FISCAL CRISIS REGULATIONS - Overview

PURPOSE

To discuss existing fiscal crisis regulations.

DESCRIPTION

Due to the State's fiscal crisis in early 2009, the Board adopted emergency regulations that would allow the Board to make findings that certain apportionments are "inactive" to relieve school districts from meeting various statutory and/or regulatory requirements.

In May 2010, the Board took action suspending re-reviews for financial hardship application on the UAL. In December 2010 the Board approved an action to grant a six month extension to the "inactive" CSFP, COS and Financial Hardship Re-Review regulations, while allowing the remaining emergency regulations to sunset on January 1, 2011.

The fiscal crisis regulations in regard to the "inactive" apportionments for the CSFP, COS and re-review of financial hardship applications were discussed at the March 1, 2011 committee meeting. See Attachment C for further details.

ACTIONS REQUESTED OF THE SUBCOMMITTEE

Vote on recommendations to determine how to proceed with the existing fiscal crisis regulations.

OPTIONS

Broken out by topic.

CSFP

1. Confirm that PAs should be re-activated once design and site advance fund releases have been provided. See Attachment E for further details.
2. Place all converted CSFP applications on the UAL based on their Preliminary Apportionment (PA) date.
3. Reserve a specified dollar amount out of the next bond sale for the purpose of funding CSFP projects.
4. Take no action and continue to place CSFP conversion applications on the UAL based on their Unfunded Approval date.

COS

1. Take action to activate all COS PAs.
2. Allow the PAs to remain inactive until the fiscal crisis regulations sunset.
3. Extend the fiscal crisis regulations.

FINANCIAL HARDSHIP RE-REVIEW

1. Allow the financial hardship re-review regulations to sunset.
2. Extend the financial hardship re-review regulations.

Charter School Facility Program

DESCRIPTION

As of this meeting, there are 49 “inactive” charter school preliminary apportionments (PA) totaling $575,830,332.

At the December 2010 meeting, the Board placed all CSFP PAs for advance fund release that have not received an apportionment on the UAL. The Board also took action to re-activate the project timelines once advance fund releases for design and site acquisition had been granted (See Attachment E). Currently, all PA conversion applications are placed on the UAL in order of their Unfunded Approval date.

The Committee discussion on this topic focused on whether full conversion projects (those ready for construction) should be given priority on the UAL. The Department of Finance (DOF) suggested moving all CSFP conversion applications up on the UAL in direct accord to their PA date because charter schools have been disadvantaged since the priority funding mechanism went into place.

OPTIONS:

Option 1: Place all converted CSFP applications on the UAL based on their PA date.

The DOF has indicated that these projects have been disadvantaged due to lack of access to priority funding apportionments. One method for remedying this situation is to place all charter PA conversion applications on the UAL based on their PA date. This would place the charter applications toward the front of the UAL and allow them to compete for priority funding.

PROGRAM CHANGES NECESSARY
This can be accomplished through a Board action and no regulatory change would be necessary.

ISSUE AND CONCERN
This could disadvantage other districts as CSFP conversion applications submitted after district applications could be placed higher on the UAL.

Option 2: Reserve a specified dollar amount out of the next bond sale for the purpose of funding CSFP projects for both advance fund releases and full construction applications.

The Board could choose to reserve enough cash to cover some or all of the CSFP projects (advance fund releases and/or full construction applications) or select a specified amount for use in an additional CSFP advance fund release filing round. This would allow charter schools to move forward and convert their projects as many charter schools need a guarantee of funding in order to acquire bridge financing to get the projects moving forward.

PROGRAM CHANGES NECESSARY
This can be accomplished through a Board action and no regulatory change would be necessary.

ISSUES AND CONCERNS

- This could disadvantage districts as there would be less money available for a future priority funding round or other apportionment method instituted by the Board.
- Reserving funding for the CSFP could set a precedent for similar SFP programs.
- If cash is reserved, what should happen to unused cash? A mechanism may need to be developed to address unused cash.
- How long should the cash be reserved?

Option 3: Continue to place CSFP conversion application on the UAL based on their Unfunded Approval date.

Under this option there would be no change to the method currently used for providing Unfunded Approvals and Apportionments to CSFP applications.

PROGRAM CHANGES NECESSARY
No program changes required.

ISSUES AND CONCERNS

- This could disadvantage charter schools as many projects can not move forward without the guarantee of funding.

DESCRIPTION

At the October 2004 meeting, Proposition 55 COS PAs were made for 496 projects for a total of $1.8 Billion. As a result of the fiscal crisis, the Board took action on 344 projects and declared them Inactive PAs as of December 17, 2008. The projects were declared inactive to protect the statutory time limits on the PAs. Since that time, of the 344 projects declared inactive, 311 have met the requirements to convert to a Final Apportionment and have been placed on the Unfunded List, leaving 33 COS Inactive PAs. If reactivated, these COS PAs would have approximately ten months to convert or rescind their reservation of bond authority.

It has been over 5 years since COS applications received PAs. At the December 2010 Board meeting all remaining COS Environmental Hardship advance site acquisition approvals were placed at the top of the UAL just below the Facility Hardship applications (See Attachment E).

HOW IT WORKS

The Board has the option to remove the “inactive” status from all COS PAs and start their 10 month timeline. If the “inactive” status is not removed from the project the Board must make a determination concerning the fiscal crisis regulations. The regulations can be extended or the Board can allow the regulations to sunset. Prior to the sunset of the regulations, the Board needs to re-activate or they lose the ability to do so in the future.

At the March 1, 2011 committee meeting the members unanimously voted to endorse removing the “inactive” status from all COS PAs. Likewise, the DOF recommends reactivation of all COS PAs.

PROGRAM CHANGES NECESSARY

- The Board can remove the “inactive” status from all COS PAs through a Board Action and no regulatory change would be necessary.
- Regulation Section 1859.148.2 would need to be updated if the Board chose to extend the COS fiscal crisis regulations.

Financial Hardship Re-Review

DESCRIPTION

At the May 2010 meeting, the Board adopted Regulations to waive the unfunded financial hardship re-review requirement for projects added to the Unfunded List due to the State's inability to provide AB 55 loans. In December of 2010 the Board approved an action to grant a six-month extension to the Financial Hardship Re-Review regulations.

Although several unfunded approvals have been converted to apportionments with the funds made available through the first two priorities in funding rounds, as of this meeting, there are 78 projects with financial hardship status remaining on the unfunded list.

HOW IT WORKS

The Board has the option of extending the fiscal crisis regulations or allowing them to sunset.

Until the Board adopts a different cash management system, projects with financial hardship status will still remain on the UAL (Lack of AB 55 Loans) until bond sale proceeds become available, which may trigger a re-review if this regulation is allowed to sunset. Allowing this to occur may not be in keeping with the Board's original intent in approving this regulation change and may cause school districts to have to go through an additional review before accessing an apportionment. However, if the Board adopts the position that the fiscal "crisis" is in fact over and that methods of making apportionments have now changed, it may be appropriate to allow this regulation to sunset and consider a return to the original process.

There are currently 78 financial hardship applications from 44 districts on the UAL (Lack of AB 55 Loans). As of July 1, 2011, 57 projects from 36 of these districts would be past the 180 day timeline and require a re-review if the regulations are allowed to sunset. The numbers could be reduced if some of these financial hardship districts come in for financial hardship reviews for new SFP projects.

FINANCIAL HARDSHIP RE-REVIEWS

- Districts would retain their Financial Hardship status.
- The re-review would only request updated capital facility financials from the close of the last Financial Hardship review period to the current period.
- The reviews would be done in a timely manner to minimize any funding delays to the district.
- If the priorities in funding rounds were established at certain times of the year, then any districts that would need a re-review would be known ahead of time and could be completed in advance of any apportionments.
- A re-review that results in a district contributing additional funds to their project would mean additional funds becoming available for other districts and their projects currently on the unfunded list.

PROGRAM CHANGES NECESSARY

- No program changes are necessary if the Board allows the regulations to sunset.
- Regulation Section 1859.81(f) would need to be updated if the Board chose to extend the COS fiscal crisis regulations.

ISSUES AND CONCERNS

- Are financial hardship districts receiving a funding advantage through not undergoing a re-review?