THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

May 19, 2009

Honorable Howard "Buck" McKeon
U.S. House of Representatives
Washington, DC 20515

Dear Congressman McKeon:

Thank you for your February 27 letter regarding the implementation of the American Recovery and Reinvestment Act of 2009 (ARRA). I apologize for the delay in responding.

I have been working with my staff to distribute the funds as quickly as possible. Our goal is to save and create jobs, improve education, and invest the funds as transparently as possible so that we can measure their impact on education and the economy. We have held a number of meetings with the relevant congressional committees to explain our plans for the allocation of these funds and will hold additional meetings in the coming months.

In response to your specific questions regarding the State Fiscal Stabilization Fund (SFSF) and other programs under the ARRA, I am pleased to provide the following information:

Monitoring

I share your commitment to strong oversight and accountability. I have established teams across the Department of Education that are responsible for monitoring and oversight. These teams include program-specific staff and staff from other offices, including the Office of the Chief Financial Officer and the Risk Management Service, and are advised by the Office of Inspector General. State implementation of the ARRA will be monitored through site visits, phone calls, and regular analysis of the required reports. In addition, the Office of Inspector General is planning its own independent oversight.

High-Risk Grantees

High-risk grantees that are eligible for ARRA funds will receive additional oversight and assistance. Each high-risk grantee has already developed a comprehensive corrective action plan that addresses the type of fiscal infrastructure issues needed to help ensure that ARRA funds are used effectively for authorized purposes and without fraud, waste, error, or abuse. The Department will take actions to ensure that high-risk grantees are fully aware of their responsibilities, applicable requirements, and the permissible use of ARRA funds. The Department will also follow up with monitoring, including site visits, during the period of ARRA-funded program implementation to verify that the funds were appropriately expended. Finally, we will require that the use of ARRA funds by all grantees, including high-risk grantees, is made transparent in order to allow the public to see how ARRA funds were spent and to assess the public benefit of the investment. This information will be reported clearly and accurately in a timely manner and will be made available for public scrutiny, including on the White House sponsored Web site, Recovery.gov.

SFSF Assurances

On April 1, the Department made the application for the first phase of funds under the SFSF available to States. The application requires governors to provide assurances that each State will take actions to: (a) increase teacher effectiveness and address inequities in the distribution of highly qualified teachers; (b) establish and use pre-K-through-college-and-career data systems to track progress and foster continuous improvement; (c) make progress toward the establishment of rigorous college- and career-ready standards and high-quality assessments; and (d) support targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring. Each State is also required to provide baseline data that demonstrate the State's current status in each of the four education reform areas and a description of how the State intends to use its SFSF allocation. The remaining funds will be awarded in a second phase after the State reports on data metrics in the four education reform areas referenced above and submits a plan for providing the data elements currently not available. In the near future, the Department will publish in the *Federal Register* for public comment the proposed data metrics and proposed plan requirements.

Formulas for Impact Aid Construction and McKinney Vento Homeless Programs

Of the $100 million appropriated under the ARRA for section 8007 of Title VIII of the Elementary and Secondary Education Act (ESEA), the Department awarded $39.6 million by formula to 180 local educational agencies (LEAs) that are eligible as a result of their enrollment of certain numbers and types of federally connected children for whom they receive funds under section 8003 of the Impact Aid program (Basic Support Payments). Eligible LEAs did not need to submit an additional application to receive these formula funds, and the payments, as prescribed in the ARRA, were based on the number of eligible federally connected children in average daily attendance who are dependents of members of the uniformed services or children living on Indian lands. In addition, the Department will distribute approximately $60 million in competitive Impact Aid Construction grants. These discretionary grants will be awarded through a separate application process. The $69.2 million appropriated for the McKinney-Vento Homeless Assistance program was allocated to States on the basis of the proportionate number of homeless children identified by the State relative to the number of homeless children identified nationally during the 2007-2008 school year. The Department awarded both the Impact Aid formula grants and the McKinney-Vento grants on April 13.

Allocation of Funds from the SFSF

The Department is making SFSF awards to States in two phases. The Department made available $32.6 billion in SFSF funds on April 1, and will award the first phase of funds (generally 67 percent of a State's total stabilization allocation) to States within two weeks of the receipt of an approvable application. Applications for program funding are available for governors on the Department's Web site. If a State demonstrates that the amount of funds it would receive in the first phase is insufficient to prevent the immediate layoff of personnel by LEAs, State educational agencies, or publicly funded institutions of higher education, the Department will award the State up to 90 percent of its SFSF allocation in the first phase. The remaining portion of the State's allocation will be provided after the Department approves a more detailed State plan as described above. We will award phase-two funds on a rolling basis. At this time, the Department has awarded funds from the SFSF to several States. Approved applications for these States are posted on the Department's Web site. We anticipate making many additional awards in the coming weeks.

Student Financial Aid

The Department plans to use the $60 million allocated for student aid administration to support loan servicing and National Student Loan Data System (NSLDS) operations. Depending on the volume of Federal Family Education Loan Program loans purchased by the Department, the money could be obligated by September 2009 and fully expended by the end of fiscal year 2010. These funds will help the Department meet its goal of ensuring liquidity in the student loan market, as Department-serviced student loan volume has expanded greatly due to adverse market conditions. In addition, the plan will meet the objective of spending the money responsibly within the shortest time frame possible.

Waiver Authority

The ARRA gives the Department the authority to waive the SFSF maintenance-of-effort (MOE) requirements. The Department will also use the MOE waiver authority granted in sections 1125A(e) and 9521(c) of the ESEA. The Department recognizes that States do not yet have all the data they need to make final SFSF MOE determinations, especially for future years. Thus, as part of the SFSF program application, the Department is requiring a State to assure only that it meets either the MOE requirements or the criterion for a waiver of those requirements. On May 1, the Department issued additional guidance on the SFSF MOE requirements and a streamlined MOE waiver application form. The awarding of a State's SFSF allocation will not be conditioned upon the submission and approval of MOE waiver requests. In the near future, the Department will also issue waiver guidance for Title I, Part A of the ESEA that addresses waivers of MOE as well as waivers of other Title I, Part A provisions under section 9401 of the ESEA.

Set-Aside Funding for Public School Choice and SES

On April 1, the Department provided guidance on issues regarding Title I, Part A ARRA funds. This guidance emphasizes that the requirement under Title I, Part A that an LEA with one or more schools in improvement, corrective action, or restructuring must spend an amount equal to at least 20 percent of the LEA's Title I, Part A, allocation on public school choice-related transportation and supplemental educational services (SES), assuming there is sufficient demand for these services, applies to Title I, Part A ARRA funds. However, the guidance indicates that the Department will consider waiving this obligation with respect to ARRA funds.

My willingness to consider waiving the 20 percent obligation as it applies to ARRA funds is not a reflection of the value of either SES or public school choice. In my time with the Chicago Public Schools, I saw how providing high-quality expanded learning opportunities, such as effective tutoring, supports improved student achievement. Rather, I recognize that an LEA requires flexibility with respect to the use of its large, one-time allocation of Title I, Part A ARRA funds in order to meet certain needs in this economic climate while implementing specific ARRA priorities. (For the same reason, I have also indicated my willingness to consider waivers of the required set asides for professional development in LEAs and schools identified for improvement.) Please note that I am only willing to consider a waiver of an LEA's 20 percent obligation with respect to Title I, Part A ARRA funds. Potentially, almost $2.9 billion from the regular fiscal year (FY) 2009 Title I, Part A appropriation would remain available for choice-related transportation and SES. Moreover, no LEA is required to request such a waiver. Further, to receive a waiver, an LEA would need to comply fully with the requirements governing SES implementation, including the new October 2008 regulations, with regard to its regular FY 2009 Title I, Part A allocation.

<u>Equitable Participation of Private Schools Children</u>

The Title I, Part A and IDEA, Part B requirements that an LEA provide equitable services to eligible private school children and their teachers and families apply to the Title I, Part A and IDEA, Part B ARRA funds. The Department may not waive these requirements. The Department has provided guidance to States and LEAs on this issue.

On the other hand, the SFSF does not have a comparable "equitable services" requirement. The legislation permits LEAs to use their SFSF funds for any activity authorized by the ESEA, the IDEA, the Carl D. Perkins Career and Technical Education Act, or the Adult Education and Family Literacy Act. An LEA's decision to use SFSF funds for an activity authorized under one of those statutes (as examples, for teacher professional development, instructional materials or equipment, or school modernization) does not trigger a requirement to provide equitable services to private school students or teachers.

Please do not hesitate to contact me again if I can provide any additional information. I look forward to continuing to work with you and other members of Congress to improve the state of our nation's economy and invest in education.

Sincerely,

Arne Duncan