



Education Jobs Fund Proposals in the 111th Congress

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Summary

During the 111th Congress, both the House and Senate have considered various pieces of legislation that would provide funds to prevent teacher layoffs. These proposals have generally been referred to as proposals to create an Education Jobs Fund. The first Education Jobs Fund was included by the House in H.R. 2847, the Jobs for Main Street Act. It was not retained in the final bill. More recently, the Education Jobs Fund was included in the Supplemental Appropriations Act, 2010 (H.R. 4899) by the House, but the domestic spending provisions added by the House through amendment were not agreed to by the Senate. Ultimately, the FY2010 Supplemental Appropriations bill did not include funding for an Education Jobs Fund.

On July 29, 2010, Senator Reid proposed an amendment (S.Amdt. 4567), on behalf of Senator Murray, to add the Education Jobs Fund and a state Medicaid package as a substitute amendment to the FAA Air Transportation Modernization and Safety Improvement Act (H.R. 1586). The substitute amendment was scheduled for a cloture vote on August 2, 2010. The vote was tabled after the Congressional Budget Office determined that the amendment would increase the deficit over both the five-year and 10-year budget intervals. Subsequently, Senator Reid filed a cloture motion on August 2, 2010, to consider S.Amdt. 4575 as a substitute amendment to H.R. 1586. The cloture motion passed by a vote of 61-38 on August 4, 2010. The Senate also voted 61-38 to waive a budgetary point of order brought against the amendment by Senator Gregg. On August 5, 2010, the Senate passed S.Amdt. 4575 by a vote of 61-38. The House agreed to H.R. 1586, as amended by S.Amdt. 4575, on August 10, 2010. H.R. 1586 was signed into law by the President later that day (P.L. 111-226).

Under H.R. 1586, the Education Jobs Fund will be administered generally under the terms and conditions that applied to the State Fiscal Stabilization Fund under the American Recovery and Reinvestment Act (ARRA; P.L. 111-5, Sections 14001 through 14013). For example, funds will be distributed to states using the same formula used to distribute funds under the State Fiscal Stabilization Funds. States are required to distribute funds to local educational agencies (LEAs). Under H.R. 1586, LEAs can only use funds for compensation and benefits and other expenses (e.g., support services) necessary to retain existing employees, to recall or rehire former employees, and to hire new employees in order to provide early childhood, elementary, and secondary educational and related services.

This report includes a summary of key provisions contained in H.R. 1586 related to the Education Jobs Fund. Estimated state grants based on the amendment's provisions are also included. It also discusses two issues related to the proposed amendment with respect to the timing of the funds and reporting requirements regarding the use of the funds. The report concludes with a brief discussion of the legislative history of Education Jobs Fund proposals during the 111th Congress.

This report will be updated as warranted by congressional action.

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Overview

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This report begins with a summary of key provisions contained in H.R. 1586 related to the Education Jobs Fund.⁷ Estimated state grants based on the amendment's provisions are also included. This is followed by a discussion of two issues related to the proposed amendment with respect to the timing of the funds and reporting requirements regarding the use of the funds. The report concludes with a brief discussion of the legislative history of Education Jobs Fund proposals during the 111th Congress.

¹ Pursuant to H.Res. 976, the House modified the Commerce-Justice-Science Appropriations Act, 2010, H.R. 2847, substituting the "Jobs for Main Street Act, 2010" as Division A of the act and the "Statutory Pay-As-You-Go Act of 2009" as Division B.

² For more information about the state Medicaid package, see CRS Report RL32950, *Medicaid: The Federal Medical Assistance Percentage (FMAP)*, by (name redacted).

³ For more information, see Senate roll call vote number 223.

⁴ The numbers were based on a draft CBO score. (Niels Lesniewski, "Reid Offers Deficit-Neutral Plan for Funding Education and Medicaid Bill," *CQ*, August 2, 2010.)

⁵ For more information, see Senate roll call vote number 224.

⁶ For more information, see Senate roll call vote number 225.

⁷ For information about the Medicaid provisions included in H.R. 1586, see CRS Report RL32950, *Medicaid: The Federal Medical Assistance Percentage (FMAP)*, by (name redacted).

Summary of the Education Jobs Fund Under H.R. 1586

This section provides a summary of the key provisions of the Education Jobs Fund under H.R. 1586. The Education Jobs Fund will be administered generally under the terms and conditions that applied to the State Fiscal Stabilization Fund under the American Recovery and Reinvestment Act (ARRA; P.L. 111-5, Sections 14001 through 14013)⁸ and Title XV of Division A. This report does not attempt to systematically make comparisons between the Education Jobs Fund and the State Fiscal Stabilization Fund, although it does so in instances where these comparisons are particularly helpful in explaining the provisions of the Education Jobs Fund.⁹

Formula Funding

Under the Education Jobs Fund, funds will be distributed to states through a funding formula. The formula will work as follows. After reserving funds for the outlying areas (0.5% of the total appropriation), for the Bureau of Indian Affairs¹⁰ (0.5% of the total appropriation), and for administration and oversight by the U.S. Department of Education (ED; \$1 million), the remaining funds will be distributed to state governors based on the same population-based formula used for the State Fiscal Stabilization Fund. Under the State Fiscal Stabilization Fund, ED was required to allocate funds to states according to a formula that incorporates two population measures: 61% of each state's grant is based on the state's relative share of the population of individuals ages 5 to 24, and 39% of each state's grant is based on the state's relative share of the total population. Estimated state grant amounts under this program are discussed in the next section of this report.

To ensure that funds are available as soon as possible, ED is required to distribute funds within 45 days of enactment to states that had submitted applications for funding. ED has indicated that it will award state grants within two weeks of an application being approved.¹¹ Applications were made available on August 13, 2010; thus, funds could be made available in early September.¹²

⁸ For more information on the State Fiscal Stabilization Fund, see CRS Report R40151, *Funding for Education in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)*, by (name redacted), (name redacted), and (name redacted).

⁹ A previous CRS report, CRS Report R41053, *Jobs for Main Street Act: Education, Training and Direct Assistance Provisions*, coordinated by (name redacted), drew comparisons between the Education Jobs Fund included in the Jobs for Main Street Act and the State Fiscal Stabilization Fund. As many of the provisions in the Education Jobs Fund included in S.Amdt. 4567 are similar to those that were included under the Jobs for Main Street Act, the aforementioned report may be useful to readers interested in comparing the two sets of provisions. It should be noted that the State Fiscal Stabilization Fund grants were made available to support a broader set of activities than the Education Jobs Fund grants would support.

¹⁰ The proposed statutory language references the Bureau of Indian Affairs (BIA). It may be more appropriate to reference the Bureau of Indian Education (BIE), as the BIE (rather than the BIA) operates and funds schools under the U.S. Department of the Interior.

¹¹ U.S. Department of Education, *Key Policy Letters: Letter to Governors Regarding the Education Jobs Fund*, August 13, 2010, <http://www2.ed.gov/programs/educationjobsfund/applicant.html>.

¹² The application is available at <http://www2.ed.gov/programs/educationjobsfund/applicant.html>. ED has released a separate application and separate guidance specifically for Texas and for the Insular Areas. They are also available at the aforementioned website.

Application Process

To receive funds under the Education Jobs Fund, a governor is required to submit an application to the Secretary containing information required by the Secretary within a timeline established by the Secretary. As previously mentioned, the application for the Education Jobs Fund was made available in mid-August. It is a three-page, streamlined application requiring various contact information, several assurances that the governor must agree to abide by or carry out, and an indication of how funds will be distributed to LEAs (see below).¹³ ED estimated that it will take about two hours for each state to complete the application.¹⁴

Any state that has an approved application for Phase II of the State Fiscal Stabilization Fund will be considered to be in compliance with various application requirements that apply to the Education Jobs Fund that were also included under the State Fiscal Stabilization Fund. For example, to receive funds under the Education Jobs Fund, a state would have to provide assurances with respect to achieving equity in teacher distribution, improving the collection and use of data, standards and assessments, and supporting struggling schools. If the state has an approved Phase II application for the State Fiscal Stabilization Fund, the requirement regarding the aforementioned assurances would be considered to have been met.

If a governor does not submit an approvable application to the Secretary within 30 days after enactment of this act (i.e., September 9, 2010),¹⁵ the Secretary is required to provide the state's share of funds to another entity or entities in the state under terms and conditions established by the Secretary. The specific entity or entities to whom these funds could be awarded has not been defined. The same terms and conditions that would apply to other grant recipients under the Education Jobs Fund will also apply to any entity or entities that receive funding in the aforementioned situation. Prior to making the distribution of funds, the Secretary must determine that the general maintenance of effort (MOE) requirements that apply to the Education Jobs Funds (see below) are "likely to be met."¹⁶

Distribution of Funds to the Local Level and Uses of Funds

Of the funds received by the state, up to 2% may be reserved for state administration. From the funds remaining after this reservation, states are required to make grants to LEAs for the 2010-2011 school year.¹⁷ Grants to LEAs within an individual state will be awarded based on the state's primary elementary and secondary funding formulae or LEAs' relative shares of funding provided

¹³ See footnote 12.

¹⁴ See footnote 12.

¹⁵ See footnote 11.

¹⁶ As discussed below, there are two types of MOE requirements included in the amendment—one set that applies to all states and one set that applies specifically to Texas. It appears that if the Texas governor does not submit an approvable application for the funds and the Secretary provides Texas' share of the funds to another entity or entities in the state, the Secretary must still receive an assurance from the governor of Texas that the MOE provisions specifically applicable to Texas will be met. In addition, the governor also has to provide an assurance that funds would be distributed to LEAs using the formula specified above.

¹⁷ Any funds not awarded by the governor within one year of receipt of funds must be returned to the Secretary. The Secretary would reallocate these funds to the remaining states based on the aforementioned state allocation formula. Funds awarded to states as the result of a reallocation of funds could be used during the 2010-2011 or 2011-2012 school year. It should be noted that if a governor takes a full year to award the funds, LEAs would be unable to meet the statutory requirement that funds be used for the 2010-2011 school year.

through Title I-A of the Elementary and Secondary Education Act (ESEA).¹⁸ There is one exception to this provision: Under H.R. 1586, Texas is required to distribute its funds based on LEAs' relative shares of funds provided under Title I-A. In addition, funds provided to LEAs by Texas must be used to supplement and not supplant state formula funding that is distributed to LEAs on a basis similar to Title I-A. As previously discussed, states (other than Texas) are required to indicate which of the two methods will be used to distribute funds to LEAs.¹⁹

Funds received by LEAs can only be used for compensation and benefits and other expenses (e.g., support services) necessary to retain existing employees, to recall or rehire former employees, and to hire new employees in order to provide early childhood, elementary, and secondary educational and related services.²⁰ According to guidance provided by ED, "compensation and benefits and other expenses, such as support services" includes, among other items, "salaries, performance bonuses, health insurance, retirement benefits, incentives for early retirement, pension fund contributions, tuition reimbursement, student loan repayment assistance, transportation subsidies, and reimbursement for childcare expenses."²¹ Funds may be used to restore reductions in salaries and to provide salary increases, as well as to cover salary and benefits costs associated with eliminating furlough days. However, funds may not be used to compensate employees for work prior to August 10, 2010, the date of enactment of the Education Jobs Fund.

With respect to which staff members may be supported with the funds, the guidance notes that the funds can be used for "teachers and other employees who provide school-level educational and related services."²² The guidance goes on to include the following staff members as employees who may be supported with program funds: "principals, assistant principals, academic coaches, in-service teacher trainers, classroom aides, counselors, librarians, secretaries, social workers, psychologists, interpreters, physical therapists, speech therapists, occupational therapists, information technology personnel, nurses, athletic coaches, security officers, custodians, maintenance workers, bus drivers, and cafeteria workers." Funds may not be used to pay for contractual school-level services (e.g., maintenance workers employed by an outside firm). For individuals that have both LEA-level and school-level responsibilities, only the portion of their salary and benefits that is attributable to their work on allowable school-level activities may be paid with funds from the Education Jobs Fund.

Statutory language specifically prohibits LEAs from using funds for "general administrative expenses" or "other support service expenditures" as these terms are defined by the National Center for Education Statistics (NCES) for the Common Core of Data (CCD).²³ In its guidance, ED has indicated that prohibited administrative expenditures include those related to the operation of the superintendent's office or the LEA's board of education, including the salaries

¹⁸ Texas would only be permitted to distribute funds based on LEAs' relative shares of funding provided through Title I-A. For more information on Title I-A, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by (name redacted).

¹⁹ See footnote 12.

²⁰ States are not permitted to direct how funds are used by LEAs (U.S. Department of Education, *Initial Guidance for States on the Education Jobs Fund Program*, August 13, 2010, <http://www2.ed.gov/programs/educationjobsfund/applicant.html>).

²¹ U.S. Department of Education, *Initial Guidance for States on the Education Jobs Fund Program*, August 13, 2010, <http://www2.ed.gov/programs/educationjobsfund/applicant.html>.

²² See footnote 21.

²³ For more information about the CCD, see <http://nces.ed.gov/ccd>.

and benefits of administrative employees at the LEA level.²⁴ ED has also interpreted the prohibition on the use of funds for other support service expenditures to prohibit the use of funds for “fiscal services, LEA program planners and researchers, and human resource services.”

Rainy-Day Funds and Debt Reduction²⁵

States are prohibited from using their funds to directly or indirectly establish, restore, or supplement a rainy-day fund. Further, states are prohibited from using funds to reduce or retire state debt obligations. They are also prohibited from supplanting state funds in a manner that would effectively establish, restore, or supplement a rainy-day fund or reduce or retire state debt obligations. The term “rainy-day fund” is not defined in H.R. 1586. While there may be a general understanding of what this term means, the bill’s lack of a definition makes it difficult to predict how the prohibition would be applied across states.

The inclusion of prohibitions on the use of Education Jobs Funds for rainy-day funds or debt reduction may be in response to issues that arose during the implementation of the State Fiscal Stabilization Fund.²⁶ The fungibility of state revenue was one of the major issues that arose as states began to use their State Fiscal Stabilization Fund grants. Some states reduced their education funding to meet the MOE requirements for receiving funding and used the State Fiscal Stabilization Fund grants to backfill their education budgets. The funds the states would have spent on education were used for other purposes.²⁷ Thus, in some states, the provision of State Fiscal Stabilization Fund grants may not have represented a net gain in education funding. In addition, at least one state governor (South Carolina) indicated that he wanted to use the State Fiscal Stabilization Fund to reduce state debt.²⁸ While ED indicated that using the portion of the funds available for “public safety and other government services” for debt reduction would be illegal,²⁹ the inclusion of language related to debt reduction in the Education Jobs Fund may be intended to clarify congressional intent on fund use.

²⁴ See footnote 21.

²⁵ For additional information about the provisions discussed in this section, please contact Steve Maguire at 7-.....

²⁶ For more information about issues related to the spending of the State Fiscal Stabilization Funds and rainy-day funds and debt reduction, see Secretary Duncan’s letter to Pennsylvania regarding rainy-day funds: <http://www.edweek.org/media/rendell.pdf>; see the following article published in *The Dallas Morning News* regarding Texas’ use of State Fiscal Stabilization Funds: http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/legislature/stories/DN-stimulusmoney_18tex.ART.State.Edition1.510f6ed.html; and see the following article from *Education Week* that provides an overview of how states shifted state funds for education in response to the State Fiscal Stabilization Fund grants: <http://www.edweek.org/ew/articles/2009/03/27/27formula.h28.html>.

²⁷ Michelle McNeil, “Stimulus Patching Budgets,” *Education Week*, April 9, 2009, available at <http://www.edweek.org/ew/articles/2009/03/27/27formula.h28.html>.

²⁸ Additional information about the specifics related to Governor Sanford’s efforts to use State Fiscal Stabilization Fund money to reduce state debt is available at <http://www.staterecovery.org/south-carolina>.

²⁹ For more information, see guidance provided by ED on the State Fiscal Stabilization Fund, items III-D-13 and IV-7, available at <http://www.ed.gov/programs/statestabilization/guidance.pdf>. It should be noted that LEAs could use the funds they received under the State Fiscal Stabilization Fund for debt reduction, but ED has discouraged LEAs from using funds for this purpose.

Fiscal Assurances by LEAs

Under Section 442 of the General Education Provisions Act (GEPA), individual LEAs participating in a program to which GEPA applies are required to provide the state with an application containing assurances regarding the administration of the program, the control of funds, fiscal control and accounting procedures, reporting, participation in program planning and operation, making reports publicly available, requirements related to construction, procedures for disseminating relevant research to practitioners, and the acquisition of equipment. If an LEA provided such an application to the state for purposes of the State Fiscal Stabilization Fund, the LEA is not required to submit a new application under the Education Jobs Fund. The assurances provided under the previous application will continue to apply to the Education Jobs Fund.

Fiscal Accountability

A long-standing principle of federal aid to elementary and secondary education is that federal funding adds to, and does not substitute for, state and local education funding. That is, federal funds are awarded to provide a net increase in financial resources for specific types of educational services (such as the education of disadvantaged students or students with disabilities), rather than effectively providing general subsidies to state and local governments. All of the fiscal accountability requirements included in federal elementary and secondary education programs are intended to ensure that all federal funds represent a net increase in the level of financial resources available to serve eligible students, and that they do not ultimately replace funds that states or LEAs would provide in the absence of federal aid.

Two fiscal accountability requirements that apply to major federal K-12 education aid programs are also relevant to the Education Jobs Fund. To meet the first requirement—maintenance of effort—recipient LEAs must have provided, from state and local sources, a level of funding (either aggregate or per student) in the preceding year that is at least a specified percentage of the amount in the second preceding year. A second fiscal accountability requirement provides that federal funds must be used to supplement, not supplant (SNS), state and local funds that would otherwise be available for the education of students eligible to be served under the federal program in question. SNS provisions prohibit states and/or LEAs from using federal funds (1) to provide services that state and/or local funds have provided or purchased in the past; (2) to provide services that are required to be provided under federal, state, or local law; or (3) to provide services for some students (e.g., those eligible under specific federal programs) that are provided to other students with non-federal funds.

Maintenance of Effort Requirements

The Education Jobs Fund has two sets of maintenance of effort requirements. One set of requirements applies to all states, while a second requirement applies solely to Texas. Both sets of requirements are summarized below. Unlike the State Fiscal Stabilization Fund, the Secretary does not have the authority to waive the MOE requirements.

General Maintenance of Effort Requirements

The Education Jobs Fund requires the governor of each state to provide an assurance that the state will meet one of three MOE requirements for FY2011.

1. Under the first option, the state would have to maintain state support for elementary and secondary education, in the aggregate, or based on per pupil expenditures, and for public IHEs³⁰ at not less than the level of support provided to each of these two education levels, respectively, for state FY2009.
2. Under the second option, the state would have to maintain state support for elementary and secondary education and for public IHEs³¹ at a percentage of the state's total revenues that is equal to or greater than the percentage provided to each of these two education levels, respectively, for state FY2010.
3. Under the third option, a state in which tax collections for calendar year 2009 were less than those for calendar year 2006, the state would have to maintain state support for elementary and secondary education, in the aggregate, and for public IHEs³² at either (1) not less than the level of support provided to each of these two education levels, respectively, for state FY2006, or (2) at a percentage of the state's total revenue that is equal to or greater than the percentage provided to each of these two education levels, respectively, for state FY2006.

The governor is required to provide an assurance in the state's Education Jobs Fund application that the state will submit the most applicable state MOE data to ED within 60 days of the date upon which the state's grant is awarded.³³ In determining whether a state meets the MOE requirements, the data used for these determinations must include only state support for education. Federal funds, including the State Fiscal Stabilization Fund grants, are not considered to be part of state support for the purposes of determining compliance with MOE requirements.

As previously discussed, each of the MOE requirements is intended to ensure that states maintain education spending, wages and salaries in particular, as a precondition for receiving federal aid. Several states, however, have experienced significant declines in tax revenues as the economic recovery has slowed. In addition, state tax revenues typically lag behind changes in the economy, thus, the impact of a recession on tax revenues arises well after the slowdown began and continues well after recovery. For this reason, Congress included a modified MOE for states that experienced a significant decline in tax revenues over the 2006-2009 time frame.

The modified MOE is applicable only when a state can show a decline in tax collections as described above. **Table 1** compares calendar year 2006 state tax revenues with calendar year 2009 state tax revenues both in current dollars and in constant dollars. The constant dollars calculation adjusts the 2009 state tax revenues for inflation since 2006. The legislation does not provide for inflation adjustments; however, much of any increase in revenue is likely the direct result of inflation alone. As the table shows, 47 states would qualify for a modified MOE compared to just 36 as provided for in the legislation.

³⁰ This does not include support for capital projects or for research and development or tuition and fees paid by students.

³¹ See footnote 30.

³² See footnote 30.

³³ For more information about MOE requirements, see ED guidance on the Education Jobs Fund (see footnote 21).

**Table I. State Tax Collections for Calendar Years 2006 and 2009:
Constant and Current Dollars**

(dollars in thousands)

State	Tax Revenues			Difference	
	Current Dollars	Current Dollars	Constant Dollars	Current Dollars	Constant Dollars
	2006	2009	2009	2009 less 2006	2009 less 2006
U.S. Total	\$728,210,389	\$687,192,577	\$645,753,523	-\$41,017,812	-\$82,456,866
Alabama	\$8,688,989	\$8,321,037	\$7,819,262	-\$367,952	-\$869,727
Alaska	\$2,470,576	\$3,115,763	\$2,927,876	\$645,187	\$457,300
Arizona	\$12,156,809	\$10,254,975	\$9,636,580	-\$1,901,834	-\$2,520,229
Arkansas	\$7,239,272	\$7,470,566	\$7,020,076	\$231,294	-\$219,196
California	\$115,855,567	\$104,080,576	\$97,804,314	-\$11,774,991	-\$18,051,253
Colorado	\$8,762,235	\$8,134,768	\$7,644,226	-\$627,467	-\$1,118,009
Connecticut	\$12,244,792	\$12,649,932	\$11,887,116	\$405,140	-\$357,676
D.C.	\$4,474,901	\$4,944,368	\$4,646,213	\$469,467	\$171,312
Delaware	\$3,019,236	\$2,642,128	\$2,482,803	-\$377,108	-\$536,433
Florida	\$39,865,221	\$31,197,245	\$29,315,990	-\$8,667,976	-\$10,549,231
Georgia	\$17,919,810	\$14,933,538	\$14,033,016	-\$2,986,272	-\$3,886,794
Hawaii	\$5,009,942	\$4,508,460	\$4,236,591	-\$501,482	-\$773,351
Idaho	\$3,266,324	\$3,034,625	\$2,851,631	-\$231,699	-\$414,693
Illinois	\$27,902,484	\$26,468,394	\$24,872,298	-\$1,434,090	-\$3,030,186
Indiana	\$13,652,396	\$13,737,215	\$12,908,834	\$84,819	-\$743,562
Iowa	\$5,569,007	\$6,397,072	\$6,011,316	\$828,065	\$442,309
Kansas	\$6,519,257	\$6,390,399	\$6,005,045	-\$128,858	-\$514,212
Kentucky	\$9,730,319	\$9,395,451	\$8,828,887	-\$334,868	-\$901,432
Louisiana	\$9,805,245	\$9,485,825	\$8,913,811	-\$319,420	-\$891,434
Maine	\$3,602,858	\$3,389,314	\$3,184,932	-\$213,544	-\$417,926
Maryland	\$14,714,058	\$15,469,579	\$14,536,733	\$755,521	-\$177,325
Massachusetts	\$19,543,081	\$19,167,177	\$18,011,359	-\$375,904	-\$1,531,722
Michigan	\$23,273,794	\$22,451,412	\$21,097,548	-\$822,382	-\$2,176,246
Minnesota	\$17,550,023	\$16,801,921	\$15,788,732	-\$748,102	-\$1,761,291
Mississippi	\$6,291,671	\$6,233,901	\$5,857,985	-\$57,770	-\$433,686
Missouri	\$10,397,466	\$9,924,722	\$9,326,242	-\$472,744	-\$1,071,224
Montana	\$2,124,820	\$2,186,670	\$2,054,810	\$61,850	-\$70,010
Nebraska	\$3,965,198	\$3,774,077	\$3,546,493	-\$191,121	-\$418,705
Nevada	\$6,243,714	\$5,936,500	\$5,578,517	-\$307,214	-\$665,197
New Hampshire	\$2,085,575	\$2,119,466	\$1,991,658	\$33,891	-\$93,917

State	Tax Revenues			Difference	
	Current Dollars	Current Dollars	Constant Dollars	Current Dollars	Constant Dollars
	2006	2009	2009	2009 less 2006	2009 less 2006
New Jersey	\$27,419,783	\$26,043,908	\$24,473,409	-\$1,375,875	-\$2,946,374
New Mexico	\$5,350,813	\$4,108,976	\$3,861,197	-\$1,241,837	-\$1,489,616
New York	\$57,664,072	\$55,664,509	\$52,307,830	-\$1,999,563	-\$5,356,242
North Carolina	\$21,486,067	\$20,843,703	\$19,586,787	-\$642,364	-\$1,899,280
North Dakota	\$1,692,567	\$2,261,587	\$2,125,209	\$569,020	\$432,642
Ohio	\$24,489,030	\$24,980,375	\$23,474,010	\$491,345	-\$1,015,020
Oklahoma	\$8,068,147	\$6,996,097	\$6,574,219	-\$1,072,050	-\$1,493,928
Oregon	\$7,729,573	\$6,803,325	\$6,393,071	-\$926,248	-\$1,336,502
Pennsylvania	\$29,610,439	\$29,397,000	\$27,624,304	-\$213,439	-\$1,986,135
Rhode Island	\$2,708,012	\$2,572,853	\$2,417,705	-\$135,159	-\$290,307
South Carolina	\$8,376,566	\$6,768,381	\$6,360,234	-\$1,608,185	-\$2,016,332
South Dakota	\$1,213,744	\$1,288,070	\$1,210,397	\$74,326	-\$3,347
Tennessee	\$10,941,283	\$10,366,682	\$9,741,551	-\$574,601	-\$1,199,732
Texas	\$37,372,292	\$38,680,328	\$36,347,829	\$1,308,036	-\$1,024,463
Utah	\$5,777,389	\$5,150,555	\$4,839,966	-\$626,834	-\$937,423
Vermont	\$2,341,637	\$2,334,312	\$2,193,548	-\$7,325	-\$148,089
Virginia	\$18,274,814	\$16,214,987	\$15,237,192	-\$2,059,827	-\$3,037,622
Washington	\$17,273,273	\$15,700,145	\$14,753,396	-\$1,573,128	-\$2,519,877
West Virginia	\$4,673,319	\$4,669,300	\$4,387,732	-\$4,019	-\$285,587
Wisconsin	\$14,113,520	\$14,457,291	\$13,585,488	\$343,771	-\$528,032
Wyoming	\$2,164,310	\$2,217,485	\$2,083,766	\$53,175	-\$80,544

Source: Table prepared by CRS, August 12, 2010, based on data from the U.S. Census Bureau, Governments Divisions, Annual State Government Tax Collections, 2006 and 2009, available at <http://www.census.gov/govs/statetax/>. Inflation adjustment with data from U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, is available at <http://www.bls.gov/cpi/>.

Maintenance of Effort Requirements Specific to Texas

H.R. 1586 also includes a MOE provision that would apply only to Texas. The governor of Texas is required to provide an additional MOE assurance that applies to FY2011, FY2012, and FY2013. For these years, the state is required to maintain state support for elementary and secondary education at a percentage of the state's total revenue that is equal to or greater than the percentage provided for this level of education for FY2011 prior to the enactment of the Education Jobs Fund.

Supplement, Not Supplant

Funds provided under the Education Jobs Fund are not subject to supplement, not supplant requirements. Thus, for example, an LEA could use funds provided through the Education Jobs Fund to pay the salary of a teacher currently being paid with state and local funds and shift the state and local funds to another purpose. As discussed below, under these circumstances, it may still be possible for an LEA to meet its MOE requirements for other federal education programs due to specific provisions that allow funds received under the Education Jobs Funds to be considered as state and local funds for the purposes of meeting these other MOE requirements.

Similar to the State Fiscal Stabilization Fund, upon prior approval from the Secretary, states and LEAs are permitted to consider Education Jobs Fund grants that are used for elementary or secondary education³⁴ as non-federal funds for the purpose of meeting the requirement to maintain fiscal effort under any other program administered by the Secretary. Thus, states and LEAs could use the Education Jobs Fund money to meet MOE requirements for ESEA and the Individuals with Disabilities Education Act (IDEA) programs. Required levels of state and local funding in subsequent years, however, will not be reduced as a result of states using federal state fiscal stabilization funds as “non-federal funds.”

Reporting Requirements

The same reporting requirements included in the State Fiscal Stabilization Fund (Section 14008) also apply to the Education Jobs Fund, as do the accountability and transparency requirements included in Title XV of ARRA (e.g., the Section 1512 reporting requirements). For example, under the State Fiscal Stabilization Fund, states are required to submit a report to the Secretary based on a timetable established by the Secretary that discusses how funds were used; how funds were distributed; the estimated number of jobs saved or created using the State Fiscal Stabilization Fund; tax increases that were averted; the state’s progress in meeting the aforementioned assurances; increases in tuition and fees at public IHEs; changes in enrollment in public IHEs; and each modernization, renovation, and repair project funded. Governors must provide an assurance that the state will comply with the aforementioned reporting requirements, as well as any other reporting requirements established by the Secretary.³⁵

Offsets³⁶

Of the offsets included in H.R. 1586, three rescinded funds from existing programs administered by ED. The offsets include the following: (1) funding for a comprehensive literacy development and education program, authorized by the Consolidated Appropriations Act, 2010 (P.L. 111-117), was reduced by \$50 million; (2) funding for Student Aid Administration was reduced by \$82

³⁴ The relevant provision in Section 14012 of the ARRA also includes funds used for postsecondary education, but this is not an allowable use of funds under the Education Jobs Fund, so presumably that portion of the pre-existing statutory language would not be relevant to the Education Jobs Fund.

³⁵ ED has indicated that states will be required to report annually on the number of education personnel affected by the program. For more information, see ED’s initial guidance on the Education Jobs Fund (see footnote 21).

³⁶ H.R. 1586 also rescinded funds from the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp program). For more information about this rescission, see CRS Report R41374, *Reducing SNAP (Food Stamp) Benefits Provided by the ARRA: P.L. 111-226 & S. 3307*, by (name redacted), (name redacted), and (name redacted).

million; and (3) funding for the Ready to Teach program, authorized by the Elementary and Secondary Education Act (ESEA), was reduced by \$10.7 million.

Estimated State Grants and Number of Jobs Funded

ED has produced estimated state grant amounts and estimates of the number of jobs that will be funded in each state. These estimates are presented in **Table 2**. Estimated state grant amounts range from about \$18 million (District of Columbia and Wyoming) to \$1.2 billion (California). ED estimates that 161,000 jobs will be funded by the Education Jobs Fund. These estimates vary by state and range from 200 jobs in the District of Columbia to 16,500 jobs in California.

Table 2. U.S. Department of Education Estimates of State Grant Amounts and Jobs Funded by the Education Jobs Fund

State	Projected Allocation	Estimated Jobs Funded
Alabama	149,539,554	2,700
Alaska	23,540,399	400
Arizona	211,824,489	4,000
Arkansas	91,311,898	1,800
California	1,201,534,585	16,500
Colorado	159,521,991	2,600
Connecticut	110,486,654	1,500
Delaware	27,425,111	400
District of Columbia	18,072,658	200
Florida	554,821,008	9,200
Georgia	322,313,830	5,700
Hawaii	39,311,983	700
Idaho	51,641,026	900
Illinois	415,397,841	5,700
Indiana	207,058,122	3,600
Iowa	96,490,048	1,800
Kansas	92,457,070	1,800
Kentucky	134,945,560	2,300
Louisiana	147,031,839	2,800
Maine	39,068,602	700
Maryland	178,929,680	2,500
Massachusetts	204,016,907	2,900
Michigan	318,132,952	4,700
Minnesota	166,717,087	2,800
Mississippi	97,823,122	2,000
Missouri	189,727,725	3,300

State	Projected Allocation	Estimated Jobs Funded
Montana	30,737,469	700
Nebraska	58,890,974	1,100
Nevada	83,113,178	1,400
New Hampshire	40,988,015	700
New Jersey	268,104,738	3,900
New Mexico	64,869,642	1,100
New York	607,591,394	8,200
North Carolina	298,458,355	5,700
North Dakota	21,517,716	400
Ohio	361,179,690	5,500
Oklahoma	119,380,027	2,400
Oregon	117,949,095	2,000
Pennsylvania	387,815,661	5,900
Puerto Rico	129,371,097	3,100
Rhode Island	32,929,312	500
South Carolina	143,700,517	2,600
South Dakota	26,292,261	500
Tennessee	195,881,328	3,700
Texas	830,820,460	14,500
Utah	101,303,951	1,800
Vermont	19,304,177	300
Virginia	249,482,375	3,800
Washington	208,335,375	3,300
West Virginia	54,657,667	1,100
Wisconsin	179,650,099	3,000
Wyoming	17,533,686	300
American Samoa	8,324,352	—
Guam	20,146,108	—
Northern Mariana Islands	8,289,850	—
Virgin Islands	13,239,690	—
BIE set-aside	50,000,000	—
Administrative set-aside	1,000,000	na
Total	10,000,000,000	161,000

Source: U.S. Department of Education (ED), Projected FY2010 Education Jobs Fund Allocations, available online at <http://www.ed.gov/news/press-releases/congress-passes-bill-provide-10-billion-support-160000-education-jobs-nationwide>.

Notes: ED did not calculate the estimated jobs funded for the outlying areas or for the Bureau of Indian Education (BIE). An earlier version of this report presented CRS estimates of state grant amounts. Those

estimates were prepared to serve as a resource during the legislative process. Now that H.R. 1586 has been adopted and ED has published projected grant amounts, ED's estimates are being presented in place of those previously generated by CRS.

Timing of the Allocation of Funding

Under H.R. 1586, ED has 45 days to distribute funds to states with approved applications. As previously discussed, ED has already indicated that funds may be granted to states as soon as early September. It is unclear, however, how many schools and LEAs will need to or choose to use the funds for the 2010-2011 school year. Schools, LEAs, and states presumably have already had to make staffing decisions for the 2010-2011 school year. That is, decisions regarding the hiring or firing of educational staff presumably have been made and implemented. In addition, it is possible that educational staff members that could have been hired or retained with these funds, had they been made available prior to the start of the school year, may have committed to other jobs (either inside or outside of education) and be unable to make a mid-year change.

The timing of the allocation of funding may be further complicated by the lack of requirements regarding how quickly states must allocate funds to LEAs. While the Secretary is required to establish an application deadline, H.R. 1586 includes a de facto deadline of 30 days for states to apply for funds (i.e., September 9, 2010) or the Secretary is required to provide a state's allocation to a different entity or entities in the state. Once funds are received at the state level, however, there are no requirements regarding the timing of the distribution of these funds to LEAs. The only provision that would affect the subgranting of funds provides governors with up to one year to distribute the funds. After a year, the funds would revert to ED for reallocation among all the other states. If a governor waited for a year (or even several months) to distribute the funds, LEAs may be unable to use the funds for the 2010-2011 school year. However, in its guidance, ED has indicated that a governor "must make awards to LEAs on a timely basis so that funds are available for use during the 2010-2011 school year."³⁷ The guidance also states that an LEA must be able to use its full allocation during the 2010-2011 school year if it chooses to do so.

Section 421 of the General Education Provisions Act extends the period during which funds may be obligated and expended by one fiscal year for any program for which the Secretary of Education has administrative responsibility. This provision applies unless specifically waived by statutory language. As language waiving this provision was not included in H.R. 1586, the funds provided under the Education Jobs Fund will remain available for obligation and expenditure through FY2012 (i.e., September 30, 2012). Thus, funds could be used for the 2010-2011 or 2011-2012 school years, as well as for the beginning of the 2012-2013 school year.

Legislative History of the Education Jobs Fund

A version of the Education Jobs Fund has been considered on the floor of the House or Senate in two previous bills: (1) H.R. 2847, the Jobs for Main Street Act, and (2) H.R. 4899, Supplemental Appropriations Act, 2010. In neither case was the Education Jobs Fund included in the final

³⁷ See footnote 21.

passage of the bill. This section provides an overview of congressional action related to the Education Jobs Fund under H.R. 2847 and H.R. 4899.

H.R. 2847

On December 16, 2009, pursuant to H.Res. 976, the House modified the Commerce-Justice-Science Appropriations Act, 2010, H.R. 2847, substituting the “Jobs for Main Street Act, 2010” as Division A of the act. The Jobs for Main Street Act would have provided \$23 billion for an Education Jobs Fund. On February 24, 2010, the Senate passed an amendment in the nature of a substitute to H.R. 2847 (S.Amdt. 3310). This substitute did not include funding for the Education Jobs Fund. Thus, the bill ultimately approved by both the House and the Senate did not include funding for the Education Jobs Fund.

H.R. 4899

On March 23, 2010, the House passed its first version of H.R. 4899. The Senate subsequently passed an amended version of H.R. 4899 on May 27, 2010. Neither of these versions of the bill included funding for an Education Jobs Fund. On July 1, 2010, the House passed an amended version of H.R. 4899 that would have provided \$10 billion for an Education Jobs Fund. The House Committee on Appropriations cited estimates indicating that the newly created Education Jobs Fund would save or create 140,000 education jobs during the 2010-2011 school year.³⁸ According to an estimate from the American Association of School Administrators (AASA) based on a May survey of 1,479 school administrators in 49 states, about 275,000 teachers and school staff, including support personnel and administrators, could be laid off in the 2010-2011 school year unless additional funding, like that provided in the American Reinvestment and Recovery Act (ARRA), is provided for the 2010-2011 school year.³⁹ If these layoffs were to occur, the AASA estimates that pupil-to-teacher ratios will increase from 15:1 to 17:1. However, there is mixed evidence to support the notion that lower class sizes leads to student academic achievement gains.⁴⁰

The House-amended version of H.R. 4899 passed in July included three offsets from existing programs administered by ED: (1) funding for Race to the Top grants, authorized by the ARRA, would be reduced by \$500 million; (2) funding for the Teacher Incentive Fund, authorized by the ESEA, would be reduced by \$200 million; and (3) funding for the Charter School Program, authorized by the ESEA, would be reduced by \$100 million.⁴¹ While President Obama and

³⁸ For more information, see U.S. Congress, House Committee on Appropriations, *House Consideration of the 2010 Supplemental Appropriations Act: Amendment on Fully Offset Education & Other Funding*, 111th Cong., July 1, 2010; http://appropriations.house.gov/images/stories/pdf/FY2010_Supplemental_Appropriations_House_Passed_Amendments_Summary.pdf, and U.S. Congress, House Committee on Appropriations, *Education Jobs Fund - Why We Need It*, 111th Cong., July 1, 2010; http://appropriations.house.gov/images/stories/pdf/Appropriations_FactSheet_Education_Jobs_Fund_07.01.2010.pdf.

³⁹ American Association of School Administrators, “Projection of National Education Job Cuts for 2010-11 School Year,” May 4, 2010, http://aasa.org/uploadedFiles/Policy_and_Advocacy/files/AASAJobCuts050410FINAL.pdf.

⁴⁰ See, for example, Linda Jacobson, “Class-Size Reductions Seen As Limited Help on Achievement Gap,” *Education Week*, February 21, 2008.

⁴¹ For an explanation of the education program offsets, see U.S. Congress, House Committee on Appropriations, *Education Reform & Teacher Jobs*, 111th Cong., July 1, 2010, http://appropriations.house.gov/images/stories/pdf/FactSheet-EdReform_and_TeacherJobs.07.01.2010.pdf.

Secretary of Education Arne Duncan emphasized the need for federal funds to prevent teacher layoffs,⁴² the Administration opposed cuts to these programs, believing that these programs are driving current school reform efforts.⁴³ The Office of Management and Budget issued a Statement of Administration Policy on July 1, 2010, indicating that the President's advisors would recommend vetoing the Supplemental Appropriations Act, 2010, if federal funding for education reforms was cut.⁴⁴

The Senate did not agree to the House-amended version of H.R. 4899 passed in July. Subsequently, the House passed the Senate-amended version of H.R. 4899 passed in May. Thus, the final bill passed by both the House and Senate did not include funding for the Education Jobs Fund.

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⁴² On May 13, 2010, Secretary of Education Arne Duncan submitted a letter to congressional leaders asking that they include funding to prevent layoffs of teachers in the FY2010 supplemental appropriations bill. For more information, see <http://www.ed.gov/blog/2010/05/obama-administration-supports-emergency-funding-to-save-teacher-jobs/>. Subsequently, in a June 12, 2010, letter to congressional leaders, President Obama asked Congress to provide funds in the FY2010 supplemental appropriations bill to prevent teacher layoffs. For more information, see http://www.whitehouse.gov/sites/default/files/rss_viewer/president_letter_6-12-10.pdf.

⁴³ Alyson Klein, "Ed. Dept. Opposes Cutting Race to Top to Fund Edujobs," *Education Week*, June 30, 2010.

⁴⁴ For more information, see Office of Management and Budget, *Statement of Administration Policy: H.R. 4899 Supplemental Appropriations Act, 2010*, July 1, 2010, http://www.whitehouse.gov/omb/assets/sap_111/saphr4899h_20100701.pdf.

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