

Monitoring Plan for the State Fiscal Stabilization Fund (SFSF) Program

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Introduction

All funds appropriated under the American Recovery and Reinvestment Act of 2009 (ARRA), including funds appropriated under the State Fiscal Stabilization Fund (SFSF) program, must be spent with an unprecedented level of transparency and accountability. As part of this increased transparency and accountability, States must report publicly information related to ARRA spending at www.recovery.gov. This website also allows for the reporting of potential fraud, waste, and abuse.

The U.S. Department of Education (Department) is committed to ensuring maximum transparency and accountability in the use of ARRA funds. As such, the Department will thoroughly and systematically monitor each State's and subgrantee's implementation of the SFSF program. The monitoring will serve several important purposes:

- To ensure that grantees and other recipients of SFSF funds have the internal controls necessary to prevent fraud, waste and abuse; promote operating efficiency; and achieve compliance with all applicable statutory and regulatory requirements;
- To track the progress of States in implementing critical provisions of the program, including progress in the four education reform areas (achieving equity in the distribution of qualified teachers; improving the collection and use of data; enhancing the quality of standards and assessments; and supporting struggling schools);
- To identify potential or existing problem areas or weaknesses; and
- To identify areas where additional technical assistance is warranted.

States also have important oversight responsibilities over the implementation of ARRA and must monitor grant and subgrant supported activities to ensure compliance with applicable Federal requirements. If a State or its subgrantees fail to comply with requirements governing these funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or part, funds awarded under the program, or recovering misspent funds.

This document describes the process that the Department's Academic Improvement and Teacher Quality (AITQ) office will use in monitoring the use of SFSF funds by States, local educational agencies (LEAs), public institutions of higher education (IHEs), and other entities. Included as attachments to this monitoring plan are the protocols that the Department will use in monitoring States and other recipients of SFSF funds, as well as the monitoring schedule. The monitoring plan, protocols, and schedule will be reviewed and revised periodically, as appropriate.

The SFSF Program

A. Background

The SFSF program is authorized under Title XIV of Division A of the ARRA (Pub. L. 111-5), which was signed into law on February 17, 2009. SFSF funds are intended to help stabilize State and local government budgets in order to minimize and avoid reductions in education and other essential public services in exchange for a State's commitment to advance essential education reform in four areas:

1. Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
2. Establishing pre-K-to-college-and-career data systems that track progress and foster continuous improvement;
3. Making progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and
4. Providing targeted, intensive support and effective interventions for the lowest-performing schools.

Congress appropriated a total of \$48.6 billion for the SFSF program. Of the amount appropriated, \$39.5 billion (81.8 percent) was for the Education Stabilization Fund (CFDA #84.394) and \$8.8 billion (18.2 percent) was for the Government Services Fund (CFDA #84.397). The remaining funds were reserved for awards to the Outlying Areas (American Samoa, Commonwealth of Northern Mariana Islands, Guam, and the Virgin Islands). SFSF funds are available for Federal obligation through September 30, 2010, and for State and local obligation through September 30, 2011.

B. Funding Process

The Department awarded SFSF funds to Governors in two phases. The Department determined that a two-phase award process was needed to provide each State with a timely allocation of the majority of its SFSF funds while giving the Department the opportunity to collect additional information from the State on how it will make progress in the four reform areas.

Phase One

The phase one SFSF application became available to States on April 1, 2009. To receive its initial SFSF allocation, each State submitted to the Department by July 1, 2009 an application that provided:

1. Assurances that the State was committed to advancing education reform in the four statutorily specified areas;

2. Baseline data that demonstrated the State's current status in each of the four education reform areas;
3. Maintenance-of-effort (MOE) assurance and information; and
4. Information on the uses of SFSF funds.

As part of the phase one application process, the Department provided States with the baseline data in each of the four reform areas. In its application, a State was able to accept the baseline data, modify the data, or provide updated or additional data.

Upon approval of a phase one application, the Department awarded a State 67 percent of its total SFSF allocation. (That is, the Department released 67 percent of both the State's total Education Stabilization Fund allocation and its total Government Services Fund allocation). If a State demonstrated that the amount of funds it would receive in phase one (67 percent of its total SFSF allocation) was insufficient to prevent the immediate layoff of personnel by school districts, public IHEs, or State or local agencies, the Department awarded the State up to 90 percent of its total SFSF allocation in phase one. On July 1, 2009, the Department made available 100 percent of Government Services funds to those States that already had approved applications. Any State that was approved after that date received 100 percent of its Government Services funds as an initial allocation. The remaining portion of the State's Education Stabilization Fund allocation is provided after the Department approves the State's phase two submission.

Phase Two

On November 12, 2009, the Department published in the Federal Register a notice of final requirements, definitions, and approval criteria for the phase two SFSF application. In the notice, the Department established specific data and information requirements (the assurance indicators and descriptors) that a State receiving funds under the SFSF program must meet with respect to the statutory assurances. The Department also established specific requirements for a plan that a State must submit (the State plan), as part of its application for phase two funding under the SFSF program, describing its ability to collect and report the required data and other information.

For each assurance indicator or descriptor under education reform areas (a), (c), and (d) for which the State is not able to fully collect or publicly report annually the required data or information, the State must provide a plan as part of its phase two application.¹ The plan must include the process and timeline for developing and implementing, as soon as possible, but no later than September 30, 2011, the means to fully collect and/or publicly report the data or information, including:

- ◄—The milestones that the State establishes toward developing and implementing those means;
- ◄—The date by which the State expects to reach each milestone;

¹ There are specific plan requirements that apply to Indicators (b)(1), (b)(2), (b)(3), (c)(11), and (c)(12). See Phase two SFSF application at pages 68-73.

- ⌘ Any obstacles that may prevent the State from developing and implementing those means by September 30, 2011, including but not limited to requirements and prohibitions of State law and policy;
- ⌘ The nature and frequency of reports that the State will provide to the public regarding its progress in developing and implementing those means; and
- ⌘ The amount of funds the State is using or will use to develop and implement those means, and whether the funds are or will be Federal, State, or local funds.

Furthermore, the plan must:

- ⌘ Describe the agency or agencies in the State responsible for the development, execution, and oversight of the plan, including the institutional infrastructure and describe the capacity of the agency or agencies as they relate to each of those tasks;
- ⌘ Describe the agency or agencies, institutions, or organizations, if any, providing technical assistance or other support in the development, execution, and oversight of the plan, and describe the nature of such technical assistance or other support;
- ⌘ Provide the overall budget for the development, execution, and oversight of the plan; and
- ⌘ Describe the way the State will publicly report the plan and the State's progress reports on its plan, including the nature and frequency of updated reports to the public on State actions taken under the plan and the website where the State will make the plan and progress reports publicly available (as defined in the notice of final requirements, definitions, and approval criteria for the phase two SFSF application).

In addition, States are required to describe generally:

- ⌘ The processes the State employs to review and verify the required data and other information on the indicators and descriptors; and
- ⌘ The processes the State employs to ensure that, consistent with 34 CFR 99.31(b), the required data and other information are not made publicly available in a manner that personally identifies students, where applicable.

C. Federal Allocations to States

The Department determined each State's total SFSF allocation by formula on the basis of (1) its relative population of individuals who are aged 5 to 24, and (2) its relative total population. A table showing each State's allocation is available at <http://www.ed.gov/programs/statestabilization/sfsf-state-allocations.pdf>.

D. Within-State Allocations of Education Stabilization Funds

For each of 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.

- For *elementary and secondary education*, a State must restore the levels of State support provided through the State's primary elementary and secondary education formulae to the greater of the FY 2008 or FY 2009 levels. In restoring the levels of State support for elementary and secondary education for FYs 2010 and 2011, a State must allow: (a) existing State formulae increases to support elementary and secondary education for FYs 2010 and 2011 to be implemented, if these increases were enacted pursuant to State law prior to October 1, 2008; and (b) funding for phasing in State equity and adequacy adjustments, if the adjustments were enacted pursuant to State law prior to October 1, 2008.

The statute provides States with some flexibility in determining which of their elementary and secondary education funding formulae are their primary funding formulae for elementary and secondary education. At a minimum, a Governor must include the State formula(e) that provide(s) basic support to LEAs (i.e., the State's foundation or base formula(e)).

An LEA receives the same share of SFSF funds as it does funding under the State's primary funding formulae.

- For *public institutions of higher education*, a State must also restore the levels of State support (excluding *tuition and fees paid by students*) to the greater of the FY 2008 or FY 2009 levels of support. For purposes of the SFSF program, State appropriations to public IHEs for financial assistance programs to defray the costs of tuition and fees paid by students (when the appropriated funds flow directly to the IHEs) may be considered State support for such institutions. The fact that the funds represent student financial aid for other purposes does not preclude such funds from consideration as State support for public IHEs in the SFSF program.

In addition, unrestricted State funding for public IHEs is considered State support for such institutions even if those institutions choose to use a portion of that funding for financial assistance to students.

The Governor makes awards under the Education Stabilization Fund only to LEAs and public IHEs. The Governor may not retain any portion of the Education Stabilization Fund for State purposes, nor award any portion of this allocation to entities other than LEAs and public IHEs.

E. Uses of Education Stabilization Funds

LEA Uses of Funds

Subject to certain limitations², an LEA may use its Education Stabilization funds for any activity authorized by the Elementary and Secondary Education Act (ESEA), the Individuals with Disabilities Education Act, the Adult and Family Literacy Act, or the Carl D. Perkins Career and Technical Education Act, or 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.

IHE Uses of Education Stabilization Funds

Subject to certain limitations³, an IHE may use its Education Stabilization 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, or repair of IHE facilities that are used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system.

F. Uses of Government Services Funds

Section 14002(b) of the ARRA authorizes a State to 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 State may not use its Government Services funds to pay down past debt.⁴

2 See April 2009 SFSF Guidance at III-D.

3 See April 2009 SFSF Guidance at III-E.

4 See April 2009 SFSF Guidance at IV.

A State should expend funds from its Government Services Fund allocation in a manner that will help create jobs, reduce unemployment, stabilize and improve the State's economy, and avert the need to raise taxes. The Department also encourages Governors to use these funds in ways that support State and local educational reform initiatives, especially activities that will enable the State to make progress in the areas related to the four education reform assurances provided in the State's application for SFSF funding.

G. 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 the General Education Provisions Act (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 that of other employees who performed similar work and were paid from other sources, and 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.”

Monitoring Process

A. Desk Reviews and On-Site Visits

The Department will conduct a desk review or on-site visit with each State annually. The Department will have an on-site visit with half of the States each year. Monitoring will be conducted by AITQ staff and trained consultants, as needed. Each review team will be led by an AITQ staff member who will be primarily responsible for ensuring that the monitoring is conducted according to established monitoring procedures, and that compliance issues are addressed in a manner consistent with the SFSF legislation and Department policies.

Prior to a desk review or on-site visit, AITQ staff will request that the State submit specific documentation. In particular, staff will review documents relating to: the allocation and uses of funds, fiscal oversight, maintenance-of-effort, progress in the four reform areas, subrecipient monitoring, and reporting.

During both a desk review and on-site visits, AITQ staff will focus on a State’s implementation of SFSF and its oversight of LEAs, public IHEs, and other entities receiving program funds. AITQ staff will review the submitted documentation and interview various State officials, including those responsible for implementing both the Education Stabilization and Government Services funds, maintaining internal controls, administering elementary and secondary education and overseeing public IHEs, and submitting quarterly reports under Section 1512 of the ARRA.

Additionally, as part of the reviews and visits, AITQ staff will interview appropriate staff of LEAs, public IHEs, and other entities receiving SFSF funds. This multi-level interview strategy will allow the monitors to gather information from a variety of perspectives and better evaluate the impact of the State's administration on the implementation of SFSF by LEAs, IHEs, and other entities receiving program funds.

Generally, a monitoring team will hold an exit conference on the final day of an on-site visit, or during the week immediately following the team's return.

B. Monitoring schedule

AITQ will establish a monitoring schedule. On-site reviews will be conducted over a two-year period and will be two to three days in duration. The Department will select a State for an on-site review in the first year on the basis of a number of factors, such as the amount of funds the State received under the program, the rate of drawdowns, and any indication of possible challenges or problems in State implementation. In those years in which staff do not conduct an on-site visit to a State, staff will perform a desk review. The Department's monitoring may also include video conferences as appropriate. (*See Attachment E for a preliminary list of States that will receive on-site visits or desk reviews during the initial year of monitoring.*)

C. Monitoring Feedback and Follow-Up

Monitoring report

After the desk review or monitoring visit, the AITQ team prepares the monitoring report for the State. The report contains a brief summary of the monitoring activities undertaken by the team during the review. This is followed by a summary of findings, required corrective actions, and recommendations. A draft of the report is transmitted electronically to the State within 35 business days of the desk review or on-site visit. The State has 10 business days to review the draft report and provide any technical edits, prior to the Department's issuance of the final report.

State response

Upon receipt of the final report, the State has 30 business days to respond to any required actions. Once the State's response is received by AITQ, the team will carefully review all documents to determine whether the response indicates that the actions that the State has taken or proposes to take will ensure full compliance in the identified areas. Upon completion of this review, AITQ's Director will send a letter to the Governor approving or disapproving the proposed actions, noting any areas that require further action by the State. The State will have an additional 30 business days to complete any remaining required actions pending AITQ's full approval.

Follow-Up Activities

If a State is not able to demonstrate sufficient progress toward full compliance with issues identified in the monitoring report, or when such issues are so significant and pervasive that on-site verification by the Department is required, AITQ will schedule a follow-up visit. Follow-up visits are individualized to address the specific needs and issues presented by each State, and will address verification of the State's efforts to correct identified compliance issues.

Monitoring Protocols

Included as attachments to this monitoring plan are the following monitoring protocols:

1. State monitoring protocol (Attachment A)
2. LEA monitoring protocol (Attachment B)
3. IHE monitoring protocol (Attachment C)
4. Government Services Fund monitoring protocol (Attachment D)