SFSF activities because there are no specific "SFSF activities."

- Under section 1512 of ARRA, recipients of SFSF funds must submit a quarterly report that describes, among other things, how the entity used those funds.

- For purposes of reporting under section 1512 of ARRA, an entity must report expenditures under the CFDA number under which the SFSF funds are awarded (i.e., 84.394 or 84.397).

- On December 18, 2009, the Office of Management and Budget issued updated reporting guidance on estimating the number of jobs created and retained under ARRA. (*See*: http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf.) The updated guidance simplifies the manner in which job estimates are calculated and reported. In order to perform the calculation, a recipient must have information on the total number of hours worked by employees in the most recent quarter (the quarter being reported) in jobs that meet the definition of a job created or a job retained . (A job created is a new position created and filled, or an existing unfilled position that is filled, that is funded by ARRA; a job retained is an existing position that is now funded by ARRA.) The reporting guidance "does not establish specific requirements for documentation or other written proof to support reported estimates on jobs created or retained; however, recipients should be prepared to justify their estimates. Recipients must use reasonable judgment in determining how best to estimate the job impact of Recovery Act dollars, including the appropriate sources of information used to generate such estimate. Where such written evidence exists, it can be an important resource for validating the job estimates reported."

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