



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors

105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Community Services
Department No.: 057
For Agenda Of: May 24, 2022
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department George Chapjian, Community Services Director (805) 568-2467
Contact Info: Dinah Lockhart, Deputy Director (805) 568-3523
Laurie Baker, Grants Program Manager (805) 568-3521
SUBJECT: Adoption of an Authorizing Resolution accepting a Cash Flow Loan of State of California General Funds, in an amount up to \$31,460,126 from the State of California Housing and Community Development Department (State HCD), to ensure, as may be necessary, continued, uninterrupted processing and payment to eligible households that applied for Emergency Rental Assistance Program (ERAP) financial assistance on or before to March 31, 2022.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- A. Adopt and authorize the Chair to execute Resolution (Attachment A) for the application for a Cash-Flow Loan from the State of California in an amount not to exceed \$31,460,126 to ensure that every qualified applicant for Emergency Rental Assistance Program (ERAP) assistance that applied on or before March 31, 2022 receives assistance; and
- B. Authorize the County Executive Officer, or her designee, to execute a Master Standard Agreement (MSA) and related documentation, forms, and reports as may be requested and

required by State HCD in a form substantially similar to the attached MSA (Attachment B), subject to the approval and concurrence of the Auditor-Controller, County Counsel, and Risk Management; and

- C. Determine that the above recommended actions are not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(4), because they consist of the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; and are otherwise exempt pursuant to CEQA Guidelines Section 15269 as they consist of specific actions necessary to mitigate an emergency.

Summary Text:

The Community Services Department's Division of Housing and Community Development (HCD), is seeking the Board's adoption and execution of an Authorizing Resolution for a State HCD Cash-Flow Loan in an amount up to \$31,460,126, in the form of State of California General Funds, to allocate and expend as may be necessary for qualified households that applied for Emergency Rental Assistance on or before March 31, 2022.

Pursuant to State Senate Bill 115, and considering that Option B jurisdictions, including the County, administering ERA1 and ERA 2 funds may encounter future shortfalls in immediately available cash resources for ongoing, continued program implementation, the Cash-Flow Loan provides a financial bridge for payment of these costs.

This Cash-Flow Loan is predicated on repayment with allocated and re-allocated U.S. Treasury funds when made available and includes certain forgiveness provisions. The State will cover all qualified applications that the County cannot pay due to having exhausted available Federal funds. In the event that the County subsequently receives additional Federal funds after drawing on the State Cash Flow loan, and there are no additional ERAP applications, then those additional Federal funds will be turned over to the State to repay any draws taken by the County. If, however, the County does not receive additional Federal Funds prior to June 30, 2023, the unpaid balance of the Cash Flow Loan will be forgiven.

The terms and conditions of the loan are articulated more specifically in the Authorizing Resolution and MSA. The Authorizing Resolution refers to the State Rental Assistance (SRA) program; however, this encompasses ERA 1 and ERA 2 funds under the State's administration. The resolution also anticipates a future Round 3 allocation of ERA 2 funds to the County from the State.

Depending on when and in what amounts additional ERA 1 and ERA 2 Treasury funds become available to the County, the County may not need to draw against the State HCD's Cash Flow Loan. The Cash-Flow Loan enables the County to pay eligible expenses for every qualified applicant that applied for Emergency Rental Assistance on or before March 31, 2022.

Background:

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub.L. No. 116-260) (the “Act”) was signed into law. Section 501 of Division N of the Act established the federal Emergency Rental Assistance Program (“ERA1”), and authorized the direct allocation of emergency rental assistance funds to states, units of local government, tribal communities, and territories. ERA1 funds are intended to assist households that are unable to pay rent and utilities due to the COVID-19 pandemic.

On March 11, 2021, the American Rescue Plan Act of 2021 (Pub.L. No. 117-2) (“ARPA”) was signed into law. Section 3201 of Subtitle B of Title III of ARPA established the federal Emergency Rental Assistance Program (“ERA2”). ERA 2 authorized the direct allocation of emergency rental assistance funds to states, units of local government, territories, and high-need grantees, and intended to assist low-income households that have experienced financial hardship in paying rent, utilities, and other housing costs during the COVID-19 pandemic.

Passed on June 28, 2021, California Assembly Bill No. 832 (Chapter 27, Statutes of 2021) (“AB 832”) provides the legal basis for the State of California’s administration of its share of ERA1 and ERA2 funds, and authorizes State HCD to administer the State ERAP funds. AB 2179 extended the statewide Eviction Moratorium from March 31, 2022, to June 30, 2022, providing protections to tenants that submitted ERA applications on or before March 31, 2022. In this context, State HCD and the County have each closed their ERAP application portals on midnight, March 31, 2022 and no longer accept applications as of this effective date; however, State HCD and, the County’s administering entity, United Way of Southern Santa Barbara County (United Way), continue to process applications that had been submitted by March 31, 2022.

On February 9, 2022, California Senate Bill No. 115 (SB 115), the Budget Act of 2021 (Budget Act), was signed into law. Section 3 of the Budget Act establishes the allocation of funds for short-term Cash Flow Loans for eligible Option B jurisdictions participating in the Emergency Rental Assistance program: Santa Barbara County is an Option B jurisdiction. SB 115 authorizes Option B jurisdictions to request from State HCD a temporary Cash Flow Loan for ERAP expenditures for eligible households who applied for assistance on or before March 31, 2022.

A. SB 115: Conditions Precedent to Cash Flow Loan

As there is uncertainty as to the timing of receipt of future tranches of allocated and re-allocated Treasury ERA1 and ERA 2 funds, SB 115 considers this and provides the Cash-Flow Loan as an available resource to local jurisdictions who may have greater cash needs to cover all qualified applications than available financial resources. SB 115 provides that “If anticipated federal funding for the program described in this item is not received as anticipated by June 30, 2023...the Department of Finance shall forgive an amount up to the amount not covered by a federal allocation.”

As a precedent condition to requesting a State HCD Cash-Flow Loan, Santa Barbara County must have applied for reallocation funding from the U.S. Treasury in November 2021 and January 2022, when re-allocated Treasury funding was made available. The County applied for reallocated funds in each of these rounds, requesting \$37 million and \$31 million, respectively, and receiving minimal amounts of \$1,156,932 in the November Round 1 request, and \$1,045,455 in the January 2022 Round 2 request, for a total amount of \$2,202,387.

The maximum County Cash Flow Loan of \$31,460,126 was calculated based on the January 2022 Second Round Reallocation request submitted to Treasury, on a then estimated need of roughly \$2.8 million per month during the period of February through May of 2022, which are the months subject to the County's Second Round Reallocation request. This represents an average of 346 payments processed monthly, in an average amount of \$8,092 per assisted household. These amounts have been progressively trending upward in more recent months. At the time of the Second Round Reallocation request there were a total of 4,500 applications in the United Way application portal.

B. Conditions Pursuant to SB 115 Cash Flow Loan Acceptance

To meet ongoing eligibility for Cash Flow Loan proceeds, the County must continue to apply for any future U.S. Treasury Reallocation Funding, inclusive of ERA1 and ERA2. In terms of process, the County must first expend available funds, including Reallocated funds, from the U.S. Treasury and State ERA 2 allocated funds before drawing down on any Cash Flow Loan funds. In the event that the Cash Flow Loan amount(s) drawn by the County is more than the total amount of Treasury and State ERAP allocations, the State will forgive the loan balance.

The State anticipates that jurisdictions may receive future reallocations of federal ERA funds from the U.S. Treasury. If such reallocations exceed the County's total need to pay eligible households, then the County must use the excess funds to repay the State.

To apply for a Cash Flow Loan from the State, the County must provide a duly adopted resolution from the County's Board of Supervisors (Attachment A), documentation evidencing the average monthly number of households assisted and dollar amount of assistance provided by the County using ERA funds, and proof that the County applied for Reallocated funds from the U.S. Treasury. The State will provide an amount based on actual need and will provide the funds in tranches based on the number of approved applications that are ready to receive payments.

Current United Way financial projections indicate that the remaining balances of Treasury ERA 1 and 2 funds, and State Option B ERA 2 funds are sufficient to pay eligible expenses for approximately 1,890 households, which should be paid out by June 30, 2022. However, there are over 3,000 applications on the wait list for which there may be insufficient funds to pay qualified rent and utility arrearages and prevent possible eviction and homelessness.

Summary of ERA funding amounts to the County from federal and state sources.

U. S. Treasury (direct to County)		State HCD Treasury ERA Funds	
ERA 1	ERA 2	ERA 1	ERA 2
\$13,275,190 + \$2,202,387 in Reallocated Funds = \$15,477,578 Total	\$16,610,602	\$14,287,321	\$12,266,550
100% obligated	Applications are currently being processed by County, through United Way. When these ERA 2 Treasury funds are exhausted, the State's ERA 2 funds will be accessed. Deadline to apply was March 31, 2022.	State is administering these funds directly on behalf of the County and is continuing to process applications submitted through September 2021. (Option C)	County, through United Way, will directly administer these funds. (Option B). First Tranche of \$4,981,340 has been received from the State. The funds will be used to continue to provide assistance for qualified applicants who applied on or before March 31, 2022.

The chart below summarizes the ERA assistance provided from the U.S. Treasury as of 4/15/22 (includes applications approved and pending payment). The County has not yet accessed ERA 2 funds allocated from the State.

	Rent and Utilities Payments	No. Households Assisted	Avg. Asst./Household
ERA 1	\$13,624,697	1,607	\$8,748
ERA 2	\$6,966,355	49	\$10,734

C. Senate Bill 115: ERAP Cash Flow Loan Terms and Conditions

The State's Cash Flow Loan documents consist of the State's Standard Agreement template; five exhibits: Exhibit A-Authority, Purpose and Scope of Work; Exhibit B-Budget Detail and Payment Provisions; Exhibit C-State of California General Terms and Conditions (incorporated by reference); Exhibit D-General Terms and Conditions; and, Exhibit E-Special Terms and Conditions; and the Authorizing Resolution. The State's Promissory Note states this is a 0 (zero) percent interest rate loan. If anticipated federal funding for the local Rental Assistance Program is not received as anticipated by June 30, 2023, and the County is not in breach of the Standard Agreement, the State Department of Finance shall forgive an amount up to the amount not covered by the federal U.S. Treasury allocation.

Funds drawn from the Cash Flow Loan made by the State to the County will be distributed on a monthly basis and will account for the County's ability to process payments and distribute funds

to qualified households. The County must expend U.S. Treasury and State allocated funding first prior to drawing upon the Cash Flow Loan.

To apply for the Cash Flow loan, the State requires the County provide the adopted Resolution; documentation evidencing the average monthly number of households assisted and dollar assistance provided; proof that the County applied for reallocations in November 2021 and January 2022 from the U.S. Treasury; and any other documents or information requested by State HCD.

The terms of the Standard Agreement for the Cash Flow Loan, include but are not limited to:

- The Loan balance shall be forgiven if there are no Federal funds to repay the Loan.
- The County must continue to comply with the Federal ERA 2 program regulations when qualifying applications and making payments to beneficiaries.
- The State may cancel the Agreement, in whole or in part, if Congress enacts any restrictions, limitations, or conditions that impact the Agreement or the funding of the Agreement, or if cancellation is otherwise permitted under state contracting law. County must then return any undisbursed portion of its Loan to the State within thirty (30) calendar days from the date of the State's written notice of termination.
- If the State terminates the Agreement for any reason, the County must return all unexpended funds.
- The Promissory Note includes a provision that in enforcing the Note or related Loan documents, the County will be required to pay all costs and expenses, including reasonable attorney's fees.

Performance Measure:

United Way will income-qualify households served and document that they have qualifying annual household incomes at or below 80% of the area median income (AMI), as determined and published by HUD annually. United Way will report on the number of households served on a monthly basis and must retain documentation for 5 years following the close-out of the program. County HCD submits monthly and quarterly reports to the U.S. Treasury and will provide monthly and weekly reports to the State.

Fiscal and Facilities Impacts:

County general funds are used for a portion of HCD's overall administrative expenses; however, no County funds are being used to fund the Program.

Fiscal Analysis:

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General Fund					
State				\$	31,460,126.00
Federal					
Fees					
Other:					
Total	\$	-	\$	-	\$ 31,460,126.00

Key Contract Risks:

The U.S. Department of Treasury could require the County to repay federal funds expended for ineligible expenses with non-federal funds. The United Way of Southern Santa Barbara County (Subrecipient) administers the ERA program on the County’s behalf. The Subrecipient Agreement with United Way specifies eligible expenses, and County staff reviews each payment request submitted by the Subrecipient to ensure that expenses incurred were for eligible costs and that the program is otherwise being administered in accordance with Treasury regulatory requirements. The County also meets weekly with the United Way’s Executive Director and the Vice President of Strategic Partnerships to discuss ongoing implementation and emerging issues. U. S. Treasury ERA2 funds expire on September 30, 2025. County HCD completes reports to the U.S. Treasury monthly and quarterly on funding provided and number of households served. The County will need to retain all records for a period of five (5) years after the expiration of the Cash Flow Loan agreement period.

Staffing Impacts:

No new staffing impacts.

Special Instructions:

1. Please return one copy of the Minute Order to Carlos Jimenez at cjimenez@countyofsb.org.
2. Please return one executed copy of the Cash-Flow Loan Authorizing Resolution to Carlos Jimenez. Please call ext. 83529 for pick up.

Author: Carlos Jimenez, Senior Housing Specialist

Attachments:

- A: Cash Flow Loan Authorizing Resolution
- B: Draft Form of State HCD Cash Flow Loan Master Standard Agreement