

# American Recovery and Reinvestment Act of 2009

## Summary of Selected Provisions

February 24, 2009

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On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA) of 2009. According to the White House, the legislation is designed to save or create 3.5 million jobs. This landmark legislation, that provides \$787 billion to address the country's economic crisis, was passed by the Congress on February 13, 2009. The House of Representatives passed the bill by a vote of 246-183. No Republicans voted for the bill and 7 Democrats voted against the bill.

Senate passage was more difficult to achieve. After a compromise provision, the Collins/Nelson amendment, was included in the bill, the Senate passed the final bill by a vote of 60 to 38. This amendment resulted in the three Republican votes needed to achieve the 60 votes necessary in the Senate. Senators Snowe (R-ME), Collins (R-ME) and Specter (R-PA) voted for passage of the bill. Thirty-eight Republican Senators voted against the bill.

This document discusses selected portions of the ARRA.

### **Title VII of Division A - Departments of Labor, Health and Human Services, and Education, and Related Agencies**

The following are funds contained in the ARRA. These are in addition to the regular annual appropriations for these programs:

- Includes \$2 billion to supplement not supplant state general revenue funds for child care assistance for low-income families.
- Includes \$1 billion for Head Start
- Includes \$ 1.1 billion for Early Head Start
- Includes \$11.3 billion for Part B of IDEA
- Includes \$400 million for Section 619 of IDEA (Preschool Special Education)
- Includes \$500 million for Part C of IDEA
- Includes \$250 million for Institute of Education Sciences for statewide data systems

- Allocates under Part B and Part C the amount allocated in 2008 plus inflation for the Secretary of the Interior

### **Title XIV of Division A - State Fiscal Stabilization Fund**

Includes \$53.6 billion administered by the U.S. Department of Education

- **Sec. 14001. Allocations**

- Secretary shall first allocate up to ½ of 1% to the **outlying areas**;
- Secretary may reserve up to \$14 million for **administration and oversight**, including **program evaluation**;
- Secretary shall reserve \$5 billion for:
  - **State Incentive Grants**
  - **Innovation Fund**
- Secretary shall allocate remaining funds to the Governor of each state:
  - 61% based on relative population of individuals aged 5-24
  - 39% based on relative total population
- The Governor shall return any funds not awarded or otherwise committed within 2 years of receipt. The Secretary shall reallocate these funds to remaining states.

- **Sec. 14002. State Uses of Funds**

- **Education Fund:** The Governor shall distribute 81.8% of the funds for the support of elementary, secondary and postsecondary education, and as applicable, early childhood education programs and services;
  - Funds shall be distributed by state formula to restore state school funding cuts to the 2008 or 2009 level, whichever is greater;
  - Funds shall be distributed by state formula for 2010 and 2011 in instances in which a state increased state funding by state law prior to 10/1/08;
  - Funds shall be distributed to public institutions of higher education to restore state funding cuts to the 2008 or 2009 level, whichever is greater; and
  - Language includes provisions if state cuts exceed available stabilization funds or if stabilization funds exceed state cuts.
- **Other Government Services:** The Governor shall distribute 18.2% of the funds in the following manner:
  - For public safety and other government services which may include:
    - Assistance for elementary and secondary education and public institutions of higher education; and
    - Modernization, renovation, or repair of public school facilities and institutions of higher education facilities.

- **Sec. 14003. Uses of funds by LEAs**

- LEAs may use funds for activities authorized under:

- ESEA
    - IDEA
    - Adult and Family Literacy Act or
    - Carl D. Perkins Career and Technical Education Act
  - LEAs may also use funds for:
    - Modernization, renovation or repair of public school facilities (requires consistency with recognized a green building rating system)
  - The language also includes prohibition on the use of funds for items including, but not limited to, maintenance costs, purchase or upgrade of vehicles, stadiums, athletic facilities, or administrative buildings.
- **Sec. 14004. Use of funds by Higher Education.** A public institution of higher education shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-state students, or for modernization, renovation and repair of institution of higher education facilities that are primarily used for instruction, research, or student housing. These must be consistent with a recognized green building rating system. Additional language is included for prohibition on the use of funds to increase endowments; for maintenance of systems, equipment, or facilities; or for renovation, modernization or repair of stadiums, other athletic facilities; and for facilities used primarily for religious purposes.
  - **Sec. 14005. State Applications.** To access the state fiscal stabilization fund, the Governor must submit an application that include assurances, baseline data on the state's current status and a description of how the state intends to use the funds including whether or not the state will use funds to meet the maintenance of effort requirements under ESEA and IDEA and what the amount will be used to meet these requirements. The application shall include the following assurances:
    - **Maintenance of Effort**
      - State must maintain state support for elementary and secondary education at least at the SFY 2006 level for SFY 2009, 2010 and 2011;
      - State must maintain state support for public institutions of higher education (with some exceptions) at least at the SFY 2006 level for SFY 2009, 2010 and 2011.
    - **Achieving Equity in Teacher Distribution.** The state will take action to improve teacher effectiveness and to address inequities in the distribution of highly qualified teachers under the ESEA.
    - **Improving Collection and Use of Data.** The state will establish a longitudinal data system including elements in the America COMPETES Act.
    - **Standards and Assessments.** The state will enhance the quality of academic assessments under ESEA; comply with requirements in ESEA and IDEA related to

- inclusion of children with disabilities and limited English proficiency including development of valid and reliable assessments and provision of accommodations; and take steps to improve state academic content and achievement standards.
- **Supporting Struggling Schools.** The state will ensure compliance with ESEA regarding these schools.
- **Sec. 14006. State Incentive Grants.**
    - The Secretary may reserve up to \$43.5 million (from the \$5 billion set-aside) for technical assistance to states to meet the assurances (called objectives) in their stabilization application.
    - The Secretary shall in 2010 make grants to states that have made significant progress in meeting these assurances (called objectives) with the remaining funds (about \$4.3 billion)
    - A state application must include state status on each of the assurances; the strategies the state is using to ensure students continue to make progress to meet academic achievement standards; achievement and graduation rates and strategies for all subgroups to achieve state standards; how grant funding would be used to improve student academic achievement; how grant funds will be distributed to high-need LEAs; and an evaluation plan.
    - The Secretary will determine which states will get grants and how much each will receive.
    - Each state that receives a grant shall distribute at least 50% of the grant to LEAs.
  - **Sec. 14007. Innovation Fund.**
    - The Secretary may reserve up to \$650 million from the \$5 billion set-aside to establish a fund to give awards to entities that have made significant gains in closing achievement gaps to allow those entities to:
      - Expand their work and serve as models;
      - Work in partnership with the private sector and the philanthropic community; and
      - Identify and document best practices that can be taken to scale based on demonstrated success.
    - Eligible entities that can apply include:
      - An LEA; or
      - A partnership between a nonprofit organization and one or more LEAs or a consortium of schools.
    - An entity can be eligible to apply for an award if they have:
      - Significantly closed achievement gaps;
      - Exceeded state objectives for achievement;

- Made significant improvement in other areas such as graduation rates, or increased recruitment and placement of high-quality teachers and school leaders; and
  - Demonstrate partnerships with the private sector.
- **Sec. 14008. State Reports.** States must submit annual reports to the Secretary describing:
  - The use of funds;
  - How the state distributed the funds;
  - The number of jobs estimated to be saved or created with the funds;
  - The state's progress in reducing the inequities in the distribution of highly qualified teachers, in implementing a state longitudinal data system, in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;
  - Tuition and fee increases for in-state students by public institutions of higher education and description of actions taken by the state to limit those increases;
  - Extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-state students eligible for Pell Grants or other need-based financial assistance; and
  - A description of each modernization, renovation, and repair project funded including amounts awarded and project costs.
- **Sec. 14009. Evaluation.** The Comptroller General of the U.S. shall conduct evaluations of the criteria used for the awards, the states selected, award amounts, how awards were used and the impact on closing achievement gaps.
- **Sec. 14010. Secretary's Report to Congress.** The Secretary shall submit a report to various Committees of the House and Senate not less than 6 months following the submission of state reports.
- **Sec. 14011. Prohibition on Provision of Certain Assistance.** Funds may not be used to provide financial assistance to students to attend private elementary or secondary schools.
- **Sec. 14012. Fiscal Relief.**
  - The Secretary shall not grant a waiver or modification of any requirement of this title relating to maintaining fiscal effort for 2009, 2010 or 2011 unless the state or LEA will not provide for elementary and secondary education for the year under consideration a smaller percentage of the total revenues available to the state or local than the amount provided in the preceding year.

- Maintenance of Effort - Upon prior approval of the Secretary, any portion of the funds received under stabilization may be treated as non-Federal funds for purposes of maintaining fiscal effort including Part C of the IDEA. In addition, the level of effort required by state or LEA for the following fiscal year shall not be reduced.
- **Sec. 14013. Definitions.** Includes definitions for elementary and secondary education, high-need LEA, institution of higher education, Secretary, and state.

## **Title V of Division B – State Fiscal Relief**

### **SEC. 5001 Temporary Increase of Medicaid FMAP**

- If the FMAP for state FY 2009 is less than the FMAP as determined for FY 2008, the FMAP for the state for fiscal year 2008 shall be substituted for the state's FMAP for fiscal year 2009
- If the FMAP for state FY 2010 is less than the FMAP as determined for FY 2008 or 2009, the greater of such FMAP for the state for fiscal year 2008 or 2009 shall be substituted for the state's FMAP for fiscal year 2010
- If the FMAP for state FY 2011 is less than the FMAP as determined for FY 2008, the FY 2009 or FY 2010, the greatest FMAP for the state for fiscal year 2008, fiscal year 2009 or fiscal year 2010 shall be substituted for the state's FMAP for fiscal year 2011

### **General 6.2% Increase**

- The FMAP shall be increased by 6.2 percentage points
- For territories this shall only apply if the State makes a one-time election to apply the increase in FMAP for state FY 2009 is less than the FMAP as determined for FY 2008, the FMAP for the state for fiscal year 2008 shall be substituted for the state's FMAP for fiscal year 2009 and a 15% increase instead of applying 30% increase

### **Additional Relief Based on Increase in Unemployment**

- The state qualifies for additional relief if the state is 1 of the 50 states or the district of Columbia and the State satisfies any of the following criteria for the quarter:
  - The State unemployment increase percentage for the quarter is at least 1.5% but less than 2.5 percent.
  - The state unemployment increase percentage for the quarter is at least 2.5 percent but less than 3.5 percent
  - The state unemployment increase percentage for the quarter is at least 3.5 percent

### **Maintenance of Status**

- If a state qualifies for additional relief it shall be deemed to have qualified for such relief for each subsequent calendar quarter ending before July 1, 2010.

### **Hold Harmless Period**

- If the percent applied to a State for any calendar quarter beginning on or after January 1, 2009, and ending before July 1, 2010 is less than the percent applied for the preceding quarter the higher applicable percent shall continue in effect for each subsequent quarter until July 2010.

### **Increase in Cap on Medicaid Payments to Territories**

- The amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa shall each be increased by 30%

### **Scope of Application**

- The increase shall apply for purposes of title XIX and **shall not apply** to
  - payments under title IV except that it shall apply to payments under part E of title IV
  - payments under title XXI
  - any payments under title XIX that are based on the enhanced FMAP
  - any payments under title XIX that are attributable to expenditures for medical assistance provided to individuals made eligible under a state plan because of income standards for eligibility for medical assistance that are higher than the income standards for such eligibility as in effect on July 1, 2008 including as such standards were proposed to be in effect under a State law enacted but not effective as of such date of a State plan amendment of waiver request under title XIX that was pending approval.

### **Maintenance of Eligibility Requirements**

- A state is not eligible for an increase in its FAMP or an increase in a cap amount if eligibility standards, methodologies or procedures under its state plan are more restrictive than the eligibility standards.
- State Reinstatement of Eligibility is Permitted if
  - A state that has restricted eligibility standards after July 1, 2008, is no longer ineligible beginning with the first calendar quarter in which the state has reinstated eligibility standards that are no more restrictive than the eligibility as in effect on July 1, 2008.
  - A state prior to July 1, 2009 has reinstated eligibility standards that are no more restrictive than the eligibility standards in effect on July 1, 2008 or on the basis of a restriction that was directed to be made under state law in effect on July 1, 2008

## **Compliance with Prompt Pay Requirements**

- No state shall be eligible for an increase FMAP rate for such days during any period in which that state has failed to pay claims

## **Reporting Requirement**

- Each state shall report to the Secretary on a quarterly basis its compliance with requirements pertaining to claims made for covered services during each month of the preceding quarter.
- The Secretary may waive the application to a state or the reporting requirements imposed during any period in which there are exigent circumstances, including natural disasters that prevent the timely processing of claims or the submission of such reports.
- A state is not eligible for an increase in its FMAP or an increase in a cap amount if any amounts are deposited or credited into any reserve or rainy day fund of the state.
- The Secretary may waive the application under section 1115 of the social security act.

## **Treatment of Certain Expenditures**

- Expenditures in effect before April 1, 2009 that are made during the period beginning on October 1, 2008 and ending on March 31, 2009 that are paid to a State shall not be counted against any allotment
- In the case of a State that requires political subdivision within the State to contribute toward the non-Federal share under the State Medicaid plan, the state is not eligible for an increase in FMAP or an increase in a cap amount if it requires that such political subdivisions pay for quarters during the recession adjustment period a greater percentage of the non-Federal share than the respective percentage that would have been required by the state.

## **Limitations of FMAP Change**

- The increase in FMAP effected under SCHIP shall not apply in the computation of the enhanced FMAP under title XXI or XIX for the Social Security Act for any period.
- **SEC. 5003. Extension of Moratoria on Certain Medicaid Final Regulations**
  - Final regulations related to Case Management Services and Provider
    - Extended to July 1, 2009
  - Final regulations related to school-based administration and school-based transportation

- Extended to July 1, 2009
- Final regulation relating to outpatient hospital facility
  - Secretary of Health and Human Services shall not take any action to implement the final regulation relating to clarification of the definition of outpatient hospital facility services under the Medicaid program published on November 7, 2008
- Sense of Congress
  - Secretary of Health and Human Services should not promulgate as final regulations any of the following proposed Medicaid regulations:
    - Cost Limits for Certain Providers;
    - Payments for Graduate Medical Education; and
    - Rehabilitative Services.

To track ongoing information on ARRA:

[www.recovery.gov](http://www.recovery.gov)

[www.ed.gov/policy/gen/leg/recovery](http://www.ed.gov/policy/gen/leg/recovery)

<http://hhs.gov/recovery/>