

FACTE Conference

August 5, 2009

Implementing CTE Under Shrinking Budgets

By

*Michael Brustein, Esq.
Brustein & Manasevit
3105 South Street NW
Washington, DC 20007
(202) 965-3652*

mbrustein@bruman.com

www.bruman.com

Agenda

- New Developments
- Understanding the ARRA and the Use of Stabilization Dollars for CTE
- Oversight and Internal Controls of ARRA
- Perkins Issues
 - Allocability
 - Remedial Courses
 - Supplanting
- Questions

New Developments

- 2010 Spending Levels for CTE
- Student Aid and Fiscal Responsibility Act (\$12 Billion American Graduation Initiative)
- Senator Murray S.B. 1532
- WIA Reauthorization
- Risk Management Report

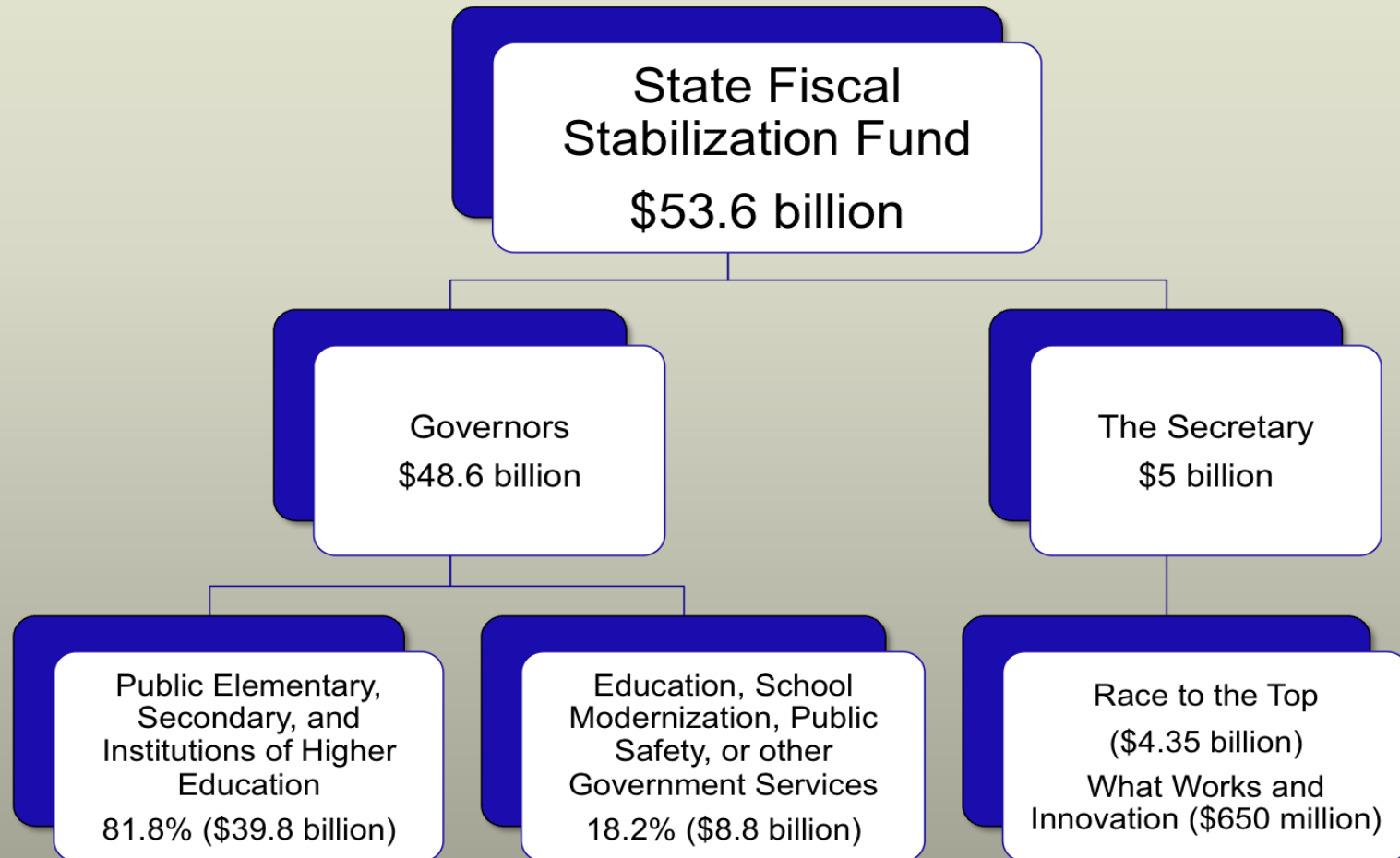
Four Interfaces for Review

- A-133 Audit (ARRA)
- OIG Audit
- Federal Monitoring
- State Monitoring

ARRA – American Recovery and Reinvestment Act

- General Funding Structure
- Stabilization 53 Billion
- Formula Programs 50 Billion

Stabilization Overview



ARRA April 1, 2009 Guidance

- American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5), which President Barack Obama signed into law on February 17, 2009.
- The two components of the Stabilization program are the Education Stabilization Fund (CFDA No. 84.394) and the Government Services Fund (CFDA No. 84.397).

Education Stabilization Fund	Government Services Fund
➤ 81.8 percent of the State's total Stabilization Fund allocation	➤ 18.2 percent of the State's total Stabilization Fund allocation

Process for Awarding Funds to Governors

Phase One	➤ 67 percent of the State's total Stabilization allocation released.
Phase One Exceptional Circumstances	➤ Up to an additional 23 percent of the State's total Stabilization allocation released (for a total of up to 90 percent).
Phase Two	➤ Remaining portion of the State's total Stabilization allocation released.

Education Stabilization (ES) Funds: CFDA No. 84.394

- The Governor makes awards under the Education Stabilization Fund only to local educational agencies (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

ES: Uses of Education Stabilization Funds by LEAs

- Any Education Stabilization funds that an LEA receives may be used for activities authorized under the ESEA, the IDEA, the AEFLA, or the Perkins Act, subject to ARRA and other applicable Federal requirements, including the limited prohibitions.
- Critical: The Education Stabilization funds are ALWAYS Federal ARRA funds: Therefore there is accountability to ED.



See 2009 OMB Circular A-133 Compliance Supplement

ES: Impact Aid

- 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.
 - 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, including the limited prohibitions.

ES: Impact Aid

- Among other things, the Education Stabilization funds may be used for activities such as:
 - paying the salaries of administrators, teachers, and support staff; purchasing textbooks, computers, and other equipment; supporting programs designed to address the educational needs of children at risk of academic failure, limited English proficient students, children with disabilities, and gifted students; and
 - meeting the general expenses of the LEA, investing in pre-K as part of “elementary education,” etc.

ES: Record keeping is critical

- An LEA must: (a) maintain records that separately track and account for its Education Stabilization funds and (b) report on the specific uses of those funds.
- ARRA funds have separate CFDA numbers

ES: May Nots...

- Obligation: An LEA's transfer of Education Stabilization funds to its local "rainy day" fund would not constitute an "obligation" of the funds.
- Neither the Governor nor the SEA may mandate how an LEA will or will not use the Education Stabilization funds.
 - Funding that an LEA receives is determined strictly on the basis of formulae and the ARRA gives LEAs considerable flexibility over the use of these funds.

Resources

- <http://www.recovery.gov/>
- <http://www.ed.gov/recovery>
- “Recovery Act Guidance,”
http://www.whitehouse.gov/omb/recovery_default/

Multiple Levels of Oversight

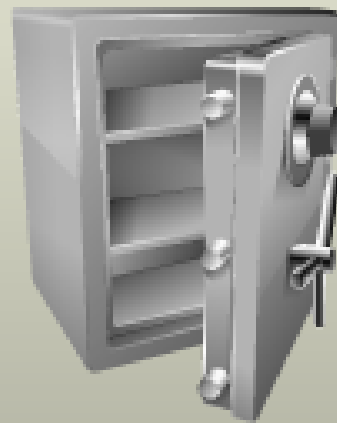
- RAT = Recovery Accountability and Transparency Board
- GAO = General Accountability Office
- ED/OIG = Office of Inspector General Audit / Investigation
- A-133 Auditor
- ED Program Monitoring
- State “Pass Through” Monitoring

What is the focus of Oversight?

- ▶ Lack of Internal Controls
- ▶ Unallowable Personnel Costs
- ▶ Time and Effort Support
- ▶ Unallowable or Inadequately Documented Non-Personnel Costs
- ▶ Unallowable or Inadequately Documented Contract Expenditures
- ▶ Poor Internal Controls (e.g. Purchase Cards)
- ▶ Unsupported Adjusting Journal Entries
- ▶ Cash Management Practices

Internal Controls

- GAO and OIG are currently reviewing Internal Controls to ensure proper expenditure of ARRA funds



Internal Controls

1. Inventory Controls
2. Procurement Controls
3. Time and Effort Procedures
4. Cash Management

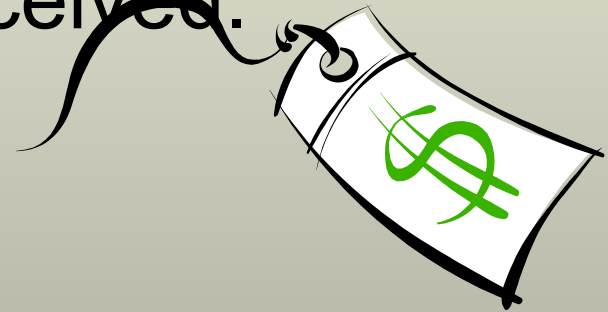
Excellent resource on requisite elements
→ for each A-133 Compliance
Supplement Appendix

Perkins Issues



Allocability (A-87, A-21)

- “A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objectives in accordance with the relative benefits received.”



Burden on Eligible Recipient to Identify CTE students, and apply A-87 “Allocability” to:

1. **Salaries**
2. **Equipment**
3. **Supplies**
4. **Curriculum Development**
5. **Professional Development**

Illustration



- A computer costing \$2,000 may be charged 100% to Perkins if 100% of the students benefitting are CTE
- Only 50% of an administrator's salary may be charged to Perkins Admin (State or local) if 50% of his or her time benefits the administration of Perkins

Prohibition on Developmental / Remedial Courses

A 44 Year Change in Federal Policy

Can tutoring be provided to “special
population” students?

OVAE Guidance 5-28-09

- D.19  No Remedial Classes
- D.20  Remedial Services are Permissible

Assistance may only be provided to an individual to the extent it is needed to address barriers to the individual's successful participation in CTE.”

-Congressional Record H5807
(7/25/06)

May Direct Assistance be provided to Special Populations?

“Special populations may need direct assistance to be able to participate successfully in CTE. These supportive services include such services as transportation, child care, dependent care, tuition, books, supplies, etc.”

**-Congressional Record H5806
(7/25/06)**

Supplanting/MOE/Hold Harmless

- Supplanting is determined on a case by case basis and is fact specific
- MOE → Simply measured by state expenditures for CTE (aggregate or per student) →
- Hold Harmless State support for State Admin cannot be reduced from prior year (Perkins)

Supplanting

- Federal Funds Cannot Displace State and Local Funds!!
 - Section 311(a) – Perkins



Supplanting

- Test #1 Was the activity paid for in the prior year with non-federal funds?
- Test #2 Was the activity required by state/local law or policy?

Supplanting

- Presumption of unlawful supplanting can be rebutted by asking?
- “What would the district have done in the absence of federal funds?”

Supplanting

- If the district can prove in the absence of federal funds it would have eliminated the activity, it may use the federal funds to support that activity, assuming the activity is allowable.

(Perkins)

Illustration of Supplanting

- Legislature cuts support to district by 6%
- The 6% cut results in reduction of force (RIF), including loss of 3 CTE instructors
- District may use Perkins funds to support those three positions
- District must retain evidence (e.g. legislative cut, board minutes)

Illustration of Supplanting

- Superintendent looks for funding for new “band uniforms”
- State/local \$ for CTE instructor’s salary is shifted to pay for uniforms, and replaced by Perkins funds
- In absence of federal \$, CTE positions would not have been cut
- This is unlawful supplanting

Questions

This presentation is intended solely to provide general information and does not constitute legal advice. Attendance at the presentation or later review of these printed materials does not create an attorney-client relationship with Brustein & Manasevit. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.