



THE DIRECTOR

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

March 31, 2009

The Honorable Lindsey O. Graham
United States Senator
Washington, DC 20510

Dear Senator Graham:

Thank you for your letter of March 18, 2009. The President and I share your concern that the money allocated to South Carolina under the State Fiscal Stabilization Fund of the American Recovery and Reinvestment Act of 2009 (ARRA) should be made available to the school children and others in need of essential services in South Carolina.

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. The bulk (81.8 percent) of a State's allocation of Stabilization Fund monies must be used "for the support of elementary, secondary, and postsecondary education," and the remaining 18.2 percent of a State's allocation of such funds must be used "for public safety and other government services." (ARRA § 14002.)

As you know, the Governor of South Carolina previously proposed using the State's allocation of Stabilization Fund monies for "paying down [your] state's sizable debt." However, as I have written to him, the Act does not authorize the Department of Education to award Stabilization Fund monies to a State for that purpose. As you note, Governor Sanford has since stated publicly that he may decline to accept the State's allocation of the Stabilization Fund, consisting of more than \$700 million.

You have inquired about whether the South Carolina State legislature may seek State Fiscal Stabilization Fund monies if the Governor does not, given the "significant ambiguities" in the ARRA and in how Section 1607 impacts Title XIV, in particular. You attached to your letter an analysis by the Congressional Research Service, which concluded, among other things, that under Title XIV, unlike other provisions of the Recovery Act, legislative action pursuant to Section 1607(b) would not suffice for a State to accept Stabilization Fund monies absent the Governor submitting the required application for Stabilization Fund monies under Section 14005 of the Recovery Act.

Administration lawyers have considered the various statutory provisions at issue and, based on their advice, we have determined that Section 1607(b) does allow the State legislature to make available to a State Recovery Act funds in a number of areas in the event that the Governor does not certify acceptance of Recovery Act funds. For example, States can access Medicaid funding, certain education funding (made available in Title VIII of the Recovery Act), and much transportation, health, infrastructure, and energy funding, among other areas, if the State legislature certifies – in lieu of the Governor’s certification – that the State will accept funds pursuant to Section 1607.

However, for a State to access its allocation of the State Fiscal Stabilization Fund, the Governor must submit an application to the Secretary of Education, and there currently is no provision in the Recovery Act for the State legislature to make such an application in lieu of the Governor for a State’s allocation of the State Fiscal Stabilization Fund.

Should Congress seek to further clarify its intention with regard to a legislature’s ability to apply for Stabilization Fund monies in lieu of a Governor, this Administration would be receptive to such Congressional clarification. As you know, the Stabilization Fund will provide needed revenues to States in order to allow them to maintain their support of elementary, secondary, and higher education in this period of budget shortfalls. It would be an unfortunate (and we believe unintended) policy outcome if the children of South Carolina were to be deprived of their share of federal stimulus dollars, which South Carolina citizens already have paid for, because the Governor chooses not to apply for available funds – especially in circumstances where the State legislature would be willing to make application on behalf of the State if it were allowed by statute to do so.

Thank you again for your letter, and for the opportunity to provide this clarification regarding the Administration’s implementation of the Recovery Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Orszag', written in a cursive style.

Peter R. Orszag
Director