

GUIDANCE

Funds for the State Independent Living Grants Program and Independent Living Services for Older Individuals Who Are Blind Program Title VII, Chapter 1, Part B and Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended

Made Available Under

The American Recovery and Reinvestment Act of 2009



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**U.S. Department of Education
Office of Special Education and Rehabilitative Services
Rehabilitation Services Administration**

Purpose of the Guidance

The purpose of this guidance is to provide comprehensive information on the Recovery funds made available to the State Independent Living Grants and Independent Living Services to Older Individuals Who Are Blind Programs authorized under Title VII, Chapter 1, Part B and Chapter 2 of the Rehabilitation Act of 1973, as amended. The guidance provides the U.S. Department of Education's interpretation of various statutory provisions and does not impose any requirements beyond those included in the American Recovery and Reinvestment Act of 2009 and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

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

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Independent Living Services for Older Individuals Who Are Blind Program
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of the Rehabilitation Act of 1973, as amended
Made Available Under
The American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5)**

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Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) appropriates significant new funding for the Independent Living programs under Title VII, Chapter 1, Part B and Part C and Chapter 2 of the Rehabilitation Act of 1973, as amended (Rehabilitation Act). The IL programs support services to individuals with significant disabilities and older individuals who are blind to maximize their leadership, empowerment, independence, and productivity, and to promote the integration and full inclusion of individuals with disabilities into the mainstream of American society.

The ARRA State Independent Living Grants (State IL Grants) and Independent Living Service to Older Individuals Who Are Blind (OIB) funds provide an unprecedented opportunity to implement innovative strategies to improve and expand IL services for individuals with significant disabilities and older individuals who are blind while stimulating the economy. Under the ARRA, the IL funds are provided under three authorities: \$18,200,000 is available under the State IL Grants; \$34,300,000 is available under the OIB program; and \$87,500,000 is available under the Centers for Independent Living Program (CIL). Each state's formula allocation under the State IL Grants and OIB programs is available at: <http://www.ed.gov/about/overview/budget/statetables/recovery.html>

This document provides guidance related to the State IL Grants program and the OIB program only. Guidance regarding the CIL program will be issued separately.

A. Timing and Eligibility

A-1. What programs funded under the Rehabilitation Act are receiving ARRA funds?

ARRA funds are available for the Vocational Rehabilitation (VR) State Grants program authorized under Title I, Part B of the Rehabilitation Act and for the IL programs funded under Title VII, Chapter 1, Part B and Part C and Chapter 2. Separate questions and answers documents for the VR State Grants program are available at: <http://www.ed.gov/recovery>.

A-2. How and when will ARRA State IL Grants and OIB funds be allocated by the Department of Education (Department) to states?

The Department awarded the total amount of ARRA State IL Grants and OIB funds to states on April 1, 2009. These awards are in addition to the regular fiscal year (FY) 2009 IL State Grant and OIB awards. Together, these grant awards will constitute a state's total FY 2009 IL State Grant and OIB awards.

A-3. What must a state do to receive ARRA State IL Grants and OIB funds?

A state does not need to submit a new State Plan for Independent Living (SPIL) to receive its ARRA State IL Grants and OIB funds. States are eligible to receive ARRA funds under these programs based on an approved SPIL and an approved OIB application, as well as the provision of the certification required by section 1607 of the ARRA. The assurances in a state's SPIL and OIB application, as well as the requirements of the ARRA, will apply to the use of ARRA funds.

A-4. Must the State Plan for Independent Living (SPIL) be amended?

State plan amendments are not required for the receipt and expenditure of the funds under the State IL Grants Program, as long as those expenditures are consistent with the FY 2009 SPIL. However, as required by the IL program regulations at 34 C.F.R. §364.20 and the Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. §76.140 and 76.141, a state must amend its SPIL if there will be a significant and relevant change in the information or assurances in the plan, the administration or operation of the plan, or the organization, policies, or operations of the state agency that received the grant, if the change materially affects the information or assurances in the plan. Note that, under 34 C.F.R. 76.141, a state amending its plan must use the same procedures that it used in preparing and submitting the plan, including the joint development of the amendment by the designated State Unit (DSU) and Statewide Independent Living Council (SILC) and the holding of public hearings, as required by 34 C.F.R. §364.20(c) and (g).

If required by the program regulations and EDGAR, SPIL amendments should be initiated expeditiously in accordance with the procedures for amendments outlined in the Rehabilitation Act and applicable regulations. The Department encourages DSUs

and SILCs to begin efforts to reach agreement on how the additional State IL Grants funding provided under the ARRA will be spent.

A-5. What is the period of availability for the ARRA State IL Grants and OIB funds?

States must obligate all ARRA State IL Grants and OIB funds by September 30, 2011, which includes one year of carry over in accordance with section 19 of the Rehabilitation Act. In accordance with the goals of the ARRA, a state should obligate ARRA State IL Grants and OIB funds expeditiously, consistent with prudent management. States may begin obligating ARRA State IL and OIB funds immediately. Costs are allowable beginning February 17, 2009, the effective date of the grants. A chart indicating when an obligation occurs for various types of activities is provided in EDGAR at 34 C.F.R. 76.707.

B. Matching Issues, Set Asides, and Indirect Costs

B-1. Are states required to provide the same non-Federal matching funds required under the State IL Grants Program and the OIB Program in order to obtain ARRA State IL Grants and OIB funds?

Yes. Under the Rehabilitation Act and the ARRA, the Department has no authority to waive the matching requirements for the ARRA funds awarded to states under the State IL Grants program or the OIB program. States must provide the requisite non-Federal share of 10 percent for all ARRA funds expended under these programs, in addition to the regular FY 2009 and FY 2010 appropriations. The carryover of ARRA funds until September 30, 2011 is contingent upon meeting the matching requirement by September 30, 2010.

B-2. Can states count State Fiscal Stabilization Funds as non-Federal funds for meeting the match requirements for the State IL Grants Program and the OIB Program?

No. A state may not count State Fiscal Stabilization Funds as non-Federal funds for purposes of meeting the match requirements for the State IL Grants and OIB Grants programs.

B-3. Will funds be set aside from ARRA State IL Grants and OIB funds for capacity building activities of minority entities and Indian tribes under section 21(b) of the Rehabilitation Act?

Yes. The Department has reserved one percent from the ARRA funds available for all three IL programs for the required set-aside under section 21(b) of the Rehabilitation Act for capacity building activities of minority entities and Indian tribes.

B-4. How might the ARRA funding affect indirect cost recoveries by grantees?

In order to obtain indirect cost recoveries, grantees are allowed to apply their currently negotiated indirect cost rate to expenditures 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 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. In order to avoid a future compounding effect of less program dollars and reduced indirect costs, we recommend grantees closely monitor the potential impact of the ARRA on their indirect cost recoveries and consider making appropriate adjustments during the current periods. Such adjustments will lessen the dollar impact in future years and allow for stability in future budgets. Adjustments to indirect cost recoveries should first be discussed with the cognizant federal agency.

C. Authorized Uses of ARRA State IL Grants and OIB funds

- C-1.** What provisions of the Rehabilitation Act, EDGAR, and the General Education Provisions Act (GEPA) apply to use of the ARRA State IL Grants and OIB funds?

All provisions of EDGAR, and GEPA, as well as those in the Rehabilitation Act, that currently apply to the State IL Grants and OIB funds apply to the ARRA State IL Grants and OIB funds.

- C-2.** How can ARRA State IL Grants and OIB funds be used?

A State and any sub-recipients must use State IL Grants and OIB funds only for those activities authorized under Title VII, chapter 1, Part B and Title VII, chapter 2 and the program regulations and allowed under EDGAR and the Office of Management and Budget (OMB) cost principles applicable to the state or its sub-recipient (OMB Circular A-87 for states and OMB Circular A-122 for non-profit organizations). Additional guidance on specific issues will be developed as questions are submitted to the Rehabilitation Services Administration (RSA) Recovery Comments mailbox. The link to this mailbox can be found at the end of this document.

- C-3.** Does RSA have any suggestions on how the ARRA State IL Grants and OIB funds should be used?

The ARRA State IL Grants and OIB funds constitute a large one-time increment in funding that offers a unique opportunity for grantees to improve independent living outcomes. Because the recovery funds constitute a large increase in IL program funding that will likely not be available at the same level beyond September 30, 2011, grantees should consider how to focus these funds on short-term investments that have the potential for long-term benefits, rather than make ongoing commitments that they might not be able to sustain once recovery funds are expended.

Grantees under the IL programs should consider how they can use the additional funds to improve and expand IL services; serve additional consumers, especially populations that are unserved or underserved by IL programs in the state; increase the capacity of IL service providers to provide IL services; and maximize employment opportunities and economic benefits to individuals with significant disabilities consistent with the goals and objectives established by individual consumers.

D. Transparency, Accountability, and Reporting

D-1. Are states required to track ARRA State IL Grants and OIB funds separately from regular State IL Grants and OIB program funds?

Yes. ARRA requires that recipients of funds made available under the Act separately account for, and report on, how those funds are spent. The Department has assigned a new CFDA number to the ARRA State IL Grants and OIB funds in order to facilitate accounting separately for the funds. Recipients will need to maintain accurate documentation of all ARRA expenditures to ensure that the data reported is accurate, complete, and reliable. States will be expected to monitor sub-recipients to help ensure data quality and the proper expenditure of ARRA funds. Further information on ARRA reporting instructions will be provided shortly at www.FederalReporting.gov.

D-2. Are there rules that govern the amount of ARRA State IL Grants and OIB funds that a state may draw down at any one time?

Yes. A state must have an effective system for managing the flow of funds that ensure that it is able to draw down funds as needed to pay program costs but that it also minimizes the time that elapses between the transfer of the funds and their disbursement by the state, 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).) A state must promptly, but at least quarterly, remit to the Department interest earned on advances. (34 C.F.R. § 80.21(i)). The Department will take appropriate actions against states that fail to comply with this requirement.

D-3. What information is the 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. These reports must be submitted not later than 10 days after the end of each calendar quarter. OMB is expected to issue government-wide guidance on the ARRA reporting requirements and procedures.

D-4. What are our shared responsibilities for ensuring that all funds under the ARRA are used for authorized purposes and instances of fraud, waste, and abuse are prevented?

All ARRA funds must be spent with an unprecedented level of transparency and accountability. Accordingly, recipients of ARRA funds must maintain accurate, complete, and reliable documentation of all ARRA expenditures. The law contains very stringent reporting requirements and requires that detailed information on the use of funds be available publicly on www.recovery.gov

States have important oversight responsibilities and must monitor grant and sub-recipient activities to ensure compliance with all applicable Federal requirements. If a state fails to comply with requirements governing the funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or in part, funds awarded under the program, 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. The Department's Office of Inspector General (OIG) will be conducting comprehensive audits of ARRA implementation activities. In addition, Department 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 <<<mailto:oig.hotline@ed.gov>>>. Moreover, states are reminded that significant new whistleblower protections are provided under section 1553 of the ARRA.

In the coming weeks, the Department will provide additional information on how to help prevent instances of fraud, waste, and abuse.

E. Civil Rights Obligations

E-1. Does the receipt of ARRA State IL Grants and OIB funds require recipients to comply with civil rights laws?

Yes. The receipt of Federal funds obligates recipients to comply with civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability and age. For additional information see: <http://www.ed.gov/policy/gen/leg/recovery/notices/civil-rights.html>.

Additional Information

The Department will provide regular updates as additional information regarding the details of the ARRA State IL Grants and OIB program funds becomes available.

If you have questions about these questions and answers, or ideas you would like to share about innovative ways to meet the ARRA goals, please email them to:

RSARecoveryActComments@ed.gov.

While we will not be able to respond to every question, all questions will be compiled and considered as we develop further guidance and Q and A documents.