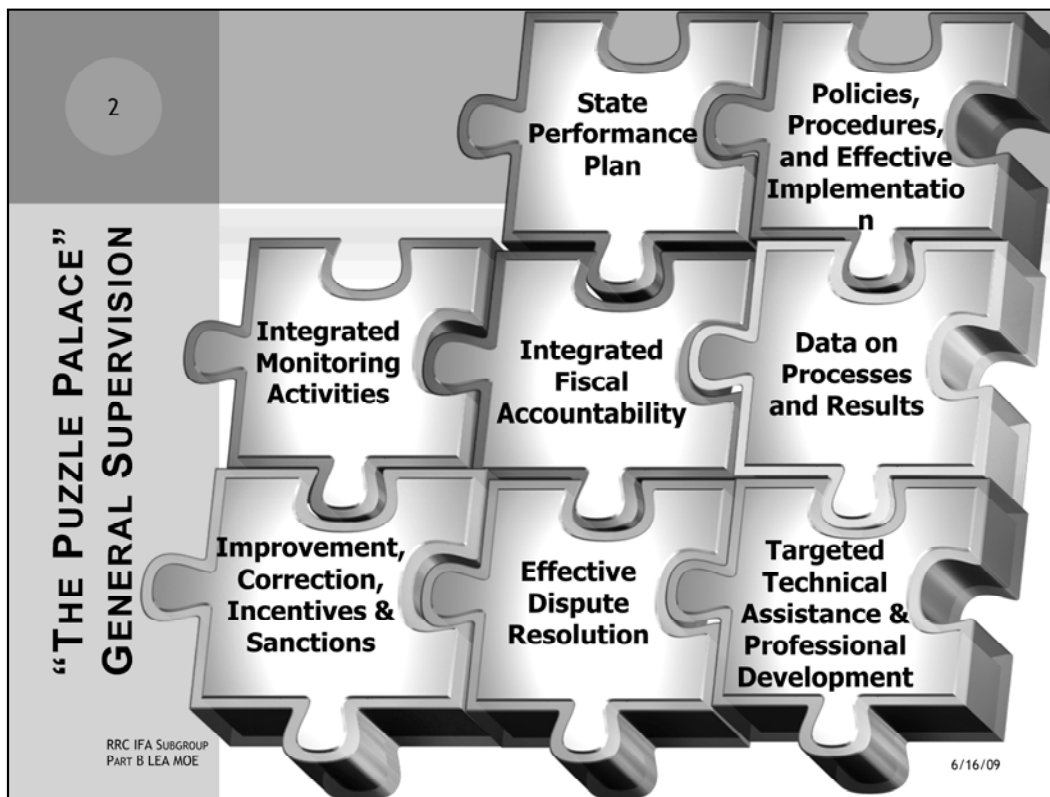
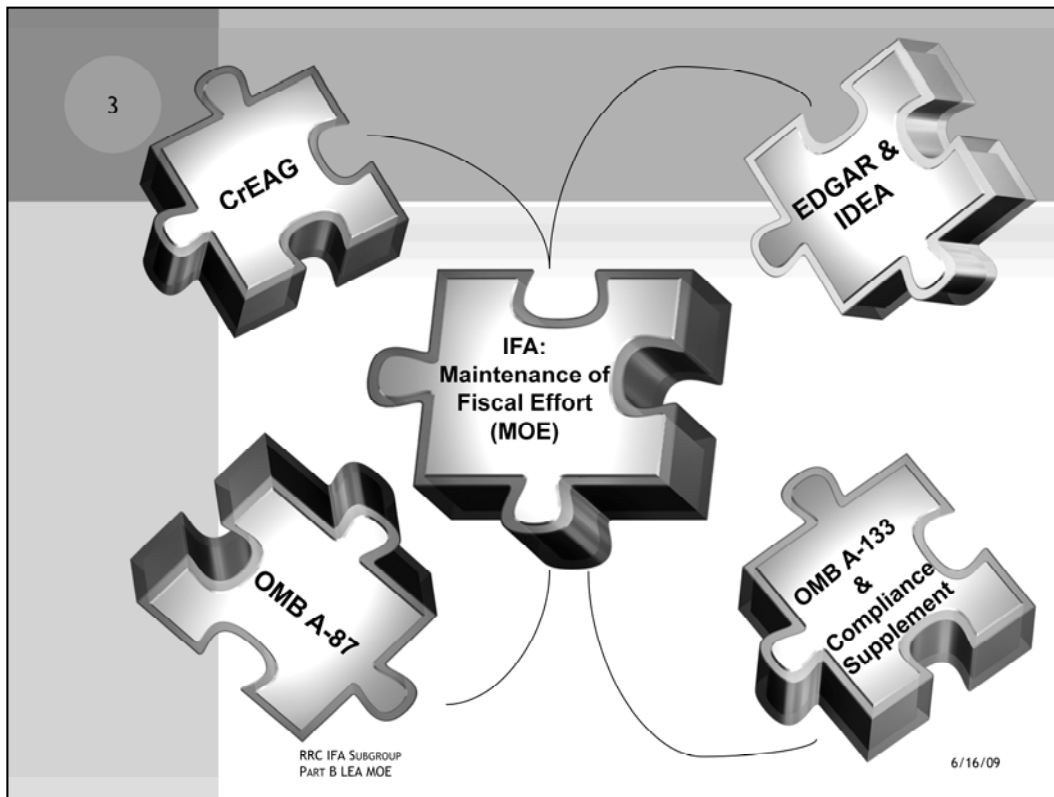


1	PART B LOCAL EDUCATIONAL AGENCY (LEA) MAINTENANCE OF EFFORT (MOE)
	Cynthia Bryant Lisa Pagano Deborah Morrow
	Slide presentation by Anthony White
	<small>RRC IFA SUBGROUP PART B LEA MOE</small>
	<small>6/16/09</small>

Today, we will be discussing what we consider to be one of the “hot topics” resulting from the American Recovery and Reinvestment Act, or A-R-R-A – local educational agency, or LEA, Maintenance of Fiscal Effort, or M-O-E. As you may remember, during the May call, we discussed State-level maintenance of fiscal support and many of the questions asked at that time focused on LEA M-O-E – so we know how important this information is to both States and their LEAs. We have a lot of ground to cover today and a great deal of information to share. There are handouts available as part of the presentation and we hope you’ve printed them off and have them for reference. We’re hoping to answer some of the questions you’ve raised and clarify some of the confusing issues around this topic.



Integrated Fiscal Accountability, or I-F-A, has been characterized as the “glue” that holds together the other pieces of general supervision under the Individuals with Disabilities Education Act, or I-D-E-A. Today, we’re going to delve more deeply into another of the components of I-F-A – LEA M-O-E.



MOE is one of the big pieces of the fiscal puzzle for both States and local educational agencies, or LEAs. All of the pieces of the I-F-A puzzle – I-D-E-A and the Education Department General Administrative Regulations, or EDGAR, Office of Management and Budget, or OMB, Circular A-87, OMB Circular A-133 and its compliance supplement, and the Critical Elements Analysis Guide, or CrEAG, play a part in illuminating M-O-E.



The first piece of our puzzle within a puzzle is the governing regulations and we're going to be spending a significant part of the call walking through the various regulations that govern LEA M-O-E. We'll start with the general requirements in EDGAR.

PART B LEA MOE EDGAR

Subpart F: What are the administrative responsibilities of the subgrantee?

- © 34 CFR §76.700 – Compliance with statutes, regulations, and applications
- © 34 CFR §76.731 – Records related to compliance

Some of you may remember this slide from our call in May – with one significant change. In May, we were talking about “grantees.” You see here that the same regulations apply to “subgrantees,” which are generally LEAs. EDGAR requires that the subgrantees receiving Federal funds from the grantee, comply with all statutes, regulations and applications that implement program requirements and that the subgrantees maintain records related to that compliance. One of the program requirements is M-O-E.

PART B LEA MOE

The amount of local, or State and local, funds expended for the education of children with disabilities is the amount of funds that establishes the level of expenditures to be maintained from year to year and establishes the MOE level

I-D-E-A funding is intended to ASSIST States and LEAs in meeting their financial obligation to provide special education and related services to eligible children with disabilities. The amount of local, or State and local, funds expended to provide education to children with disabilities determines the level of “effort” that must be maintained from year to year.

PART B LEA MOE LEA MOE REQUIREMENT

With certain exceptions, funds provided to an LEA under Part B must not be used to reduce the level of expenditures for the education of children with disabilities below the level of those expenditures for the preceding fiscal year

See 34 CFR §300.203(a)

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PART B LEA MOE

6/16/09

As you can see from the LEA MOE provision, the regulation at section 300.203(a) addresses the requirement that the LEA maintain the LEVEL OF EXPENDITURES from year to year. There are some specific exceptions that we will discuss later in the presentation.

<div data-bbox="342 205 440 302">8</div>	<div data-bbox="570 163 1203 338"> <h2>PART B LEA MOE</h2> <h3>LEA MOE REQUIREMENT: ELIGIBILITY</h3> </div>
	<p data-bbox="513 378 1208 455">In order to determine an LEA's eligibility for a Part B allocation, the SEA must ensure that:</p> <p data-bbox="513 487 1263 732">With certain exceptions, an LEA budgets for the education of children with disabilities at least the same total or per capita amount of either local, or State and local, funds as it spent from those same sources in the most recent prior year for which the information is available</p> <p data-bbox="837 764 1273 804">See 34 CFR §300.203(b)(1)</p> <div data-bbox="574 892 678 924"> <small>RRC IFA SUBGROUP PART B LEA MOE</small> </div> <div data-bbox="1222 898 1273 915"> <small>6/16/09</small> </div>

When we look further at 34 C-F-R section 300.203, we also find the standard for what State educational agencies, or SEAs, must consider when determining whether an LEA is eligible for I-D-E-A Part B funds. You'll notice that the regulation requires the SEA to examine whether the LEA has **BUDGETED** at least the same total or per capita amount of local, or State and local, funds as it spent during the most recent prior year for which there is information available.

This is the standard the SEA uses to determine whether an LEA is eligible to receive Part B funds for the current year.

While the standard for determining eligibility for funds looks at the **BUDGETED AMOUNT**, it is important to remember that the audit standard for determining an LEA's compliance with M-O-E requirements compares **EXPENDITURE AMOUNTS** from year to year.

<div data-bbox="341 199 438 304">9</div>	<h2 style="text-align: center;">PART B LEA MOE</h2> <h3 style="text-align: center;">LEA MOE REQUIREMENT: DOING THE MATH</h3>
	<p>Eligibility: LEA expends \$900,000 in FY 2007 and budgets \$1,000,000 in FY 2009; therefore, the LEA meets the IDEA MOE eligibility requirement for an FY 2009 grant award</p>
	<p>Compliance: LEA expends \$900,000 in FY 2007 and expends \$950,000 in FY 2008; therefore, the LEA complied with the MOE requirement from FY 2007 to FY 2008</p>

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PART B LEA MOE

6/16/09

In the examples on this slide, we compare the **ELIGIBILITY** standard expressed in section 300.203(b)(1) and the audit, or **COMPLIANCE**, standard expressed in section 300.203(b)(2).

To determine the eligibility of an LEA to receive Part B funds for fiscal year, or FY, 2009, the SEA looks at what the LEA has budgeted – what it intends to expend – in FY 2009 out of local, or State and local, funds. In the example shown on the slide, the LEA intends to expend \$1,000,000. The LEA provided its budgeted amount in its FY 2009 application, received by the SEA in March of 2009. The accounting records for FY 2008 are not yet available because FY 2008 will not end until June 30, 2009. However, the LEA reports that, in FY 2007, which ended on June 30, 2008, it actually expended, in total, \$900,000 from a combination of State and local funds. Therefore, the LEA meets the IDEA M-O-E eligibility requirement for an FY 2009 grant award.

The SEA conducts an onsite visit (although there are other ways to obtain this information – this is just one method) of this particular LEA in December 2009. As part of the visit, the SEA looks at the LEA’s M-O-E data. As reported in the March 2009 application, the LEA expended, in total, \$900,000 of State and local funds for the education of children with disabilities. It closed the books on FY 2008 on June 30, 2009 and shows the SEA that it expended, in total, \$950,000 of State and local funds on the education of children with disabilities. The SEA concludes that the LEA has met the compliance standard for M-O-E for FY 2008.

10	PART B LEA MOE LEA MOE REQUIREMENT: SEA RESPONSIBILITY
	<p>The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly, or through the SEA, in determining an LEA's compliance with the MOE requirement</p> <p>See 34 CFR §300.203(b)(3)</p> <p><small>RRC IFA SUBGROUP PART B LEA MOE</small></p> <p><small>6/16/09</small></p>

The regulation reflected on this slide states the requirement that the SEA cannot allow the LEA to include expenditures it made from Federal funds when determining whether the LEA maintained its level of effort. These Federal funds are those for which accountability to the Federal government is required, such as Title I and I-D-E-A.

OSEP has issued correspondence on January 24, 2008 – Letter to Copenhagen, which you have as a handout – clarifying that reimbursements from Federal funds, including Medicaid, are not considered “State and local funds” for the purposes of meeting the M-O-E requirements.

PART B LEA MOE LEA MOE REQUIREMENT: WHAT EXPENDITURES COUNT?

- ⊙ What expenditures are included will vary from State to State and LEA to LEA
- ⊙ States should provide guidance to LEAs on calculating MOE

Some common expenditures often included:

- ⊙ Mental health services pursuant to IEPs
- ⊙ Behavioral intervention services under IEPs
- ⊙ Special Olympics Programs, if part of a school program

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PART B LEA MOE

6/16/09

When calculating M-O-E, it is important that consideration is given to the variety of sources of local, and State and local, funding that supports the provision of education to eligible children with disabilities.

Examples may include support provided by local departments of mental health pursuant to students' individualized education programs, or IEPs; for Special Olympics programs when part of the school program for children with disabilities; for job coaching; or for sign language interpreters.

A common mistake occurs when the LEA fails to consider all locally-generated funds, from whatever sources, expended to provide education to eligible children with disabilities.

<div data-bbox="342 205 440 302">12</div>	<h2 style="text-align: center;">PART B LEA MOE</h2> <h3 style="text-align: center;">LEA MOE REQUIREMENT: SUPPLEMENT/NOT SUPPLANT</h3>
	<p>Funds under Part B must be used to supplement State, local and other Federal funds and not to supplant them See 34 CFR §300.202(a)(3)</p>
	<p>If an LEA maintains its fiscal effort, it will only be using Part B funds to supplement local, or State and local, funds, and not to supplant them</p>
	<div data-bbox="574 892 678 924"> <small>RRC IFA SUBGROUP PART B LEA MOE</small> </div> <div data-bbox="1224 898 1273 915"> <small>6/16/09</small> </div>

Question C-6 of the Part B A-R-R-A guidance dated April 13, 2009, discusses the relationship between the supplement/not supplant requirement at section 300.202(a)(3) and the LEA M-O-E requirements at section 300.203(a). Quoting from the answer to this question, the guidance states: “If the LEA maintains (or exceeds) its level of local, or State and local, expenditures for special education and related services from year to year, either in total or per capita, then the Part B funds are, in fact, supplementing those local, or State and local, expenditures and the LEA has met its M-O-E and supplement/not supplant requirements.”

There is a related footnote in the guidance regarding the elimination of the particular cost test. Language taken from the footnote explains, “[the particular cost test] meant, for example, that if an LEA spent Part B funds to pay for a teacher’s salary that was previously paid for with State or local funds, a supplanting violation would occur, even though the total amount of State and local funds spent on special education is greater than the amount spent the previous year. At that time, an LEA could maintain effort but still violate the supplement/not supplant provision. The “particular cost test” was removed from the regulations by an amendment published...on August 19, 1992...and that became effective on October 3, 1992. Therefore, no requirement currently exists related to supplanting “particular costs” and if an LEA maintains local, or State and local effort, it will not violate the supplement/not supplant requirements of the I-D-E-A.”

Even though the particular cost test was removed several years ago, we continue to receive questions about it from States and handle audit findings that are clearly based in the particular cost requirement.

PART B LEA MOE EXCEPTIONS

An LEA may reduce the level of its expenditures (local, or State and local; in total or per capita) below the level of those expenditures (local, or State and local; in total or per capita) for the preceding fiscal year under certain circumstances....

See 34 CFR §300.204

An advantage for the LEAs is that the regulations permit some allowable exceptions to the M-O-E requirement! We'll talk about those next.

PART B LEA MOE EXCEPTIONS

34 CFR §300.204 provides exceptions for:

- ⊙ Voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- ⊙ Decrease in the enrollment of children with disabilities;
- ⊙ Termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities;

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PART B LEA MOE

6/16/09

The regulations provide exceptions to M-O-E for a specific set of circumstances, which are included in the next few slides.

The first exception is for voluntary departure, which is typically retirement of experienced, veteran teachers and usually remedied by hiring younger staff who fall lower on the pay scale than the departing staff. Voluntary departure is a justifiable reason for lowering the MOE for the year in which the staff departs. Departure “for just cause” is usually related to some kind of disciplinary dismissal and is something of a “term of art” in the human resources world. Reductions in force, or RIFs, are NOT to be confused with just cause terminations and RIFs are not considered to be an allowable exception to the MOE requirements.

In the second exception, we know that some jurisdictions experience a reduction in overall school enrollment, with a corresponding reduction in child count of children with disabilities and a resulting need to expend, per capita, less local, or State and local, funds for the education of children with disabilities.

In the third exception, termination of costly expenditures for long-term purchases is also a potential justification for lowering an LEA’s M-O-E. An example would be if an LEA had undertaken the refurbishing of its existing bus fleet with wheel chair lifts, gates and tie-downs. If the LEA purchased these items, on a single, multi-year contract, the LEA could reduce its M-O-E by the annual amount of the contract once that contract is completed.

PART B LEA MOE EXCEPTIONS

- ⊙ Termination of an exceptionally costly obligation to a particular child with a disability because the child:
 - ⊙ Has left the jurisdiction;
 - ⊙ Has reached the age at which the obligation to provide a free appropriate public education (FAPE) to the child is terminated; or
 - ⊙ No longer needs the program of special educationor
- ⊙ Assumption of cost by a high cost fund operated by the SEA under 34 CFR §300.704(c);

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PART B LEA MOE

6/16/09

In the fourth exception, an LEA also may reduce its M-O-E due to the termination of an exceptionally costly obligation for a particular child. For example, if an LEA has funded the provision of FAPE for a particular child at a residential facility, including many related and support services, and the child exits the school program, the LEA is no longer responsible for this cost and could reduce its MOE accordingly.

Finally, Under section 300.704(c), some States operate a “high cost fund” to assist LEAs in defraying costs of services for high need children with disabilities. The amount assumed BY THE SEA is the amount by which an LEA then may reduce its M-O-E. The next slide goes through an example of this exception.

PART B LEA MOE EXCEPTIONS

Assumption of cost by a high cost fund operated by the SEA under 34 CFR §300.704(c):

State APPE 5,000

3 x APPE 15,000

Cost per year for child 25,000

$25,000 - 15,000 = \text{HCF amt} = 10,000$

Amt LEA can reduce MOE = 10,000

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PART B LEA MOE

6/16/09

In accordance with 34 C-F-R section 300.704(c)(3)(i)(A)(2), the SEA must ensure that it **DEFINES** a high-cost child as a child with a disability who, at a minimum, costs more than three times the average per pupil expenditure, or A-P-P-E, in that State – as defined in section 9101 of the Elementary and Secondary Education Act, or E-S-E-A. In our example, we say that this SEA has determined, as part of its State Plan for operating the High Cost Fund, that it will **DEFRAY** costs for a child that are in excess of three times that average per pupil expenditure. The A-P-P-E for elementary children in the STATE is 5000 dollars per child, so three times that amount is 15,000 dollars. A particular high need child with a disability in this LEA costs the LEA 25,000 dollars per year in order to ensure a free appropriate public education, or FAPE. 25,000 minus 15,000, which in this example, is the LEA's obligation under the SEA's State Plan, is 10,000 dollars. Therefore, the LEA, under this particular provision of I-D-E-A- can reduce its M-O-E by 10,000 dollars – the amount assumed by the SEA's High Cost Fund.

We also want to point out that the SEA could, as part of its State Plan, determine that it will defray **ALL** of the costs for high needs children with disabilities. So, in this example, that would mean that the State paid the entire 25,000 dollars and that would become the amount by which the LEA could reduce its M-O-E.

The SEA could continue to defray all the costs of high need children until it had expended the entirety of its high cost fund up to the ten percent it is allowed to reserve from its set-aside for "other State-level activities" under 34 C-F-R section 300.704(b)(1) for the high cost fund.

The SEA has discretion to determine what portion of the cost of a high-need child it will cover and that amount becomes the amount by which the LEA can reduce its M-O-E.

PART B LEA MOE ADJUSTMENTS

With certain exceptions, for any fiscal year for which an LEA's Part B allocation under section 611 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required for MOE by not more than 50% of the amount of the excess

See 34 CFR §300.205(a)

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PART B LEA MOE

6/16/09

The provision reflected on this slide has generated more of the recent questions from States than any other fiscal provision in Part B. The substantial increases provided under the A-R-R-A have resulted in corresponding significant increases to LEA allocations for fiscal year 2009. Coupled with the troubled economy and reductions in available State and local funds for special education, this provision holds great interest for both State and local jurisdictions.

This slide states the fundamental principle of this regulation, which is that an LEA MAY be able to reduce the amount of local, or State and local, funds it expends for the education of children with disabilities by as much as 50 percent of the amount of its Federal allocation increase. However, as we will see, there are conditions.

PART B LEA MOE ADJUSTMENTS

An LEA is eligible to make the 50% reduction if the LEA:

- ⊙ receives an increase in section 611 funds
- ⊙ “meets requirements” under the sec. 616 determinations
- ⊙ has not had action taken against it by the SEA under IDEA section 616
- ⊙ has not had responsibility for providing FAPE taken from it by the SEA
- ⊙ has not been found by the SEA to have significant disproportionality under 34 CFR §300.646

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PART B LEA MOE

6/16/09

This slide lays out the conditions that an LEA must meet in order to be able, or eligible, to take advantage of the 50% reduction authority outlined in section 300.205. These conditions also are specified in the A-R-R-A guidance for Part B under question D-7.

We know that the majority of LEAs will receive increases in their section 611 funds for FY 2009 under the A-R-R-A so most LEAs will meet that requirement. Under section 616 of the I-D-E-A, the LEA must “meet requirements” for its most recent determination by the SEA not have action taken against it by the SEA. The LEA cannot have had responsibility for the provision of FAPE taken from it by the SEA and, finally, the LEA cannot have been found by the SEA to have significant disproportionality under section 300.646.

If an LEA meets all these conditions, it can then begin to look at the provisions of section 300.205 for reducing its M-O-E - the local, or State and local, funds expended for the education of children with disabilities - by up to 50 percent of the increase in its Part B allocation for FY 2009 – including its A-R-R-A funds.

PART B LEA MOE DOING THE MATH

In 2008, the LEA received a
sec. 611 allocation of 800,000

In 2009, the LEA received a
sec. 611 allocation of 900,000
AND an ARRA allocation for
sec. 611 of 750,000

$900,000 + 750,000 = 1,650,000 -$
 $800,000 = 850,000 * 50\% =$ \$425,000

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PART B LEA MOE

6/16/09

On this slide is an example of computing the 50 percent reduction for an eligible LEA! In this example, the LEA received a Federal allocation under Part B, section 611, of 800,000 dollars for FY 2008. This LEA's FY 2009 regular Part B allocation is 900,000 dollars and its A-R-R-A allocation is 750,000 dollars for section 611. First, you aggregate the FY 2009 regular Part B allocation and the FY 2009 A-R-R-A allocation for a total of 1,650,000 dollars. From that, you subtract the FY 2008 allocation for a difference of 850,000 dollars. Fifty percent of that difference, or 425,000 dollars is the amount by which this LEA can reduce its expenditures of local, or State and local, funds for the education of children with disabilities. Note that the LEA is not reducing Federal expenditures. That 425,000 dollars doesn't actually have any bearing on the A-R-R-A or 2009 allocations at all. It's just a number. The impact comes on local, or State and local, funds because that number - 425,000 dollars - tells the LEA how much it can reduce THOSE local, or State and local, expenditures for the education of children with disabilities in FY 2009.

20	<h2 style="text-align: center;">PART B LEA MOE USING THE “FREED-UP FUNDS”</h2>
	<p>The LEA may reduce its expenditure of local, or State and local, funds for FY 2009 by \$425,000</p> <p>The \$425,000 must be expended for activities/programs allowable under the Elementary and Secondary Education Act (ESEA)</p> <p style="text-align: center;"> <small>RRC IFA SUBGROUP PART B LEA MOE</small> <small>6/16/09</small> </p>

Reducing the amount the LEA spends on special education and related services does not actually result in a “savings” for the LEA because those funds STILL have to be spent – just NOT on special education and related services. The 425,000 dollars the LEA frees up by reducing the amount of local, or State and local, funds it spends on the education of children with disabilities can be spent for any activities or programs allowable under the Elementary and Secondary Education Act, or E-S-E-A. The funds can be spent to enhance or expand programs or activities for which the LEA is already expending funds or to start up new activities or create new programs. Some examples of ways to utilize these funds include activities or programs for children at risk of school failure, before- and after-school tutoring programs, teachers’ salaries, or any expenditures for which the LEA uses its Impact Aid funds – also an E-S-E-A program. There is wide flexibility in how these funds can be used.

However, there is one caveat – because these are funds the LEA would expend as part of its FY 2009 program of special education and related services, the LEA should expend these funds for the E-S-E-A activities in FY 2009. LEAs are accountable for being able to demonstrate HOW and WHEN these funds are expended, such as during an audit.

<div data-bbox="341 199 438 304">21</div>	<h2 style="text-align: center;">PART B LEA MOE USING THE “FREED-UP FUNDS”</h2>
	<p>Will using the freed-up funds for ESEA activities cause a problem with the ESEA MOE requirements at 34 CFR §299.5?</p> <p>Generally, maintaining effort under the ESEA should pose no problem because the local, or State and local, funds provided for the cost of special education are already included in the LEA’s calculation of the cost of a free public education, required under the ESEA</p> <p style="text-align: center;">See Question D-11 of the ARRA Guidance</p> <div data-bbox="568 892 682 924"> <small>RRC IFA SUBGROUP PART B LEA MOE</small> </div> <div data-bbox="1218 892 1274 913"> <small>6/16/09</small> </div>

As you can see from the response to Question D-11 of the A-R-R-A Guidance, maintaining effort under the E-S-E-A should not be a problem in most cases. However, it is important to know and understand those requirements, found at section 299.5, in order to ensure that no problems arise. This is a “risk factor” in terms of fiscal management and one that can be proactively managed by being aware and paying attention to how the funds are being used. There are two provisions that should be noted. First, not all E-S-E-A programs have an M-O-E requirement and those that do, have a 90 percent M-O-E requirement, unlike the 100 percent or more M-O-E requirement of the I-D-E-A. Second, a requirement under the E-S-E-A is that the LEA annually aggregates the total amount of State and local funds expended on a “free public education.” Generally, the State and local funds expended for the education of children with disabilities are included in the calculation of the free public education under E-S-E-A. That being the case, in our previous example, it doesn’t matter, for E-S-E-A M-O-E purposes, whether the 425,000 dollars of local, or State and local, funds are expended for the education of children with disabilities or expended as “freed up” funds for E-S-E-A activities. That amount would be included in the E-S-E-A MOE calculation either way. Therefore, there should be no appreciable impact on E-S-E-A M-O-E by a reduction in I-D-E-A M-O-E.

Next, we are going to talk about comprehensive, Coordinated Early Intervening Services, or C-E-I-S, and M-O-E.

PART B LEA MOE COORDINATED EARLY INTERVENING SERVICES (CEIS)

CEIS are services for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who are not currently identified as needing special education and related services, but who need additional academic and behavioral support to succeed in a general education environment

See 34 CFR §300.226(a)

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PART B LEA MOE

6/16/09

I expect that most, if not all of you, are familiar with the concept and requirements regarding CEIS. We are going to pursue it in terms of its impact on the M-O-E reduction option. It's a complex interaction and one that becomes clearer the more you engage in discussions about it. We have had many questions about it and we hope you keep them coming – developing the answers helps all of us understand it better.

PART B LEA MOE CEIS

An LEA may use up to 15% of the amount it receives under Part B, both sections 611 and 619, for CEIS, less any amount reduced by the LEA pursuant to 34 CFR §300.205

See 34 CFR §300.226(a)

In discussing the M-O-E reduction option, we have been talking solely about funds provided under section 611 of the I-D-E-A and the impact of an increase in those funds on local, or State and local, funds for special education and related services. In discussing CEIS, we add another source of funds to the equation – funds provided for preschool special education and related services under section 619 of the I-D-E-A.

In computing the amount available for CEIS, the LEA must first aggregate all funds provided under sections 611 and 619, including the 611 and 619 A-R-R-A I-D-E-A allocations for FY 2009. Fifteen percent of the combined amount becomes the funds AVAILABLE to implement CEIS. From that 15 percent, the LEA must subtract any amount by which the LEA wants to reduce its M-O-E under section 300.205.

PART B LEA MOE CEIS

- ⦿ If an LEA is REQUIRED to use the entire 15% available for CEIS because it has been identified with significant disproportionality under 34 CFR §300.646, then the LEA cannot reduce its MOE
- ⦿ As described on the previous slide, the LEA must subtract any amount used for MOE reduction from the amount it intends to use for CEIS; therefore, if the LEA reduced its MOE, it would also have to reduce its CEIS amount and would not have the required 15% available for CEIS

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PART B LEA MOE

6/16/09

As mentioned earlier, if an LEA is required to use the entire 15 percent of its Part B allocation available for CEIS because the LEA has been determined to have significant disproportionality occurring under section 300.646, then the LEA cannot reduce its M-O-E under section 300.205. Again, the reason is because section 300.226(a) requires that any amount by which the LEA intends to reduce M-O-E be subtracted from the amount it intends to use for CEIS. If the LEA MUST use the entire 15 percent for CEIS because of significant disproportionality, it is prohibited from subtracting ANYTHING from that 15 percent and therefore CANNOT reduce its M-O-E.

PART B LEA MOE CEIS

- ◎ The amount of funds expended by an LEA for CEIS must count toward the maximum amount of expenditures that the LEA may reduce under 34 CFR §300.205(a)
- ◎ This means that, no matter how much is available for CEIS (up to 15%) or for MOE reduction under §300.205(a), the total amount expended on CEIS and MOE reduction together cannot exceed the lesser of the total amount available for MOE reduction under §300.205(a) or the amount available for CEIS
See 34 CFR §§300.205(d) and 300.226(a)

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PART B LEA MOE

6/16/09

The amount of funds expended by an LEA for CEIS must count toward the maximum amount of expenditures that the LEA chooses to reduce under the M-O-E reduction option. An eligible LEA could take the maximum M-O-E reduction, or use the maximum amount available for CEIS. If the LEA wanted to do some M-O-E reduction and spend some for CEIS, though, the restrictions in sections 300.205(d) and 300.226(a) apply. As a result, no matter how much is available for CEIS or M-O-E reduction, the total amount spent on both of them in combination cannot exceed the lesser of the total amount available for M-O-E reduction or the amount available for CEIS. Of course, an LEA that is not required to use funds for CEIS could use some of the local funds that are “freed up” because it can reduce local M-O-E for activities for at-risk children - CEIS-like services - as those would be permissible under the E-S-E-A.

PART B LEA MOE EFFECT OF MOE EXCEPTIONS AND ADJUSTMENT

When an LEA reduces its MOE pursuant to 34 CFR §§300.204 or 300.205, the adjusted amount is the LEA's new MOE level until the LEA, on its own, increases the level of special education expenditures, using local, or State and local, funds

See Question D-9 of the ARRA Guidance

Once the LEA reduces its M-O-E pursuant to either one of the exceptions in section 300.204 or the allowable adjustment in section 300.205, the “new” M-O-E amount remains the LEA’s M-O-E obligation until such time as the LEA increases that amount in order to continue to provide special education and related services. Remember, an M-O-E reduction under either of these provisions does not constitute a failure to maintain M-O-E.

27	PART B LEA MOE EFFECT OF MOE EXCEPTIONS AND ADJUSTMENT – DOING THE MATH
	FY 2008 Effort 1,000,000
	FY 2009 50% reduction 425,000
	$(1,000,000 - 425,000 = 575,000)$
	Effort for FY 2009 575,000
	Effort required for FY 2010 575,000
	If the LEA expends \$575,000 in FY 2010, Effort required for FY 2011 = 575,000
	<small>RRC IFA SUBGROUP PART B LEA MOE</small> <small>6/16/09</small>

In our earlier example, if the LEA reduces its M-O-E by 425,000 dollars, from, say 1,000,000 dollars in FY 2008 to 575,000 dollars in FY 2009, pursuant to section 300.205, then in FY 2010, the level of effort the LEA must maintain is 575,000 dollars. It will **REMAIN** 575,000 dollars until the LEA raises it by providing **MORE** local, or State and local, funds for special education and related services.

Now we'll take a look at the Critical Elements Analysis Document, or CrEAG, related to LEA M-O-E.

PART B LEA MOE CRITICAL ELEMENTS ANALYSIS GUIDE (CrEAG)



Fiscal Critical Element 3: Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA?

How does the State ensure that LEAs comply with the fiscal requirements of IDEA (including LEA MOE, exception and reduction in MOE, CEIS, ...)?

Of course. As you can see in this slide, M-O-E is also a subject of the OSEP verification process and questions related to M-O-E are included in the CrEAG document. Through the verification process, OSEP will be looking at the State's fiscal system, including what mechanisms the State uses to ensure that M-O-E requirements are being met in its LEAs. A State's inability to ensure that LEAs maintain fiscal effort may result in OSEP findings in the verification process.

In this particular question, all of the elements that we have discussed today are addressed – from LEA M-O-E to CEIS, significant disproportionality and the adjustments/allowances to M-O-E.

PART B LEA MOE CrEAG

How does the SEA ensure that funds provided to LEAs are not used to reduce the level of expenditures, except as provided in 34 CFR §§300.204 and 300.205 ... below the level of those expenditures for the preceding fiscal year?

If there was an increase in an LEA's Federal formula funding, how does the SEA verify that, if the LEA reduces its MOE, it reduces it by no more than 50% of the amount of the increase?

If an LEA reduces its MOE based on an increase how does the State ensure that those monies are used on allowable expenses?

RRC IFA SUBGROUP
PART B LEA MOE

6/16/09

The CrEAG also includes questions regarding the reduction of M-O-E under both sections 300.204 and 300.205. Again, the SEA has an obligation to examine this information for its LEAs and ensure that they are properly implementing these requirements. We have had audit findings from a State audit where the State failed to ensure that LEA justifications for reducing M-O-E were appropriate under section 300.204. The State had properly asked LEAs that failed to maintain effort to justify that failure, but the State had not verified either that the justifications met the requirements of section 300.204 or that, if the justification met one of those requirements, it was true for the particular LEA using that reason. The State was asked to verify the justifications and to pay back funds to the Department where it verified that LEAs had failed to maintain effort rather than appropriately exercising one of the allowable exceptions.

If an LEA is eligible to exercise its authority to reduce its M-O-E by 50% of an increased Part B allocation, the State has an obligation to ensure that local, or State and local, funds freed up by this reduction are spent for allowable purposes under the E-S-E-A.

PART B LEA MOE CrEAG

What procedures does the State have to prohibit an LEA from exercising its authority to reduce its MOE based on an increased allocation under 34 CFR §300.705 because it determined that an LEA was unable to establish and maintain programs of FAPE OR because of a State's LEA determination under section 616?

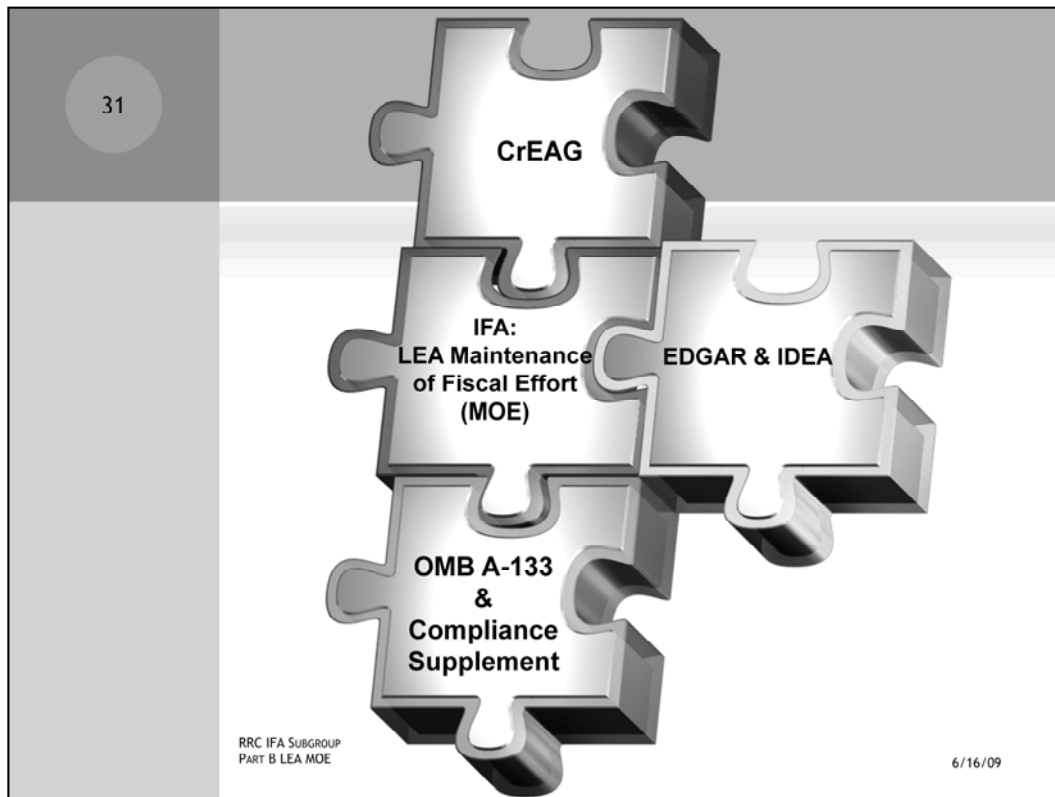
RRC IFA SUBGROUP
PART B LEA MOE

6/16/09

The final CrEAG question on this slide, related to M-O-E, addresses the prohibitions we discussed when we talked about LEA eligibility to reduce its M-O-E by 50 percent pursuant to section 300.205. Some of these prohibitions are found at section 300.608. You can find these questions in the fiscal section of your CrEAG or in the “Crunched CrEAG” that we provided as a handout during the April 21st call.

OSEP expects that the SEA is familiar with each LEA's “eligibility,” if you will, to exercise its authority to reduce its M-O-E by up to 50 percent of any increase in the LEA's Part B allocation under I-D-E-A. SEAs must have, and exercise, procedures to prohibit an ineligible LEA from making such a reduction and to continue to maintain the appropriate level of local, or State and local, funds expended for the education of children with disabilities.

Next we'll look at the related audit standards for level of effort.



We've discussed, in detail, the regulations governing LEA maintenance of effort, its complexities and variances, exceptions and adjustments, from calculating M-O-E to determining when and where adjustments can be made.

We've talked about M-O-E from the standpoint of the CrEAG and how OSEP examines local-level M-O-E as part of verification. It's been a big part of our conversations with States over the past two years since we began the verification cycle that includes a review of each State's fiscal system.

Now we'd like to add in the audit standards regarding level of effort, as viewed by auditors when conducting audits under the Single State Audit Act, OMB Circular A-133 and its Compliance Supplement.

PART B LEA MOE RISK ASSESSMENT AND INTERNAL CONTROLS

Control activities:

- ⊙ Preventative
 - ⊙ Deters risk from being realized
- ⊙ Detective
 - ⊙ Determines if risk could be realized
- ⊙ Corrective
 - ⊙ Detects if risk has been realized and reacts

During the May call, we talked about risk assessment and internal controls as being the core of integrated fiscal accountability and the documents related to these subjects are available at the iLink blog site and also on the SPP/APR calendar in the fiscal section. It includes OMB Circulars A-87 and A-133 and the Compliance Supplement, as well as the “Crunched CrEAG.”

LEAs, as well as SEAs, should constantly be assessing their risk with regard to maintenance of effort and supplement/not supplant requirements, and establish strong internal controls for dealing with identified threats – whether it is impending economic difficulty, statewide reductions, or problems with methods of calculating M-O-E. Not all threats are within the control of the LEA, especially if other State and/or local agencies, whose budgets are not impacted by LEA issues, are involved in State and/or local support for special education. However, knowing what must be included – or excluded – and ensuring that individuals – within the LEA and in any other relevant agencies - understand the I-D-E-A M-O-E requirements is critical, both to obtaining an accurate calculation of local, or State and local, support provided and in ensuring that EFFORT IS MAINTAINED from year to year.

PART B LEA MOE OMB A-133 COMPLIANCE SUPPLEMENT

- ⊙ Establishes specific requirements within the 14 areas for Federal programs across all Federal agencies
- ⊙ Using the Supplement, auditors identify findings specific to different Federal programs, including those within the Department of Education (e.g., IDEA, Title I, etc.)
- ⊙ Section G of the supplement addresses Matching, **Level of Effort**, and Earmarking

RRC IFA SUBGROUP
PART B LEA MOE

6/16/09

Matching, level of effort, and earmarking are discussed in Section G of both the cross-cutting and special education specific sections of the Circular A-133 compliance supplement. Within all cross-cutting sections of the compliance supplement, a consistent format is used for listing compliance requirements, defining terms, and outlining audit objectives and procedures. In the cluster areas, which are relevant to specific programs, the standard format includes a review of control objectives and activities, risk assessment, communication, and monitoring. We will discuss each of these areas with the next slide.

PART B LEA MOE

SECTION G: MATCHING, LEVEL OF EFFORT, EARMARKING

- ⊙ Control Objectives
- ⊙ Control Environment
- ⊙ Risk Assessment
- ⊙ Information and Communication
- ⊙ Monitoring

RRC IFA SUBGROUP
PART B LEA MOE

6/16/09

Under each of the specific sections of the compliance supplement, auditors are looking for the items listed on this slide.

When looking at Control Objectives, auditors ask whether the LEA's fiscal system provides reasonable assurance that level of effort is met using only allowable funds or costs which are properly calculated and valued.

Auditors look for three things in the LEA's Control Environment. First: Is there a commitment from management to meet M-O-E requirements? Next: Does the LEA have a budgeting process that adequately addresses and provides adequate resources to meet M-O-E requirements? Finally: Are there official written policies outlining responsibilities for determining M-O-E, allowable costs that may be claimed, and methods for accounting for amounts used to calculate M-O-E as well as documentation for reporting? As you can see, we just established the nexus between the M-O-E regulations, OMB Circular A-133 and OMB Circular A-87, which you might remember from our last call, establishes the basis for determining what are allowable costs, when read in conjunction with the IDEA statute and regulations.

Auditors also examine Risk Assessment, asking whether the LEA identified areas where estimated values will be used for level of effort and whether management has a sufficient understanding of the accounting system to identify potential recording problems. On our last call, we talked a bit about the importance of internal controls, and using PROACTIVE measures to address possible issues before they become audit findings. Assessing risk in your LEA's system is a first step to implementing appropriate control actions and heading off noncompliance.

In examining Information and Communication, the auditors look at the LEA's accounting system to determine if it is capable of: One, separately accounting for funds used to support level of effort; two, ensuring that expenditures or expenses, refunds, and cash receipts or revenues are properly classified and recorded only once regarding their effect on level of effort; and three, documenting the value of "in-kind" contributions of property or services.

Finally, auditors look at Monitoring, as it applies to the State's system for ensuring level of effort. The auditors will ask SEAs what supervisory review of level of effort is performed in the State and LEAs will need to provide SEAs with appropriate documents of level of effort during the SEA's monitoring process.

PART B LEA MOE IMPLICATIONS OF FAILURE TO MAINTAIN EFFORT

1. Audit implications

- ⊙ Noncompliance with MOE requirements
- ⊙ Pay back the amount by which the LEA failed to meet MOE.
- ⊙ Paybacks must be made out of out of non-Federal funds or funds for which accountability to the Federal government is not required

2. Grant implications

- ⊙ Ineligibility for subgrant funds

RRC IFA SUBGROUP
PART B LEA MOE

6/16/09

As you can see in this slide, not maintaining fiscal effort can have serious implications for LEAs. Recognizing that many LEAs are experiencing budget shortfalls and budget cuts, this is a particularly critical time to be having discussions about M-O-E with the LEA leadership. If LEAs have questions, you can certainly contact your SEA.

In terms of audit implications, maintenance of fiscal effort should be monitored through internal fiscal controls, as well as through the A-133 auditing process. In audit findings where LEAs have been found to be in noncompliance with M-O-E requirements, as defined by OMB A-133 standards, a State would be required to pay back the amount by which the LEA failed to meet M-O-E, and these paybacks must be made out of non-Federal funds or Federal funds for which accountability to the Federal Government is not required.

In terms of grant implications, an LEA may not be eligible for IDEA grant award funds if it is unable to budget an amount equal to, or more, for the upcoming grant year than it EXPENDED in the most recent year for which expenditure data is available. We discussed this requirement earlier in the presentation and you can find it at section 300.203(b)(2).

PART B LEA MOE STATE STABILIZATION FUNDS

ARRA Guidance: QUESTION C-7

To what extent may a state or LEA use Stabilization funds to meet the MOE requirements of the IDEA, Part B program?

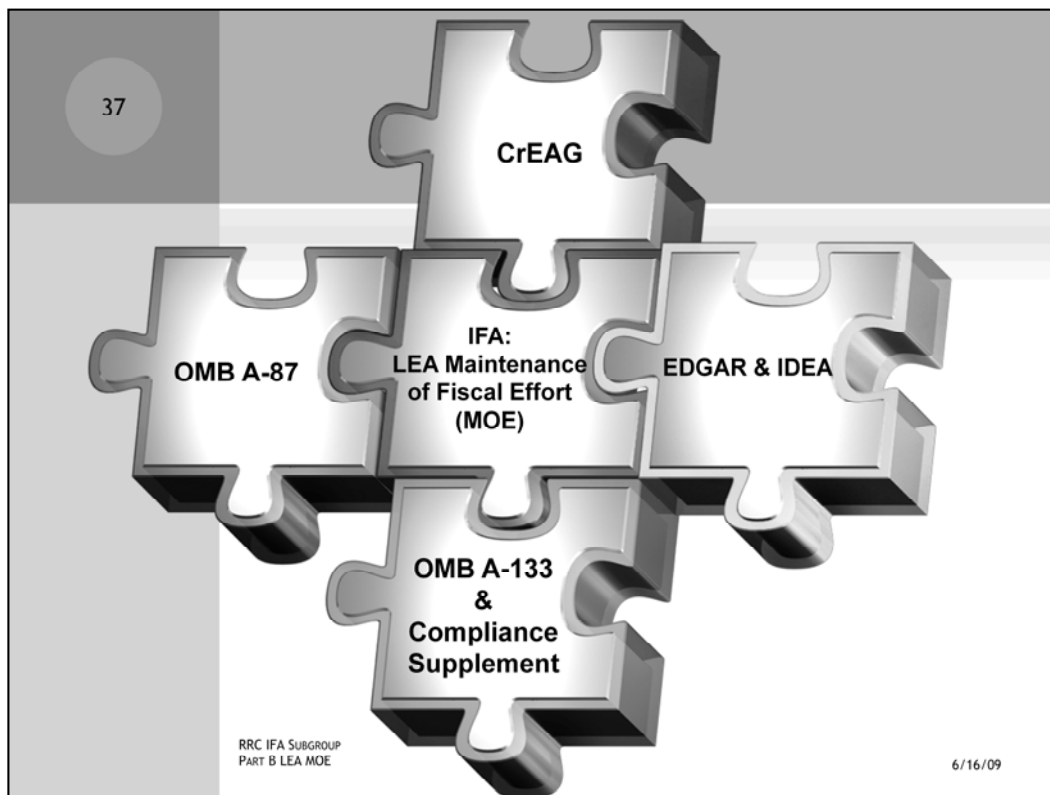
Upon prior approval from the Secretary, a State or LEA may treat Stabilization funds...as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any program that the Department administers.

RRC IFA SUBGROUP
PART B LEA MOE

6/16/09

Now, a final word about the A-R-R-A. Please refer to question C-7 of the A-R-R-A Guidance. In addition to the program-specific supplements, the Act makes available State Fiscal Stabilization Funds, or SFSF.

As you will see in our response to this question, stabilization funds generally can be treated as non-Federal funds for the purposes of M-O-E by States and LEAs; however, this can only occur if the criteria specified in the answer to Question C-7 of the ARRA guidance is met. Note in the response, that the Secretary will be concerned if a State reduces the proportion of total State revenues that are spent on education, and will take that into consideration in deciding whether to allow a State or LEA to treat Stabilization funds as non-Federal funds for M-O-E purposes of other Federal programs. The Secretary also will consider whether there were any exceptional or uncontrollable circumstances contributing to the year-to-year decreases, the extent of the decline in available financial resources, and any changes in demand for services. The Department intends to issue further guidance on the process for obtaining the Secretary's "prior approval" to use Stabilization funds to meet the M-O-E requirements of other programs.



We’ve tried to fit each piece of this puzzle together, as we did during the May call. It’s important to note that we’ve talked about M-O-E in terms of risk assessment and internal controls, and I hope you can see from the complexity of the discussion how important those factors are in dealing with the wide range of issues covered in this topic of M-O-E.

We’ve carefully walked through the regulations governing maintenance of effort, its peculiarities and variances, allowances and adjustments, from establishing where to begin to calculate M-O-E and how to determine when and where adjustments or allowances can be made.

We’ve talked about allowable costs for the “freed up” funds and how that differs from the allowable costs for Federal funds and we’ve discussed the implications under OMB Circular A-133 and the Compliance Supplement in the case of audit findings related to M-O-E.

Finally, we’ve talked about M-O-E from the standpoint of the CrEAG and how OSEP views both State-level and local-level MOE as part of our verification.

While getting a minimum amount of attention over the past several years, except during an A-133 audit, M-O-E has become a major factor under the A-R-R-A and, at least in the short term, will continue to generate interest and questions as States and LEAs grapple with these complicated requirements.