



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

March 20, 2009

The Honorable Mark Sanford
Governor of South Carolina
Columbia, SC 29211

Dear Governor Sanford:

Thank you for your letter to the President dated March 17, 2009. The President has asked me to respond on his behalf concerning your proposed use of State Fiscal Stabilization Fund monies to pay down your State's debt.

As you know, the American Recovery and Reinvestment Act of 2009 ("ARRA," or the "Recovery Act") was enacted in response to the severe economic downturn we are currently experiencing. The Recovery Act is designed to spur economic activity and private sector job growth; provide relief to individuals and families, as well as States and localities that are facing the prospect of cutting services and laying off teachers, police officers, and other vital public servants; and make critical investments in long-term economic growth, such as providing every child the chance for a world-class education.

The State Fiscal Stabilization Fund is a one-time appropriation in Title XIV of the Recovery Act. The Fund consists of approximately \$48.6 billion that the U.S. Department of Education will award to States to help address State and local budget shortfalls in order to minimize or avoid reductions in education and other essential services. As a condition of receiving stabilization funds, the Recovery Act requires States' assurances that they will advance essential education reform in four areas: (1) make progress toward rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students; (2) establish pre-K-to-college-and-career data systems that track longitudinal progress and foster continuous educational improvement; (3) make improvements in teacher effectiveness and in the equitable distribution of qualified teachers between high- and low-poverty schools; and (4) provide intensive support and effective interventions for the lowest-performing schools. In addition, States must assure that they will maintain State support for elementary, secondary, and higher education at certain levels for fiscal years 2009, 2010, and 2011. (ARRA § 14005(d).)

You have proposed using the Stabilization Fund monies for "paying down [your] state's sizable debt." However, the Act does not authorize the Department of Education to award Stabilization Fund monies to a State for that purpose.

With regard to the 81.8 percent of a State's allocation of Stabilization Fund monies that must be used "for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services" (ARRA § 14002(a)(1)), the Recovery Act further specifies that those Federal funds must be used "first" to restore State

support to local educational agencies pursuant to the State's funding formula and to public institutions of higher education. (ARRA § 14002(a)(2).) Any remaining Federal funds within that percentage allocation must be used to provide subgrants to local educational agencies on the basis of a statutory formula. (ARRA § 14002(a)(3).)

With regard to the remaining 18.2 percent of a State's allocation of Stabilization Fund monies, the Act specifies that a State must use the monies "for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building system." (ARRA § 14002(b)(1).) Although payment of public debt obligations is a necessary governmental expenditure, the Department of Education, in consultation with the Department of Justice and my office, has concluded that the paying down of past debt does not constitute the use of Federal funds for "government services" under the plain meaning of those words in the Act.

The language of the Recovery Act, as enacted by Congress, accordingly does not support your proposed use of the State Fiscal Stabilization Fund monies to pay down the State's debt.

Thank you again for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Orszag', written over the printed name.

Peter R. Orszag
Director