REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, December 15, 2010

PRELIMINARY APPORTIONMENT ADVANCE FUND RELEASE OPTIONS

PURPOSE OF REPORT

To present options for making cash available for Charter School Facility Program (CSFP) preliminary apportionment advance fund releases and Critically Overcrowded Schools (COS) Environmental Hardship (EH) advance fund releases.

BACKGROUND

At its June 2009 meeting, the Board declared COS and CSFP Preliminary Apportionments inactive. Both programs allow for advance fund releases from the Preliminary Apportionment amount. Advance fund releases for the CSFP and COS EH are not considered separate apportionments in and of themselves; therefore, they are not placed on the Unfunded Approvals list. Since they are not Unfunded Approvals, there has been no mechanism to reserve bond sale proceeds for these requests and thus they have been ineligible to compete for funding. Even though these applications are not on the Unfunded Approvals list there is still a need for cash to move forward with the projects.

At its October 2010 meeting, the Board approved the allocation of $10 million in cash proceeds to the CSFP for purposes of advance fund releases for Proposition 55 and Proposition 1D filing round recipients. This resulted in a filing period in which 17 requests for consideration were submitted. After a lottery to determine who would receive the funding, two projects were approved in full and two others have been offered partial fund releases. However, this still leaves a need of over $178.3 million in CSFP advance fund releases. COS EH projects have never been allocated cash proceeds for advance fund releases. In total, there is a need of approximately $131.9 million in COS EH advance fund releases.

As of December 10, 2010, there is approximately $1.4 billion in bond sale proceeds available. Of this amount, approximately $116.5 million comes from taxable bonds which are eligible to be used for funding programs like the CSFP which contain a loan component.

AUTHORITY

SFP Regulation Section 1859.153.1(a) "...a district that meets the following may request an advance release of funds from a preliminary apportionment: (c) A district is eligible for an amount, not to exceed the Preliminary Apportionment, for environmental hardship site acquisition pursuant to Section 1859.75.1 after submittal of a Form SAB 50-08 pursuant to Section 1859.141."

SFP Regulation Section 1859.164.2 states the following regarding advance fund releases:

"A Charter School receiving a Preliminary Charter School Apportionment from the Board after July 2, 2003 may request an advance release of funds for either of the following:
(a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a)(1) through (9) or Section 1859.163.5(a) through (g).
(b) A separate advance release of funds for site acquisition once the requirements in Section 1859.81.1(a)(2) and (3) are met for an amount not to exceed the Preliminary Charter School Apportionment for site acquisition. The Board shall release to the Charter School an amount up to the Preliminary Charter School Apportionment determined in Section 1859.163.1(b).
Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial soundness status from the Authority. Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, the OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05."

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AUTHORITY (cont.)

Inactive Preliminary Apportionment....that no longer meets the meaning of a Preliminary Charter School Apportionment....and that the four-year period....is therefore suspended as of December 17, 2008."

Education Code Section 17070.35(a) states, "In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter...

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary..."

Budget Letter 10-09 requires that if there are insufficient bond proceeds, departments and agencies are responsible for placing projects in priority order that will be funded consistent with the priority order criteria outlined (including job creation). It also indicates that if bond proceeds are not managed efficiently, additional bonds may not be sold for the program.

STAFF COMMENTS

CSFP Advance Fund Releases

Many charter schools that participate in the CSFP do not have the resources to move school construction projects forward without an infusion of State funding through advance fund releases. Of the 77 projects awarded Preliminary Apportionments or Unfunded Preliminary Apportionments since the inception of the program, 61 accepted 100% upfront funding. The local matching share provided in the form of a 30 year lease from the State, while another seven projects requested a 30 year lease for a portion of their local matching share. The lack of available funding for advance design and site acquisition fund releases prevents most CSFP recipients from reaching a point where they can compete for full funding and effectively halts almost all activity within the program.

The options presented below would only reserve bond sale proceeds for the amount of a recipient's advance fund release(s), not for the entire Preliminary Apportionment or Unfunded Preliminary Apportionment. However, since the Board approves a CSFP full conversion in the same manner as a regular SFP new construction or modernization project, the restoration of advance fund releases would put CSFP projects back on level ground with other SFP projects in the competition for available bond sale proceeds for full fund release requests.

Since all of the conditions and mechanisms of the pre-conversion process that existed prior to the fiscal crisis would now be available to CSFP participants, all Preliminary Apportionments that receive a set-aside could be re-activated and their statutory timelines could resume. Once a project converts it will receive an Unfunded Approval.

In deciding how to disburse the recent bond sale proceeds, it should be noted that the State Treasurer's Office has advised the OPSC that any loan amount awarded as part of a fund release request can only be funded through taxable bonds. Loans account for $78.3 million of the $178.2 million in eligible advance fund release requests, and the most recent bond sale included $116.5 million in taxable bond sale proceeds.

*CSFP Option 1: Make cash available for all possible advance fund releases and re-activate all projects (**Total Need: $178,263,870**)*

The Board could choose to reserve bond sale proceeds for all of the possible advance design and site funds releases for the remaining projects in all three filing rounds. This would allow a recipient to request and receive

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STAFF COMMENTS (cont.)

an advance fund release at any time, allowing them to work toward conversion. Projects from the 2009 Filing Round would be converted from Unfunded Preliminary Apportionments to Preliminary Apportionments.

Pros:
- Completely restores all CSFP projects to an active status
- Allows projects to move forward ensuring that bonding authority does not remain idle
- Avoids the need to re-visit activation issue at a later date
- Takes advantage of the availability of taxable bonds

Cons:
- Less cash would be available for the current priority funding round

CSFP Option 2: Make cash available to cover only requests related to the $10 million recently made available by the Board and place remaining advance fund release amounts on the Unfunded Approvals List. Re-activate Preliminary Apportionments once advance fund releases for both site acquisition and design costs have been granted. ***(Total Need: $45,989,455)***

This option would currently provide cash to cover only those requests that were submitted during the filing period for the $10 million in cash proceeds made available by the Board at the October 2010 meeting. The requests submitted for this filing round total approximately $56 million. When offset by the $10 million already available, the need from the most recent bond sale would be approximately $46 million. All projects that have received both design and (if applicable) site acquisition advance fund releases could then be re-activated as of December 15, 2010, but all other projects from all three filing rounds would have to remain inactive. Providing additional cash to the lottery would have the same effect as making the cash available through a priority funding round because the lottery process required submittal of a fund release within a required timeline.

Moving forward, the advance fund release amounts could be placed on the Unfunded Approvals list using the original date of the Preliminary Apportionment in place of the SAB Unfunded Approval Date. By placing these amounts on the Unfunded Approvals List applicants could participate in future priority funding rounds with the same timelines for submitting a fund release request as all other applications. Those who received priority funding for advance fund releases in a future priority funding round would receive a new unfunded approval date for their advance fund release if they failed to submit the fund release request by the deadline established.

Pros:
- Satisfies the known immediate funding need within the CSFP
- Provides a plan for addressing these needs in future priority funding rounds
- Does not require large cash reserves that may remain unused for an undetermined length of time
- Restores 17 projects to an active status
- Allows projects to move forward ensuring that bonding authority does not remain idle
- Takes advantage of the availability of taxable bonds

Cons:
- May be inequitable as potential applicants were not aware that submitting a request could impact the disbursal of future bond sale proceeds
- The majority of CSFP projects would remain inactive
- Less cash would be available for the current priority funding round

CSFP Option 3: Make cash available for Proposition 55 (2005) and Proposition 1D (2008) advance fund release and re-activate ***(Total Need: $168,435,047)***

The Board could choose to reserve bond sale proceeds for all of the possible advance design and site fund releases for the remaining projects in these filing rounds. It would exclude the 2009 filing round so that the proceeds saved could be applied to the current priority funding round. This would allow a recipient in the earlier funding rounds to request and receive an advance fund release at any time, allowing them to work toward conversion.

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STAFF COMMENTS (cont.)

Pros:
- Restores to an active status all projects that have been inactive since the onset of the State's fiscal crisis
- Allows older projects to move forward ensuring that bonding authority does not remain idle
- Takes advantage of the availability of taxable bonds

Cons:
- Board would still need to set aside $9.8 million in future bond sale proceeds for the 2009 filing round recipients at a later date
- Preliminary Apportionments from the 2009 filing round would remain unfunded and inactive
- Less cash would be available for the current priority funding round

CSFP Option 4: Make cash available for only Proposition 55 advance fund releases and re-activate ***(Total Need: $40,335,148)***

This option would allow only Proposition 55 recipients to request and receive an advance fund release at any time, allowing them to work toward conversion. The Proposition 55 projects were declared inactive with 14 months left before the final conversion date. These projects are generally the furthest along and the closest to resolution via either conversion or rescission. They are also generally at the most critical juncture. Several of these are ready or nearly ready to submit an advance fund release request, pending the availability of cash.

Pros:
- Restores to an active status the projects with the earliest Preliminary Apportionment date
- Allows Proposition 55 projects to move forward ensuring that bonding authority does not remain idle
- Takes advantage of the availability of taxable bonds

Cons:
- Board would still need to set aside $137.9 million in future bond sale proceeds for other CSFP recipients at a later date
- The majority of CSFP projects would remain inactive
- Less cash would be available for the current priority funding round

CSFP Option 5: Set aside bond sale proceeds to cover only Proposition 1D and 2009 Filing Round advance fund releases and re-activate ***(Total Need: $137,928,722)***

Since Proposition 55 received the least amount of proceeds from the recent bond sale, the Board could choose to reserve bond sale proceeds for only the Proposition 1D and 2009 Filing Round, excluding the Proposition 55 projects

Pros:
- Restores to an active status all Proposition 47 and Proposition 1D projects
- Would allow bond sale proceeds from Proposition 55 to be used in other areas at the Board's discretion
- Allows projects to move forward ensuring that bonding authority does not remain idle
- Takes advantage of the availability of taxable bonds

Cons:
- May be inequitable as Proposition 55 projects have the earliest Preliminary Apportionment dates in the CSFP
- Board would still need to set aside $40.3 million in future bond sale proceeds for Proposition 55 recipients at a later date
- Proposition 55 projects would remain inactive
- Less cash would be available for the current priority funding round

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STAFF COMMENTS (cont.)

CSFP Option 6: Do not make cash available for the CSFP at this time ***(Total Need: $0)***

The Board could choose to not reserve any bond sale proceeds for the CSFP at this time in order to provide more cash for the current priority funding round.

Pros:

- Maximizes cash available for the current priority funding round

Cons:

- Board would still need to set aside $178.3 million in future bond sale proceeds for CSFP recipients at a later date
- All CSFP projects would remain inactive
- Does not take advantage of the availability of taxable bonds

COS EH advance site acquisition approvals

Under the COS program districts are eligible to request an advance fund release for site acquisition when excessive time for the remediation of hazardous waste is required. The advance site acquisition approvals are based on a cost estimate and are adjusted when the district submits a final adjusted grant funding application for the project. Currently, there are 12 projects with COS EH advance site acquisition approvals totaling approximately $131.9 million that have not received fund releases. All 12 projects are from the Los Angeles Unified School District (District) and each project received an advance COS EH site acquisition approval on or before July 31, 2009. Of the 12 projects, 10 have submitted a final adjusted grant application and have received an Unfunded Approval date; seven of the twelve projects will receive priority funding for the full grant amount as part of the October 2010 priority funding round, leaving a cash need for five COS EH advance site acquisition approvals. Each COS EH project approval received Proposition 55 bonding authority.

COS Option 1: Make cash available for advance COS EH site acquisition approvals and re-activate projects not yet on the Unfunded Approvals list ***(Total Need: $86,619,947)***

The Board could choose to reserve $86.6 million in Proposition 55 bond sale proceeds for each of the 5 COS EH site acquisition advanced approvals that are not receiving priority funding for the full grant amount.

Pros:

- The Board would be providing cash to applications that received approvals prior to 99% of the applications on the Unfunded Approvals list
- Restores an additional two projects to an active status
- The District will receive cash to get all 12 projects moving whereas not every COS project on the unfunded list will receive a priority funding apportionment
- Keeps with the intent of the COS program to provide cash for advance fund releases prior to full apportionment

Cons:

Less Proposition 55 cash would be available for the current priority funding round

*COS Option 2: Add COS EH site acquisition approvals to the Unfunded Approvals List for inclusion in priority funding rounds (including the October 2010 priority funding round)****(Total Need: $58,890,425)***

When a district requests a COS EH site acquisition approval, the OPSC sends an approval letter. The date of the approval letter would be used instead of the SAB Unfunded Approval Date to place these approvals on the Unfunded Approvals List. By adding these approvals to the Unfunded Approvals List, districts could participate in the October 2010 and future priority funding rounds. When Los Angeles Unified submitted its October 2010 priority funding round request, it requested consideration for nine of the twelve COS EH site acquisition approvals. Six of those nine projects will receive a full grant apportionment. The approval letter dates would place the three remaining COS EH site acquisition fund release requests early enough on the Unfunded Approvals List to be above the funding line, requiring $58,890,425. The other three approvals would be placed on the list for consideration in a future priority funding round. If the fund release requests are not submitted for a COS EH site acquisition approval by the priority funding round deadline, the COS EH site acquisition approvals will receive the new unfunded approval date required by the priority funding round.

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STAFF COMMENTS (cont.)

Those projects that have not already converted to a final apportionment could be re-activated once the cash is made available for the COS EH site acquisition approval.

Pros:

- This option would treat COS EH site acquisition approvals in an equal manner as other applications on the Unfunded Approvals List.
- Cash would be made available for approvals made prior to 99% of the applications on the Unfunded Approvals List
- Keeps with the intent of the COS program to provide cash for advance fund releases prior to full apportionment

Con:

- Less Proposition 55 cash would be available for the current priority funding round for full adjusted grant applications

*COS Option 3: Do not make cash available for advance COS EH site acquisition approvals (**Total Need: $0**)*

Providing advance fund releases for COS EH site acquisition approvals is not the only method available for these projects to receive funding, as some have been converted to full COS applications and been placed on the Unfunded Approvals list. However, based on the total amount of available cash for priority funding the District will not receive a priority funding apportionment for each COS adjusted grant application

Pros:

- This option would make more cash available to the current priority funding round

Cons:

- This option would be excluding a specific set of applications that received approvals prior to 99% of the applications on the Unfunded Approvals list
- Only a small portion of the District's COS applications would receive funding to move forward with the project

RECOMMENDATIONS

1. Approve CSFP option 1 to make cash available for all possible CSFP advance fund releases.
2. Approve COS option 1 to make cash available for all COS EH advance site acquisition approvals.

BOARD ACTION

In considering this Item, the Board approved Option #2, which would make cash available to cover only requests related to the $10 million recently made available by the Board and place remaining advance fund release amounts on the Unfunded Approvals List. The Board's approval would also reactivate Preliminary Apportionments once advance fund release for both site acquisition and design costs had been granted ($45,989,455). The approval provided the stipulation that staff would bring back options that could look at addressing the timeline issues to get charter schools on a faster timeframe based on a phase process, and having another opportunity to get into the funding queue (between 90 days and five years). Further, it was expressed that this action included the approval of Option #2 regarding the COS, which would add COS EH site acquisition approvals to the Unfunded Approvals List for inclusion in priority funding rounds (including the October 2010 priority funding round) [$58,890,425].

In addition to the above, the Board made available an additional $50 million for an additional filling round for charter schools with the same structure that the previous round ($10 million) was for site and plans and come back with a recommendation on the amount of time site and plans must be perfected (90 to 150 day timeline).