

STATE OF COLORADO

OFFICE OF STATE PLANNING AND BUDGETING

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Bill Ritter Jr.
Governor

Todd Saliman
Director

April 10, 2009

The Honorable Moe Keller
Chairman, Joint Budget Committee
200 East 14th Avenue, Third Floor
Legislative Services Building
Denver, CO 80203

Dear Senator Keller:

On March 24, 2009 I sent you a letter describing the Governor's plan for using the American Reinvestment and Recovery Act of 2009 (ARRA) State Fiscal Stabilization Fund. The ARRA allocates \$760,242,539 to Colorado under the State Fiscal Stabilization Fund. Of that amount, 81.8%, \$621,878,397, goes to the Education Stabilization Fund and 18.2%, or \$138,364,142, goes to the Governor Services Fund. This memo is only in regards to the Education Stabilization Fund. We will submit our plan for use of the remaining 18.2% portion after it is fully developed.

Within two weeks of receipt of the State Stabilization Fund application, Colorado will receive 67% of its total Stabilization allocation (67% of both the State's total Education Stabilization Fund allocation and its total Government Services Fund allocation). Colorado will receive the remaining 33% of its total Stabilization allocation after the U.S. Department of Education approves the State's comprehensive plan for making progress in the four education reform areas.

On April 1, 2009, the U.S. Department of Education provided official guidance on the implementation of the State Fiscal Stabilization Fund dollars. Upon reviewing that guidance, OSPB determined that the plan that was submitted needed to be modified. Colorado is in a unique position because, due to Amendment 23, it cannot reduce the formulaic-based funding for K-12 education. That means our plan may be different from most other states. This plan is different than the plan submitted on March 24; this plan replaces that plan.

Stabilization Funds for Higher Education

Section 14002 (a) (2) (A) (ii) of the Act states "*to provide in each fiscal year 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of fiscal year 2008 or fiscal year 2009.*" The restoration ceiling, therefore, is the greater of fiscal year 2008 or fiscal year 2009. The State can maintain FY 2008-09 funding levels with the aid of federal stimulus dollars but cannot exceed this funding ceiling.

Colorado is allowed to reduce State fiscal years 2008-09, 2009-10, and 2010-11 down to FY 2005-06 levels, then is required to backfill 100% of these reductions up to the FY 2008-09 level. The federally required maintenance of effort floor, therefore, is the FY 2005-06 level of state support. This means that the State cannot reduce state support for institutions of higher education below the FY 2005-06 level (the funding floor). This is the higher education part of the federal Maintenance of Effort requirement for eligibility to all of the State Fiscal Stabilization Funds.

Since Colorado has already made some reductions to higher education (some in excess of the floor), the reductions will need to be adjusted to access the federal funds. That means that certain reductions can be continued, some will need to be restored, and different reductions applied. These adjustments are illustrated in Table 2. While most General Fund has already been reduced, and therefore does not exist and cannot be “freed up,” some General Fund is available due to additional necessary reductions in FY 2008-09. This General Fund can be transferred to the State Education Fund (SEF) to help keep the fund solvent.

Colorado should reduce the institutions of higher education down to FY 2005-06 funding levels, which would be approximately \$150.7 million less than the FY 2008-09 funding ceiling, for each year of the Act (FY 2008-09, FY 2009-10, and FY 2010). This is the maximum allowed by federal law. We would need to reduce higher education as illustrated in Table 1. These reductions would be fully restored by federal funds.

Table 1: Summary of Higher Education Reductions and “Restorations”

State Fiscal Year	2008-09	2009-10	2010-11
Current Higher Ed Reduction Replaced by Education Stabilization Fund*	\$30,000,000	\$150,676,055	\$150,676,055
Revised Higher Ed Reduction (maximum allowed under ARRA)	\$150,676,055	\$150,676,055	\$150,676,055
General Fund Relief for Transfer to the State Education Fund, to be used before September 2011	\$120,676,055	\$0	\$0
Total Amount Restored in Higher Education with Education Stabilization Funds	\$150,676,055	\$150,676,055	\$150,676,055
Dates of Restoration**	May 1, 2009	July 1, 2009	July 1, 2010
Date of Transfer to SEF	May 2009		

*Although the FY 2010-11 budget has not been set, it is assumed that the \$150 million already reduced in FY 09-10 will continue into FY 2010-11 and beyond. Also, adjustments are needed to achieve this exact reduction.

**Transfers of Education Stabilization Fund Federal Funds must be the first SEF or General Fund dollars spent and must be spent before October 2011.

In the context of the federal Education Stabilization Fund, cutting deeper in FY 2008-09 creates General Fund relief; thereby helping to prevent additional reductions in FY 2009-10. After restoring the reductions that have already been recommended, the remaining relief can be

transferred into the State Education Fund and be used for K-12 Education. As long as these are the first State Education Funds (SEF) funds used, and are spent by schools before October 2011, transferring these savings into the State Education Fund should be in compliance with federal guidelines.

To accomplish the above and receive the State Fiscal Stabilization Funds in the ARRA stimulus federal funds, the \$300 million reduction to higher education recently considered could not be implemented. Cutting this deeply will not allow Colorado to draw the federal funds because we would not meet the federally-required maintenance of effort. Reductions of \$102,530,783 have already been recommended, and proposed for federal funds backfill. These cuts need to be maintained. In addition, OSPB proposed and the Joint Budget Committee approved a \$50 million reduction that would be backfilled from the Governor Services Fund. To maximize the Education Stabilization Funds, we are asking you to reverse the funding source to be the Education Stabilization Fund and to modify the amount to \$48,145,272, so that the maximum federal “floor” is not exceeded. This will free up \$50 million in the Governor Services Fund that can be transferred to the State Education Fund. Table 2 illustrates the current and needed higher education reductions.

Table 2 assumes that FY 2010-11 has already been reduced by the required amount. OSPB has assumed that the reductions made in FY 2009-10 will continue into FY 2010-11, FY 2011-12, and beyond as base reductions. Therefore, there can be no other General Fund freed up as in FY 2008-09, because these reductions have already occurred.

Table 2: Higher Education Reductions to Maximize Education Stabilization Funds

	Current Reduction	New Reduction	Impact to Higher Education	Transfer General Fund Relief
FY 2008-09 Cut 1	\$30,000,000	\$30,000,000	None. Backfill with Federal Education Stabilization Funds	None, already reduced
FY 2008-09 Cut 2	\$0	\$120,676,055	None. Backfill with Education Stabilization Funds	To the State Education Fund
FY 2009-10 Cut 1: proposed by OSPB	\$52,530,781	\$52,530,781	None until FY 2011-12. Backfill with Education Stabilization Funds	None, already reduced
FY 2009-10 Cut 2: action by JBC	\$50,000,002	\$50,000,002	None until FY 2011-12. Backfill with Education Stabilization Funds	None, already reduced
FY 2009-10 Cut 3: OSPB Comeback	\$50,000,000	\$48,145,272	Fill with Education Stabilization Fund not Governor Services Fund. Colorado would be \$1,854,728 over the maximum and would lose all federal funds	Transfer Governor Services Fund relief to the State Education Fund
FY 2010-11 Cut 1	\$150,676,055	\$150,676,055	None until FY 2011-12. Backfill with Education Stabilization Funds	None, base already reduced
TOTAL	\$633,206,838	\$452,028,165		
Total Available		\$621,878,397		
Net Remaining		\$169,850,232		

This plan does not balance the State budget and requires that the \$300 million reduction to higher education that has been discussed not be pursued. If more than \$150.7 million is reduced from Higher Education from the original FY 2008-09 funding level in any of these years, Colorado will lose the entire \$760 million in federal funds (both the 82.8% share and 18.2% share).

This plan follows the current guidance and does not require a waiver. A waiver would only be approved by the U.S. Department of Education if Colorado's reductions kept funding for education in proportion to state revenues. Because Colorado is required to by the State Constitution to put funding into K-12 education, Colorado would not qualify for this waiver and cannot reduce higher education below FY 2005-06 levels.

Stabilization Funds for K-12 Education

The previous plan involved adding funding to the State Education Fund by using the formulaic increases. Although now the plan is revised to utilize most of the federal Education Stabilization Fund through Higher Education, Colorado cannot benefit from its full allotment simply through reducing and restoring Higher Education, because Colorado cannot reduce higher education below 2006 levels. After Higher Education utilizes \$452,028,165 of the Education Stabilization Fund, \$169,850,232 remains to be accessed.

We propose accessing this by using language in the Act. Section 14002 (a) (2) (A) (i) (II) states that the legislation will allow "*existing state formula increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in state equity and adequacy adjustments.*" Since Colorado cannot "reduce and restore" K-12 education due to Amendment 23, we can offset the State's obligation with the federal funds. In FY 2009-10, we estimate this amount will be \$152,061,455. Therefore the balance, \$17,788,777 is applied to the FY 2010-11.

Therefore, Colorado should transfer \$152,061,455 of the federal funds into the State Education Fund to cover the State's obligation for the K-12 formulaic increase for FY 2009-10, and transfer \$17,788,777 into the State Education Fund for the same purpose in FY 2010-11. These actions, coupled with those presented above for higher education, will result in Colorado accessing the full \$621,878,397.

To accomplish the offset, the federal funds would be drawn as soon as they are available, hopefully in May 2009, and deposited into the State Education Fund. As long as these funds are closely tracked and monitored, they can be transferred into the State Education Fund. The funds would remain there until require to pay the State obligations required in Amendment 23, for FY 2009-10 and FY 2010-11, as long as the funds are spent by September 2011. This is illustrated in Table 3.

Table 3: Summary of K-12 Education Impacts

State Fiscal Year	2008-09	2009-10	2010-11
Transfer into State Education Fund from Higher Education Reductions Backfilled with Federal Funds	\$120,676,055	\$0	\$0
Transfer from the federal Governor Services Fund (relieved from Higher Education budget balancing as discussed above)		\$50,000,000	
Transfer from the federal Education Stabilization Fund into the State Education Fund for K-12 Formulaic Increase*	\$0	\$152,061,455	\$17,788,777
Dates of Use*	July 1, 2009	July 1, 2009	July 1, 2010
Date of Transfer to the State Education Fund	May 2009	May 2009	May 2009

*621,878,397 – (\$150,676,055*3) = \$169,850,232 = \$152,061,455 + \$17,788,777

The Office of State Planning and Budgeting still withdraws the recommendation that was submitted to the Joint Budget Committee on January 27, 2009 to eliminate the incremental increase for Full Day Kindergarten factor (from 0.58% to 0.62%).

Below, OSPB has provided a projection for the State Education Fund, illustrating the impact of the proposal on Fund solvency.

State Education Fund (SEF) Solvency					
Fiscal Year	SEF Year End Balance	General Fund Percent Increase	Annual General Fund Increase	Cumulative General Fund Increases	Total General Fund Appropriation
2008-09	\$314,556,680	5.00%	\$139,527,343	\$139,527,343	\$2,930,074,211
2009-10	\$349,895,137	5.00%	\$146,503,711	\$286,031,054	\$3,076,577,922
2010-11	\$222,171,151	4.60%	\$141,522,584	\$427,553,638	\$3,218,100,506
2011-12	\$199,173,047	4.60%	\$148,032,623	\$575,586,262	\$3,366,133,130
2012-13	\$181,924,481	4.60%	\$154,842,124	\$730,428,386	\$3,520,975,254
2013-14	\$106,833,911	4.60%	\$161,964,862	\$892,393,247	\$3,682,940,115
2014-15	\$98,308,192	4.60%	\$169,415,245	\$1,061,808,493	\$3,852,355,361
2015-16	\$38,146,322	4.60%	\$177,208,347	\$1,239,016,839	\$4,029,563,707
2016-17	\$46,115,165	4.60%	\$185,359,931	\$1,424,376,770	\$4,214,923,638
2017-18	\$1,476,152	4.60%	\$193,886,487	\$1,618,263,257	\$4,408,810,125

State Education Fund balance above assumes \$170,676,055 from Higher Education refinancing and the impact of utilizing \$169,850,232 federal stabilization dollars to finance formulaic increases in K-12.

Closing

The above plan for use of the Stabilization Fund is based on the best available information and subject to change as the state’s economic condition changes and as new economic data becomes

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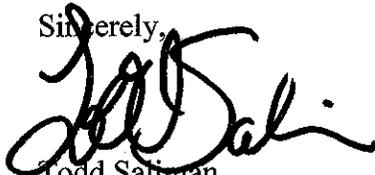
available. The Governor will submit this plan to the U.S. Department of Education for its approval, and implementation of the plan is contingent upon this approval.

The federal guidance explicitly and repeatedly emphasizes that although each year needs to be fully restored, the Governor can determine the timing in which the funds are obligated. This plan restores all higher education, and creates General Fund relief that can be used to fund K-12 education in the near future. The transfers can occur as soon as the funding is available, but must be obligated by the schools before October 2011.

Attached to this letter is a diagram showing the flow of funds in the proposal. This diagram portrays how \$340,526,287 will benefit the State Education Fund. In addition, the impact to the specific institutions of higher education is included.

It is important to repeat that support from the Stabilization Fund is not ongoing and does not represent a permanent solution to our state's budget challenges. We must continue to work together on the budget reductions recommended by the Governor, the Joint Budget Committee, and Legislature to ensure the State remains on firm financial footing in the years to come.

Sincerely,



Todd Salzman
Director

cc: Representative Jack Pommer, JBC, Vice-Chairman
Senator Abel Tapia, JBC
Senator Al White, JBC
Representative Mark Ferrandino, JBC
Representative Don Marostica, JBC
President Peter Groff
Speaker Terrance Carroll
Majority Leader Brandon Shaffer
Majority Leader Paul Weissmann
Minority Leader Josh Penry
Minority Leader Mike May
John Ziegler, JBC Staff Director
Jim Carpenter, Chief of Staff, Governor
Don Elliman, Director, Office of Economic Development
David Skaggs, Executive Director, Department of Higher Education
Dwight Jones, Commissioner, Department of Education
Lisa Esgar, Deputy Director, OSPB
David McDermott, State Controller

Impact of Education Stabilization Fund on Institutions of Higher Education

Institutions of Higher Education	Funding Ceiling	Funding Floor	State Fiscal Stabilization Funds
	Original FY 2008-09 General Fund*	Final FY 2005-06 General Fund**	
Adams State College	\$14,608,449	\$12,149,322	\$2,459,127
Mesa State College	\$24,005,607	\$19,888,392	\$4,117,215
Metropolitan State College of Denver	\$49,713,412	\$39,778,568	\$9,934,844
Western State College	\$12,173,017	\$9,892,147	\$2,280,870
Colorado State University System	\$146,891,512	\$113,620,028	\$33,271,484
Fort Lewis College	\$12,736,330	\$8,757,822	\$3,978,508
University of Colorado System	\$209,099,449	\$159,103,982	\$49,995,467
Colorado School of Mines	\$23,237,386	\$18,793,625	\$4,443,761
University of Northern Colorado	\$44,086,311	\$35,176,878	\$8,909,433
Community College System	\$142,320,783	\$117,020,778	\$25,300,005
Area Vocational Schools	\$11,202,546	\$8,505,528	\$2,697,018
Local District Junior Colleges	\$15,890,257	\$12,601,934	\$3,288,323
TOTALS	\$705,965,059	\$555,289,004	\$150,676,055
* Source: H.B. 08-1375, S.B. 08-79, & S.B. 08-166			
** Source: S.B. 05-209, S.B. 05-518, H.B. 06-1370, & H.B. 06-1385			

