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Modifications to Questions in the April 2009 Guidance on the State Fiscal Stabilization Fund Program

**U.S. Department of Education
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Introductory Note

On April 1, 2009, the U.S. Department of Education (Department) released detailed guidance on the State Fiscal Stabilization Fund program. As a preface to the guidance, the Department indicated that it would provide additional or updated guidance as necessary and invited interested parties to provide comments on the document.

In response to comments received, we are updating the answers to three of the questions in the initial guidance and construction language in Illustration 8. Those questions, with the revised answers, and the revised Illustration 8 are provided below. The Department intends to periodically incorporate new questions and answers into a revised version of the complete guidance document.

The answers to the questions below and the revised Illustration 8 supersede the respective portions of the initial guidance.

III-D-11. May an LEA use Education Stabilization funds for construction activities that are not considered to be modernization, renovation, or repair?

Yes. 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 (including a charter school 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. However, the Department discourages LEAs from using Education Stabilization funds for new construction because this use of funds may limit an LEA's ability to meet other essential needs or implement necessary reform initiatives. The Department does not discourage an LEA from using Education Stabilization funds for modernization, renovation, or repair.

An LEA may not use Education Stabilization funds for construction of (or 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 stand-alone facilities whose purpose is not the education of children, including central office

administration or operations or logistical support facilities. If an LEA uses Education Stabilization funds for construction, it must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (See Section 1605 of the ARRA.)

Illustration 8: Summary – LEA Uses of Education Stabilization Funds

LEA Uses of Education Stabilization Funds	
Cautionary Note: All of the uses identified in this Illustration are subject to ARRA and other applicable requirements, including prohibitions relating to the uses of funds.	
Basic Rule	<ul style="list-style-type: none"> ➤ An LEA may use its Education Stabilization funds for any activities authorized under the ESEA, the IDEA, the AEFLA, or the Perkins Act, regardless of whether the Education Stabilization Funds were awarded through the State’s primary education funding formula(e) or based on the LEA’s relative share of funding under Title I, Part A.
Governor’s Control	<ul style="list-style-type: none"> ➤ A Governor does <u>not</u> have the discretion to direct how an LEA must use its Education Stabilization Funds.
Education activities consistent with State and local requirements	<ul style="list-style-type: none"> ➤ An LEA may use its Education Stabilization allocation for such purposes because these activities are authorized under Title VIII of the ESEA (Impact Aid). NOTE: The LEA must maintain records that track separately the specific uses of the funds (<i>see</i> Part VII: “Transparency, Accountability, Reporting, and Other Obligations”).
Modernization, renovation, and repair of public school facilities	<ul style="list-style-type: none"> ➤ Section 14003(a) of the ARRA expressly authorizes an LEA to use Education Stabilization funds for this purpose.
Construction	<ul style="list-style-type: none"> ➤ Construction is allowable as an authorized activity under Title VIII of the ESEA (Impact Aid). However, the Department discourages LEAs from using Education Stabilization funds for new construction.

IV-5. May a State use its Government Services funds for construction or infrastructure projects?

Yes. The scope of allowable activities for the Government Services funds is broad, and is not limited to modernization, renovation, or repair of public school facilities or IHEs. Subject to the limitations in section 14004(c) of the ARRA, construction and infrastructure support are allowable uses of Government Services funds. However, the Department discourages States from using Government Services funds for new construction because this use of funds may limit a State's ability to meet other essential needs. Thus, the extent to which a State uses Government Services Funds for new construction will be a consideration in making awards under the State Incentive "Race-to-the-Top Fund" competition.

If a State uses Government Services funds for construction, alteration, maintenance, or repair of a public building or public work, it must comply with specific requirements relating to the use of American iron, steel, and manufactured goods used in the project. (*See* Section 1605 of the ARRA.)

V-1. May Stabilization funds be used for construction?

Stabilization funds may be used to support construction as follows:

- By LEAs under the Education Stabilization Fund – An LEA (including a charter school LEA) may use Education Stabilization funds for construction of new public school facilities because section 14003(a) of the ARRA authorizes an LEA to use its funds for any activities authorized under the ESEA (and certain other Federal education laws), and construction is an activity authorized under Title VIII of the ESEA (Impact Aid).
- By Governors under the Government Services Fund – A Governor may use Government Services funds for construction because section 14002 of the ARRA authorizes the use of funds for "public safety and other government services", and construction may be considered a government service.

However, as noted in Questions III-D-11 and IV-5, the Department discourages the use of either Education Stabilization funds or Government Services funds for new construction. In addition, the extent to which a State uses Government Services Funds for new construction will be a consideration in making awards under the State Incentive "Race-to-the-Top Fund" competition.

All construction activities under the ARRA are subject to the applicable requirements in the ARRA and other Federal statutes and the assurances that the Governor provides in the State's Stabilization program application.