

BUDGET LETTER

SUBJECT: GENERAL OBLIGATION BOND-FUNDED PROJECTS	NUMBER: 09-15
REFERENCES: BL 08-33, BL 09-02, BL 09-05, BL 09-06, BL 09-09	DATE ISSUED: May 6, 2009
	SUPERSEDES:

TO: Secretary of State
State Controller
State Treasurer
Superintendent of Public Instruction
Administrative Office of the Courts
Agency Secretaries
Office of the President, University of California
Chancellor's Office, California State University
Board of Governors, California Community Colleges

Department Directors
All GO Bond Financing Committees
California Institute for Regenerative Medicine
Departmental Budget Officers
Departmental Accounting Officers
Department of Finance Budget Staff

FROM: DEPARTMENT OF FINANCE

Budget Officers are requested to forward this Budget Letter (BL) to their Department Facilities, Construction, and Contract Managers.

On April 28, 2009, the State Treasurer's Office (STO) announced that proceeds were available from a bond sale of approximately \$6.85 billion, including \$5.2 billion of Build America Bonds which were authorized by the American Recovery and Reinvestment Act, and \$1.65 billion of taxable bonds. Based on estimated cash flow needs that departments provided to the STO, these bond proceeds are sufficient to pay the balance of outstanding obligations (i.e. "unpaid bills"), and pay for estimated project/grant cash needs going forward until a subsequent bond sale. In addition, bond funded projects/grants that had been committed or awarded that were suspended prior to completion of necessary agency approvals may restart. This affects nearly all general obligation bond funded projects/grants that had been suspended pursuant to BL 08-33 and by actions of the Pooled Money Investment Board (PMIB) on December 17, 2008.

The attachment to this budget letter outlines the proceeds available by bond act and department. These bond proceeds are intended to satisfy obligations made for projects already started or grant commitments already made. However, the condition of the Pooled Money Investment Account (PMIA) remains a concern, and the PMIB may not approve loans to meet additional project/grant cash flow needs. Accordingly, we anticipate that additional cash needs for projects/grants will be primarily provided by upfront proceeds of future general obligation bond sales. Agencies are still not authorized to start any new projects or make new grant awards. Further direction will be forthcoming with release of the May Revision.

The STO and State Controller's Office (SCO) will set up accounts to be used for disbursement of the bond proceeds. The disbursements from the Build America Bonds proceeds are not authorized until the STO determines that the projects/grants to be funded are eligible for tax exempt financing and the department executes a tax compliance certificate pertaining to the use of such funds. In addition to the standard IRS rules for tax-exempt bonds, the Build America Bonds may only be used for capital expenditures, and may not be used for administrative or other non-capital expenditures. Capital expenditures means a cost of a project/grant to acquire, construct, or improve property, including land, buildings, and equipment, or to adapt the property to a new or different use. The property must have a useful life longer than one year.

Capital expenditures also include design and planning costs related to the project/grant, as well as architectural, engineering, surveying, soil testing, environmental, and similar costs incurred in the process of acquiring, constructing, improving or adapting the property. Capital costs do not include operating expenses of the project or incidental or routine repair or maintenance of the project/grant, even if the repair or maintenance will have a useful life longer than one year. Please note that this definition of capital costs may differ from state law definitions of capital costs or capital expenditures. Finally, in accordance with IRS rules, the STO must determine that the average life of the bonds, which is 28 years, does not exceed 120 percent of the aggregate weighted average useful life of the projects/grants receiving funding from the Build America Bonds. This means it is possible that some projects with short useful lives that are otherwise eligible may not receive funding.

In addition, all normal administrative approvals and contract requirements still apply, such as having a fully executed agreement before payments are made and obtaining all applicable administrative approvals. The STO and the state's bond counsel are reviewing all tax certifications and state bond act requirements, and will work with each department on the eligibility of projects/grants. Should projects/grants not qualify (we expect non-qualifying projects to be minimal), the Department of Finance will work with departments on how to proceed. Contact Melinda Chan at the STO for any questions regarding tax compliance procedures or Build America Bond restrictions.

CLAIMS PAID FROM BOND PROCEEDS

When departments/agencies that use bond proceeds from the Build America Bonds submit claims or plans of financial adjustment (PFAs) to the SCO, they must attach a letter certifying that the amounts requested are for expenditures consistent with the tax compliance certificate filed with the STO. The letter should specify the amount requested, the cumulative amount requested (if multiple claims/PFAs have been submitted), and a statement signed by an appropriate accounting officer that *"the cumulative disbursements are consistent with the tax compliance certificate completed for the use of the bond proceeds and are within the amounts authorized by the Department of Finance for [Department name], and Account [GO Bond Proceeds Account Number] pursuant to BL 09-15."* **The SCO will return all claims or PFAs that lack the required certification to departments/agencies.**

Some departments/agencies are working with the STO to modify tax compliance certificates from the March and April bond sales to better manage the restrictions associated with the Build America Bonds. Bond administering agencies have the management flexibility to reallocate amounts within and between the bond sales, so long as the use of the funds is consistent with BL 09-09, this BL, and the department/agency works with the STO to amend the applicable tax compliance certificate if it was already executed.

For taxable bond proceeds, no tax compliance certificate is required. Departments should ensure that their claims are consistent with this BL and that total claims do not exceed the amounts identified in Attachment I.

In addition, departments/agencies must track all bond expenditures and maintain, and make available upon request, a list of all disbursements for both taxable and Build America Bonds bond proceeds.

PROJECT SUSPENSION AND FREEZES

Pursuant to BL 08-33 departments/agencies are still directed to make no new awards, allocations, assignments, or any other obligations of general obligation bond funds for new projects until further notice.

Project suspensions and freezes are still in effect for other projects, such as suspended lease-revenue projects. If projects continue with non-state funding sources, the state intends to eventually pay

the costs to which it has committed through a valid agreement; however, entities providing the non-state funding sources should be cautioned that the timing of such payment is uncertain and these projects will be considered for repayment in the same manner as if they had remained suspended. These suspensions will remain in effect until such time as they can be reevaluated in light of additional information regarding the condition of the PMIA, future PMIB actions, and future bond sales.

State entities are not permitted to substitute cash in special funds for previously approved AB 55 interim financing loans. Utilizing cash in other state special funds that are in the PMIA would not comply with BL 08-33 and the PMIB's actions.

Please contact your Finance budget analyst if you have questions.

/s/ Greg Rogers for

Karen Finn
Program Budget Manager