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Legislative Appropriations Authority and the American Recovery and Reinvestment Act of 2009

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Introduction

The American Economic Recovery and Reinvestment Act of 2009 (ARRA) has raised questions of who within states have authority over appropriations and policymaking for the programs funded. The ARRA is a complex law creating new programs, expanding or establishing competitive grants, and funding existing programs—each with their own rules.

The ARRA requires certification by governors of intent to take new funding and creating a process for legislatures to accept the funding if the Governor declines the funds. However, this does not impact the role of state legislatures in appropriating these dollars. Nothing in the ARRA law otherwise precludes, overrides or preempts state constitutions, statutes, practices, customs, or court rulings regarding the appropriations of federal dollars, anticipated or unanticipated.

Only a few of the programs, notably the fiscal stabilization grants under the U.S. Department of Education, explicitly authorize the Governor's authority over funds. Most funds in the ARRA are for existing programs. Some of the existing programs require state matching funds that are appropriated through the legislative budget process. Some existing programs, such as TANF and Child Care Development Block Grants, have federal requirements in the underlying statute that ensures that state legislatures appropriate funds.

Five Kinds of ARRA Funded Programs and Implications for Legislators

1) Current Programs with No State Match

Whatever practice or procedure state legislatures currently utilize to appropriate federal funds applies. For example, the new ARRA funding for highways and bridges does not require a state match.

2) Current Programs with State Match

Demand of a state match places the state legislature in the position of deciding whether to accept any, some, or all federal funds. This is because state legislatures appropriate the state funds. For example, a state administrative match for SAF, the drinking water state reserve fund continues.

3) Current Programs with Brown Amendment Language

The ARRA provides increased funds to TANF and Child Care, whose underlying statutes contain the Brown amendment. The Brown amendment, named after former Colorado Senator Hank Brown, was included in the 1996 welfare reform law and requires that these funds be appropriated by the state legislature.

4) Competitive Grants

In general, the executive branch applies for competitive grants offered to the states. However, in many cases, state legislatures may authorize or support the application, especially if it requires state funding.



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Under ARRA, there is funding for both new and additional competitive grants in many different agencies. For example, NITA's new technology opportunity program offers competitive grants to eligible entities, including states, and requires a 20% match. Additional funding is provided to high speed rail grants which are also competitive.

5) New Programs

We assume newly created programs will track the current practice that governs existing state-federal programs. However, these are likely to ensure agency guidance and regulatory procedure that may or may not exist at this time. They may or may not require state match. For example, the new school nutrition equipment grant in the school lunch program gives states funding to provide grants to school food authorities. Supplemental discretionary grants for surface transportation will be granted at the Secretary's discretion.

6) Stabilization Fund

ARRA states that the Governor will receive and determine use of the State Fiscal Stabilization Fund. This is a \$53.6 billion fund that is, however, split three ways.

- \$5 billion for state education incentive grants, a competitive process governed by the Secretary of Education
- \$39.7 billion that must be used for K-12 and post-secondary education; and
- \$8.9 billion that can be used for public property and other government services.

However, if the Governor includes stabilization fund dollars in the state budget, we assume that the legislative appropriations process applies.

State Legislative Authority over Federal Funds

In approximately 80 percent of the states, provisions in their constitution or statutes authorize the legislature in budgetary sessions to appropriate federal funds. A variety of other procedures and practices govern state legislative appropriation of federal funds in or out of session and whether federal funds these are anticipated or not. Please see NCSL's paper, "Legislative Oversight of Federal Funds," published in 2004, detailing how legislatures control federal funds. You can view a summary of this paper by visiting: <http://www.ncsl.org/programs/fiscal/ositefedfund.htm>

Other Ways Legislatures Influence Federal Funding Decisions

There are other tools state lawmakers can use when the federal government designates the executive branch to make policy and funding decisions. Legislators have oversight authority and can take advantage of protocols on use of state money or the overall state budget process.

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