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| OSEP 09-08 |
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MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Patricia J. Guard
Acting Director
Office of Special Education Programs (OSEP)

SUBJECT: The American Recovery and Reinvestment Act of 2009 Individuals with Disabilities Education Act Part B Grants to States and Preschool Grants

Enclosed are your State's April, 2009 Individuals with Disabilities Education Act (IDEA) Part B Grants to States and Preschool Grants programs grant awards under the American Recovery and Reinvestment Act of 2009 (ARRA). The enclosed awards represent fifty percent (50%) of your State's awards under the ARRA Grants to States and Preschool Grants awards (ARRA IDEA Part B funds). These funds are provided in accordance with section 807 of the ARRA, which allows the Secretary to award these ARRA funds on the basis of IDEA eligibility determinations made for fiscal year (FY) 2008 and your provision of the certification required by section 1607 of the ARRA. The effective date of the grant awards transmitted with this memo is February 17, 2009. Acceptance by your State of these grant awards constitutes an agreement by the State to comply with the conditions in Enclosure A and Box 10 on the enclosed Grant Award Notifications. Please note that as part of your application for FY 2008, your State made an assurance, as required by 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding.

It is important to note that the ARRA IDEA Part B grants are a supplemental appropriation to the annual IDEA Part B Grants to States and Preschool Grants that will be distributed to eligible States on July 1, 2009 (Part B Grants to States and Preschool Grants) and October 1, 2009 (Part B Grants to States only). In distributing these funds to LEAs, each SEA must calculate separately each LEA's Grants to States and Preschool Grants programs awards based on the total of the ARRA IDEA FY 2009 funds and the regular IDEA Part B FY 2009 funds by using the formulas under 34 CFR §§300.705(b) and 300.816.

The remaining 50% of your State's ARRA IDEA Part B funds will be available to your State by September 30, 2009. As detailed in Enclosure A, States and local educational agencies (LEAs) are required to track and account for the ARRA IDEA Part B funds separately from the regular IDEA Part B grant awards funds. In order to receive the remaining funds, your State will need to submit, for review and approval by the Department, additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA. The second half of the award will be made by September 30, 2009 upon approval of the State's recordkeeping and reporting submission. The Department will issue specific guidance for preparing and submitting this recordkeeping and reporting information and other guidance governing ARRA funds in the coming weeks.

Enclosure A provides the terms and conditions of receipt of these funds. Acceptance by your State of these grant awards constitutes an agreement by the State to comply with the terms and conditions in Enclosure A.

Enclosure B provides a short description of how IDEA Section 611 funds were allocated to States and how those funds can be used. In addition, Table I in Enclosure B shows State-by-State funding levels for distribution of IDEA Section 611 funds and the parameters for within-State allocations.

Enclosure C provides a short description of how IDEA Section 619 funds were allocated to States and how those funds can be used. In addition, Table II in Enclosure C shows State-by-State funding levels for distribution of IDEA Section 619 funds and the parameters for within-State allocations.

This one-time large increment in IDEA Part B funding offers States and LEAs a unique opportunity to improve teaching, learning, and results for children and youth with disabilities. We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities and look forward to working with you in creating long-lasting education reform to improve results for children and youth with disabilities.

For additional information on the ARRA, please visit the Department's Web site at <http://www.ed.gov> or <http://www.recovery.gov> .

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C

ENCLOSURE A
Grant Terms and Conditions
Under American Recovery and Reinvestment Act of 2009, Public Law 111-5

A. Award Term—Reporting and Registration Requirement under Section 1512 of the American Recovery and Reinvestment Act of 2009

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (“Recovery Act or ARRA”) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The first report is due no later than ten calendar days after the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act, or July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.
- (c) Recipients and their first-tier subrecipients (but not vendors for goods and services as distinguished in § __.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”) must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds.
- (d) The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov, and will provide any additional information required by the Department, unless the information is pre-populated in www.FederalReporting.gov and in any additional form required by the Department. At a minimum, grantees should anticipate reporting:
 - the total amounts of ARRA funds received and expended or obligated;
 - the name, description, and evaluation of the project or activity’s completion status; and
 - an estimate of the number of jobs that were saved or created with the funds.

B. Award Term—Infrastructure Certification Requirement under Section 1511 of the American Recovery and Reinvestment Act of 2009

For infrastructure investment projects, the recipient, or appropriate chief executive, must post an online certification that the infrastructure investment received the full review and vetting required by law and that the recipient accepts responsibility that the investment is an appropriate use of taxpayer funds. This certification along with other required information such as a description of the investment, estimated total cost, and amount of Recovery Act funds to be used, must be posted and linked on the Recovery Accountability and Transparency Board website. A recipient may not use funds for infrastructure investment funding unless this certification is made and posted.

C. Award Term— Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009

- (a) *Definitions.* As used in this specific award term and condition—

“Construction material” means iron, steel, or manufactured goods brought to the construction site by the recipient, subrecipient or a subcontractor for incorporation into the public building or public work. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“Manufactured good or product” means an item incorporated into the physical structure of the public building or used in a public work that is the result of processing materials by way of machinery and/or labor that produce a substantially different item. Where the basic form or function of the material

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processed remains the same, or the processing does not add value to the item, it is not manufactured. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

“Public building” and “public work” means a public building of, and a public work of, a governmental entity (the United States, the District of Columbia, commonwealths and territories of the United States and minor outlying islands, and State and local governments). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

- (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and other manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.
- (2) This requirement does not apply to the material listed by the Government as follows:

NONE

- (3) The award official may add other iron, steel, and/or other manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal Government determines that—
 - (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured goods is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

- (1)
 - (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—
 - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

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- (iii) The cost of iron, steel, and/or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
 - (2) If the Federal Government determines after award funds have been obligated for a project for construction, alteration, maintenance or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign iron, steel, and/or manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, and/or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
 - (3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

| Description | Unit of Measure | Quantity | Cost (Dollars)* |
|---|-----------------|----------|-----------------|
| <i>Item 1:</i> | | | |
| Foreign iron, steel, and/or manufactured goods | _____ | _____ | _____ |
| Domestic iron, steel, and/or manufactured goods | _____ | _____ | _____ |
| <i>Item 2:</i> | | | |
| Foreign iron, steel, and/or manufactured goods | _____ | _____ | _____ |
| Domestic iron, steel, and/or manufactured goods | _____ | _____ | _____ |

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

D. Award Term—Required Use of American Iron, Steel, and Manufactured Goods (Covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

- (a) *Definitions.* As used in this award term and condition—

“Construction material” means iron, steel, or manufactured goods brought to the construction site by the recipient, subrecipient or a subcontractor for incorporation into the public building or public work. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as

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complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“Designated country” --

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia)

“Designated country iron, steel, and/or manufactured goods” --

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

“Manufactured good” means an item incorporated into the physical structure of the public building or used in a public work that is the result of processing materials by way of machinery and/or labor that produce a substantially different item. Where the basic form or function of the material processed remains the same, or the processing does not add value to the item, it is not manufactured. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

“Public building” and “public work” means a public building of, and a public work of, a governmental entity (the United States, the District of Columbia, commonwealths and territories of the United States and minor outlying islands, and State and local governments). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

- (1) This award term and condition implements
 - (i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and
 - (ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic

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goods and services, or where the iron, steel or manufactured goods are from a least developed country. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

- (2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.
- (3) The requirement in paragraph (b)(2) of this term and condition does not apply to the iron, steel, and manufactured goods listed by the Government as follows:

NONE.

- (4) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(3) of this clause if the Federal Government determines that—
 - (i) The cost of domestic iron, steel, and manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured goods is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

- (1) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph(b)(4) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—
 - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.
 - (iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron,

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- steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
- (3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.
- (d) *Data.* To permit evaluation of requests under paragraph (b) of this term and condition, based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

| Description | Unit of Measure | Quantity | Cost (Dollars)* |
|---|-----------------|----------|-----------------|
| <i>Item 1:</i> | | | |
| Foreign iron, steel, and/or manufactured goods | _____ | _____ | _____ |
| Domestic iron, steel, and/or manufactured goods | _____ | _____ | _____ |
| <i>Item 2:</i> | | | |
| Foreign iron, steel, and/or manufactured goods | _____ | _____ | _____ |
| Domestic iron, steel, and/or manufactured goods | _____ | _____ | _____ |

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site.]*

E. Award Term—Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009

- a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

- (b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Grant recipients should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

F. Award Term—Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients

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- (a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215, subpart ___. 21 “Uniform Administrative Requirements for Grants and Agreements” and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.
- (b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
- (c) Recipients agree to separately identify to each subrecipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.
- (d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office

G. Award Term—Reporting of Fraud and Misconduct

Each recipient and subrecipient awarded funds made available under the Recovery Act must promptly refer to the Department of Education’s Office of Inspector General any credible evidence that a principal officer, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Information about the Office of Inspector General Hotline is available at: <http://www.ed.gov/about/offices/list/oig/hotline.html>

H. Award Term—National Environmental Policy Act requirements under Section 1609 of the American Recovery and Reinvestment Act of 2009

All recipients must comply with any applicable environmental impact requirements of the National Environmental Policy Act of 1970 (NEPA), as amended, (42 U.S.C. 4371 *et seq.*), 40 CFR parts 1500 through 1508 and any State government requirements that implement NEPA. The recipient must follow the reporting instructions that will be provided online at www.FederalReporting.gov with respect to compliance with NEPA requirements and documentation for affected projects.

I. Award Term—Conditions governing FY 2008 awards apply to grants awarded with ARRA funds

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These funds are subject to the terms of the ARRA, IDEA, and all applicable provisions of the General Education Provisions Act and the Education Department General Administrative Regulations. Conditions, if any, placed on your FY 2008 grant award(s) apply to these funds, unless those conditions have been removed or revised. If the Department makes any further revisions to those conditions when the regular grant award(s) for FY 2009 funds are made on or around July 1, 2009, those revised conditions shall also apply to the funds made available with this award.