



To: School District Superintendents and State Aid Designees (excluding NYC)

From: State Aid Office and Office of Facilities Planning

Subject: Implementation of Chapter 97 of the Laws of 2011 Regarding Building Aid for Capital Projects Approved by SED on or after July 1, 2011 (Does not apply to BOCES capital projects or Capital Outlay Exception Aid projects paid for out of budgetary appropriations; e.g., projects costing less than \$100,000, emergency, etc.)

Date: March 2012

I.

Review of Current Process: Projects Aided via Assumed Amortization and Approved by the Commissioner Before July 1, 2011

A.

Building Aid can start to flow for projects approved by the commissioner before July 1, 2011 18 months after the Commissioner's Approval Date (CAD) or the date on which notification that a construction contract was signed (SA-139) is received in the State Aid Office, whichever is later. Initial Building Aid payments are based on estimated project costs until a Final Cost Report (FCR) for the project is submitted and approved. Districts are able to update their estimated costs during the construction phase via submission of an FPMI to Facilities Planning and once that is approved, a revised SA-139 to the State Aid Office.

Note: The aid year in which Building Aid begins may be deferred if the SA-139 notification of contract signing was not received by the State Aid Office in time to be included in the appropriate frozen data file in the aid year prior to the aid year in which Building Aid would be scheduled to start based on the CAD + 18 months rule.

B.

After FCR approval, Building Aid is based on approved final costs. The State Aid Office processes *prior year revisions* to aid for all previous aid years if:

- Final costs exceed estimated costs, resulting in additional aid for prior years added to the prior year 'queue' and paid as funds become available;
- Final costs are lower than estimated costs, resulting in the deduction of overpayments for prior years from current year General Aid payments;
- An FCR is submitted after the statute of limitations has expired, resulting in the recoupment of all aid paid in prior years and the end of all Building Aid for the project unless the FCR

deadline was extended by the Office of Facilities Planning (OFP) due to litigation or other circumstances beyond district control.¹

No aspect of the process described above has changed for capital projects approved by the Office of Facilities Planning before July 1, 2011 except that **effective April 1, 2012 final cost reports for all capital projects, regardless of approval date, should be sent to the State Aid Office (attn: Building Aid Unit) instead of the Office of Facilities Planning.**

II.

Explanation of New Process: Projects Approved by the Commissioner on or after July 1, 2011

A.

Both the final Certification of Substantial Completion (CSC) and the FCR must be submitted to SED in order for Building Aid to start on a project.

Section 4 of Chapter 97 of the Laws of 2011 altered the Building Aid start date by amending NYSEL 3602 6.e.(3)(b). The earliest Building Aid can begin for projects approved by Facilities Planning on or after July 1, 2011 is 18 months after the Commissioner's Approval Date (CAD) or the date on which both the final CSC and a completed FCR are on file at the State Education Department, whichever is later.

Note: The aid year in which Building Aid begins may still be deferred if the SA-139 notification of contract signing was not received by the State Aid Office in time to be included in the November 15th frozen data file in the aid year prior to the aid year in which Building Aid would be scheduled to start based on the CAD + 18 months rule.

B.

The new Building Aid start date provisions will:

- Reduce or eliminate situations in which payment of aid based on under-estimated preliminary costs results in prior year supplemental aid that is not paid for many years;
- Reduces or eliminate situations in which the total amount of overpaid Building Aid for all prior years is immediately deducted from current aid year payments after the final cost report is processed.

In addition, a significant effect of the new provision is to eliminate entirely the possibility of the loss of all Building Aid on a project due to late submission of final cost reports:

There is no longer a deadline for final cost reports.

C.

The following items detail various aspects of the implementation of this change:

1. **Pursuant to 3602 6.e.(3)(b), the *final* CSC is required to be on file at SED for Building Aid to begin.** Districts should continue to submit partial CSCs to the Office of Facilities Planning in order to obtain Certificates of Occupancy (CO) for completed portions of a project; however, only the date the *final* CSC is received by the Office of Facilities Planning

¹ A provision to reduce the penalty for late FCR submission is included in the 2012-13 Executive Budget proposal. If enacted, the provision would limit the loss of Building Aid to the years during which the FCR was late.

will be used in determining when Building Aid for the project can start. Districts should submit the final CSC immediately after receiving certification from the architect/engineer. NOTE: New CSC forms will be available that clearly indicate whether the form should be used to report partial or final CSC information. To facilitate the transition, CSCs for all projects approved by Facilities Planning on or after 7/1/11 should be submitted on a new form labeled either "Partial" or "Final." Please continue to send all CSCs to Facilities Planning and to direct all questions regarding CSCs to Facilities Planning.

2. **In order to receive Building Aid districts must still submit an SA-139 Request for Project Data form for each project when a general construction contract has been signed.** The SA-139 is still necessary for Building Aid to begin. Building Aid will not begin on a project if the SA-139 was not received in time to be included in the November 15th frozen data file in the aid year prior to the aid year in which Building Aid would be scheduled to start based on the CAD + 18 month rule, *even if the final CSC and final cost report have been submitted.*
3. **New certification requirements for final cost reports: superintendent must certify.** Currently, certification consists only of an affidavit of the Clerk of the Board of Education. For all projects approved on or after 7/1/2011, the superintendent will be required to certify to:
 - a) Having reviewed the final cost report;
 - b) The accuracy and finality of the data in the report and
 - c) The availability of detailed construction and financial documentation, such as contracts, invoices, etc., for SED to review upon request.
4. **Incomplete FCRs will be returned to districts for completion.** Assuming all other requirements for aid to start are met, and the final CSC has been received, Building Aid will begin during the aid year in which the complete final cost report is received. A district may be notified that an incomplete final cost report must be resubmitted with requested modifications. In such instances, Building Aid will begin during the aid year in which the modified, complete final cost report is received.
5. **Building Aid is a separate calculation from other aids, but it is included with many other aids in districts' General Aid payments.** Each district has a General Aid payment schedule that determines how often and when payments are made throughout the aid year. Therefore, FCRs received early in the aid year may result in Building Aid for a project being included in earlier General Aid payments. FCRs received after December 1 of any aid year will first affect the June General Aid payment.
6. **On or about August 1st, a data file is frozen for the September General Aid payment following the close of the aid year.** Assuming all other requirements for aid to start are met, FCRs received on or before June 15th *will* be processed in time for the projects to generate Building Aid in that final September General Aid payment. FCRs received after June 15th *may* be processed in time to generate Building Aid in that final September General Aid payment.
7. The fact that there are several General Aid payments throughout an aid year means that the final cost report for a project need not be submitted exactly 18 months after the project was approved in order to start generating Building Aid in the earliest possible aid year. For example, the CSC and final cost report for a project approved by SED in March 2012 could

be submitted as late as June 15, 2014 and the project would still generate 2013-14 Building Aid. If construction work began in May 2012, the district would have approximately 24 months to complete the project. In this example, all of the 2013-14 Building Aid would be paid in the final General Aid payment of that aid year (September 2014) as long as the notification of contract signing (SA-139) was on file by October 15th 2012. The last section of this document contains several sample project timelines.

8. **FPFI forms² should not be submitted for *most* projects approved by SED on or after July 1, 2011,** and if submitted will not be processed. Because no Building Aid will be paid on estimated costs, for the majority of projects there is no longer any reason to submit FPFI forms to request OFP approval of cost adjustments, or to submit multiple SA-139 forms to update estimated project costs.
9. FPFI forms ***must still be submitted*** to Facilities Planning for projects approved by SED on or after July 1, 2011 to: a) obtain OFP approval as an EXCEL project when the original project was approved without EXCEL funding, or b) to change the EXCEL funding for a project already approved as EXCEL-eligible from receiving EXCEL in lieu of Building Aid instead of as a supplement to Building Aid and vice versa or c) to increase the amount of EXCEL funding for a project already approved with EXCEL as a portion of the funding. In all of these instances, after FPFI approval, the district must also submit to the State Aid Office an SA-139 form containing the revised information
10. **The SA-139 form is still the official application for EXCEL funding.** After a construction contract is signed and the SA-139 form is submitted, no updates to SA-139 forms should be submitted and none will be processed *except* when submitted to apply for EXCEL funding for a project for which the initial SA-139 contained no amount for EXCEL funding, or in a very limited number of cases, to change an EXCEL amount that has not yet been certified to the Dormitory Authority for payment.
11. There is no change in any reporting requirements or Building Aid start rules related to \$100,000, emergency or small city ‘capital exception projects’ which pursuant to NYSEL 3602 6-f generate aid in the year after a cash expense is incurred. Existing final cost report due dates still apply to these projects. This link contains more information on these ‘cash only’ projects: https://stateaid.nysed.gov/build/html_docs/capexc_aid.htm
12. Districts with projects eligible to receive Native American Building Aid pursuant to NYSEL 3602 6-a will continue to receive this apportionment after an SA-139 has been received because the new aid start provisions do not apply to this aid. However, the new provisions do apply to the regular Building Aid generated by such projects.
13. There is no change to the calculation or aid start timing of BOCES Aid for BOCES capital projects.

² FPFI forms currently are submitted to Facilities Planning for notification and approval of significant changes to project costs and/or funding sources that occurred since the project was originally approved.

III.

New Final Cost Report Review Process

A.

All final cost reports for projects approved on or after July 1, 2011 should be sent to the State Aid Office. Final cost reports will be processed by State Aid after a preliminary review so that aid can begin on projects otherwise eligible for aid to begin.

Please send Final Cost Reports to the State Aid Office via email to

buildingforms@nysed.gov

The State Aid Office and Office of Facilities Planning recognize that it is critical to process final cost reports quickly in order for districts to begin to receive Building Aid as early as permissible. Therefore, an expedited preliminary review of each final cost report will ensure that Building Aid starts during the aid year in which the report is submitted assuming all other requirements have been met. The expedited preliminary review also helps ensure that districts have the maximum possible amount of construction time.

Note: All questions regarding the content and completion of the final cost report should continue to be addressed to the Office of Facilities Planning.

B.

Following the preliminary review, Building Aid will begin for all projects meeting all other requirements unless the district is notified of a problem. After Building Aid has begun, the FCRs will be transferred to the Office of Facilities Planning for substantive review by an Office of Facilities Planning fiscal associate. In conjunction with this detailed review, districts may be asked to provide supplementary material documenting the reported final project costs, and therefore must be sure to maintain complete and easily accessible project documentation.

C.

The Office of Facilities Planning will make every effort to complete all detailed final cost report reviews during the aid year in which the final cost report is submitted / Building Aid starts.

By doing so, most if not all overpayments and 'queued' supplemental payments due to prior year revisions will be avoided. Districts can help avoid the potential for prior year revisions by submitting final cost reports earlier in the aid year rather than later when possible, and by responding promptly to any requests/inquiries from the Office of Facilities Planning.

D.

The final cost report is final. No changes from the district will be accepted once a final has been processed.

E.

Final Cost Reports with missing or incorrect EXCEL information will NOT be processed by SED. See **Final Cost Report Submission for EXCEL Projects** memo for further details:

https://stateaid.nysed.gov/build/html_docs/fcr_excel_posting_may2013.htm

IV.

What happens if circumstances entirely beyond the district's control prevent submission of the final CSC and/or the final cost report?

A.

On a case by case basis, the Director of Facilities Planning may authorize Early Aid Start for a project; i.e., aid starts before the FCR has been submitted, if:

1. At least 18 months has passed since SED project approval, all other requirements for aid to start have been met (including timely submission of the SA-139), but the district is not able to submit the final cost report for the project by June 15th of the aid year in which the project would otherwise first be eligible to generate Building Aid payments;
2. The district has submitted an Early Aid Start Request (EASR) form to Facilities Planning. The new form will require districts to provide detailed information as to why the final cost report cannot be completed as well as the date by which the FCR will be submitted³;
3. The district has submitted to Facilities Planning preliminary versions of the completed "Source of Funds" page (21) and "Summary of Expenditures" page (22) of the Final Cost Report form that indicates which project costs cannot be finalized;
4. The district has submitted all CSCs, partial or final, that have been received up to the time the Early Aid Start Request form is submitted;
5. OFP has approved the Early Aid Start Request Form;
6. The State Aid Office has received from Facilities Planning a copy of the approved Early Aid Start Request form and the preliminary versions of the completed "Source of Funds" FCR page (21) and "Summary of Expenditures" FCR page (22) and has entered the information necessary for aid to start and for the district-designated FCR due date to be monitored. (If these materials are received by State Aid from Facilities Planning by June 15th, and all other requirements for aid to start have been met, the project will begin generating aid in the current aid year.)

B.

In cases where early aid start has been authorized, aid paid prior to receipt of the FCR will be based on estimates of total final costs at the time the EASR form is submitted, *not* on contract costs previously submitted on the SA-139. This will help reduce the magnitude of overpayments and queued supplemental payments generated for prior years when the FCR is received.

C.

Under no circumstances will the Director of Facilities Planning authorize Early Aid Start in advance of the start of a construction project or at any time prior to 18 months after SED project approval.

D.

Submitted Early Aid Start Request forms must include the district's planned FCR submission date.

³ Criteria for approval of early aid start request for projects approved on or after July 1, 2011 will be similar to but not the same as criteria for waivers from final cost report due dates for projects approved before July 1, 2011. This guidance document will be amended when the criteria are finalized, and a list of circumstances that would qualify a project for early aid start will be included on the new Early Aid Start Request (EASR) form when it becomes available.

V.
Project Timelines

Several dates affect the aid year in which Building Aid will first be paid for projects approved by the Commissioner on or after July 1, 2011, including: Commissioner Approval date (CAD), General Construction contract sign date, SA-139 receipt date, *final* Certificate of Substantial Completion (CSC) receipt date and the Final Cost report (FCR) receipt date. In addition, the interaction of these dates with the timing of General Aid payments pursuant to NYS Education Law Section 3609-a will affect when aid is received during the aid year.

Following are four examples outlining when aid would begin under the specific circumstances noted. However, there are many more possible scenarios based on the mix of the various factors involved. Districts may wish to use the list of items used in these examples as a template to estimate when aid will start for their own projects. Please feel free to contact Caylyn Agans in the State Aid Office with any questions regarding the timing of Building Aid payment.

	PROJECT TIMELINE EXAMPLE 1	
1	Example description:	<ul style="list-style-type: none"> • FCR receipt date is latest date per line 6 below • 1st year of aid <i>not deferred</i> • First aid payment in September (last General Aid payment of the earliest possible first aid year)
2	Facilities Planning Project Approval: Commissioner Approval Date (CAD)	3/12/2012
3	A) CAD + 18 months (Earliest possible year aid can begin based on 18 months)	9/12/2013 (2013-14)
4	B) Final (not partial) CSC receipt date	5/1/2014
5	C) FCR receipt date	6/15/2014
6	D.) Year amortization should begin: Latest date of A,B or C	6/15/2014 (2013-14 aid year)
7	Calculation of number of assumed payments in 1 st & last years of aid (1 or 2 payments): 1 or 2 assumed debt service payments in the first year? If latest date (D) falls: July 1, XX- December 31, XX = 2 payments. January 1, YY -June 30, YY= 1 payment.	1 assumed aidable debt service payment
8	Contract Sign Date	7/1/2012
9	SA-139 receipt date (to determine if Year 1 of aid will be deferred) In order for project to generate aid in the year the amortization should begin (D), the SA-139 must be received in time to be included in the Nov. frozen data file in the aid year prior to the aid year in which the amortization should begin.	10/15/2012 (In time to be included in November 15, 2012 frozen data file)
10	Actual Aid start year (after Line 9 deferral check)	2013-14
11	Number of assumed payments in ACTUAL 1 st year of aid: (May be different than line 7 above)	1 assumed aidable debt service payment
12	Timing of General Aid payments in actual aid start year	September 2014 payment of 2013-14 General Aid (FCR was received in time to be included in the August 2014 frozen data file that is the basis for the last 2013-14 General Aid payment in Sept 2014)
13	Estimated maximum construction time: # of months between contract sign date (line 8) and CSC receipt date (line 4)	22 months

	PROJECT TIMELINE EXAMPLE 2	
1	Example description:	<ul style="list-style-type: none"> FCR receipt date is latest date per line 6 below 1st year of aid <i>not deferred</i> FCR received 2 weeks later than in Example 1; aid begins in aid year <i>after</i> earliest possible first aid year
2	Facilities Planning Project Approval: Commissioner Approval Date (CAD)	3/12/2012
3	A) CAD + 18 months (Earliest possible year aid can begin based on 18 months)	9/12/2013 (2013-14)
4	B) Final (not partial) CSC receipt date	5/1/2014
5	C) FCR receipt date	7/1/2014
6	D.) Year amortization should begin: Latest date of A,B or C	7/1/2014 (2014-15 aid year)
7	Calculation of number of assumed payments in 1 st & last years of aid (1 or 2 payments): 1 or 2 assumed debt service payments in the first year? If latest date (D) falls: July 1, XX- December 31, XX = 2 payments. January 1, YY -June 30, YY= 1 payment.	2 assumed aidable debt service payments
8	Contract Sign Date	7/1/2012
9	SA-139 receipt date (to determine if Year 1 of aid will be deferred) In order for project to generate aid in the year the amortization should begin (D), the SA-139 must be received in time to be included in the Nov. frozen data file in the aid year prior to the aid year in which the amortization should begin.	10/15/2012 (In time to be included in November 15, 2012 frozen data file)
10	Actual Aid start year (after Line 9 deferral check)	2014-15
11	Number of assumed payments in ACTUAL 1 st year of aid: (May be different than line 7 above)	2 assumed aidable debt service payments
12	Timing of General Aid payments in actual aid start year	Paid as part of 2014-15 General Aid throughout the 2014-15 aid year
13	Estimated maximum construction time: # of months between contract sign date (line 8) and CSC receipt date (line 4)	22 months

	PROJECT TIMELINE EXAMPLE 3	
1	Example description:	<ul style="list-style-type: none"> • FCR receipt date is latest date per line 6 below • 1st year of aid <i>deferred</i> • First aid paid in separate July 2014 payment of deferred Building Aid
2	Facilities Planning Project Approval: Commissioner Approval Date (CAD)	3/12/2012
3	A) CAD + 18 months (Earliest possible year aid can begin based on 18 months)	9/12/2013 (2013-14)
4	B) Final (not partial) CSC receipt date	2/1/2014
5	C) FCR receipt date	3/15/2014
6	D.) Year amortization should begin: Latest date of A,B or C	3/15/2014 (2013-14 aid year)
7	Calculation of number of assumed payments in 1 st & last years of aid (1 or 2 payments): 1 or 2 assumed debt service payments in the first year? If latest date (D) falls: July 1, XX- December 31, XX = 2 payments. January 1, YY -June 30, YY= 1 payment.	1 assumed aidable debt service payment
8	Contract Sign Date	7/1/2012
9	SA-139 receipt date (to determine if Year 1 of aid will be deferred) In order for project to generate aid in the year the amortization should begin (D), the SA-139 must be received in time to be included in the Nov. frozen data file in the aid year prior to the aid year in which the amortization should begin.	11/15/2012 (<i>Not</i> in time to be included in November 2012 frozen data file: receipt date of 10/15/12 would guarantee inclusion in November 15, 2012 data file)
10	Actual Aid start year (after Line 9 deferral check)	2014-15
11	Number of assumed payments in ACTUAL 1 st year of aid: (May be different than line 7 above)	3 assumed aidable debt service payments: One deferred 2013-14 payment and 2 scheduled 2014-15 payments
12	Timing of General Aid payments in actual aid start year	2014-15 aid on the deferred 2013-14 assumed payment will be paid in a separate July 2014 payment of deferred Building Aid; aid on the 2 scheduled 2014-15 assumed payments will be paid as part of General Aid throughout the 2014-15 aid year
13	Estimated maximum construction time: # of months between contract sign date (line 8) and CSC receipt date (line 4)	19 months

	PROJECT TIMELINE EXAMPLE 4	
1	Example description: All documentation received in time for aid on project to start in earliest possible aid year	<ul style="list-style-type: none"> FCR receipt date is latest date per line 6 below 1st year of aid <i>deferred</i> First aid paid as part of 2014-15 General Aid throughout the 2014-15 aid year; no July payment
2	Facilities Planning Project Approval: Commissioner Approval Date (CAD)	3/12/2012
3	A) CAD + 18 months (Earliest possible year aid can begin based on 18 months)	9/12/2013 (2013-14)
4	B) Final (not partial) CSC receipt date	5/1/2014
5	C) FCR receipt date	6/15/2014
6	D.) Year amortization should begin: Latest date of A,B or C	6/15/2014 (2013-14 aid year)
7	Calculation of number of assumed payments in 1 st & last years of aid (1 or 2 payments): 1 or 2 assumed debt service payments in the first year? If latest date (D) falls: July 1, XX- December 31, XX = 2 payments. January 1, YY -June 30, YY= 1 payment.	1 assumed aidable debt service payment
8	Contract Sign Date	7/1/2012
9	SA-139 receipt date (to determine if Year 1 of aid will be deferred) In order for project to generate aid in the year the amortization should begin (D), the SA-139 must be received in time to be included in the Nov. frozen data file in the aid year prior to the aid year in which the amortization should begin.	11/15/2012 (<i>Not</i> in time to be included in November 2012 frozen data file: receipt date of 10/15/12 would guarantee inclusion in November 15, 2012 data file)
10	Actual Aid start year (after Line 9 deferral check)	2014-15
11	Number of assumed payments in ACTUAL 1 st year of aid: (May be different than line 7 above)	3 assumed aidable debt service payments: one deferred 2013-14 payment and 2 scheduled 2014-15 payments
12	Timing of General Aid payments in actual aid start year	Aid on deferred 2013-14 assumed payment <i>and</i> on the 2 scheduled 2014-15 assumed payments will be paid as part of General Aid during the 2014-15 aid year: FCR receipt must be by mid-March 2014 to be included in the May frozen data file on which July deferred payments are based
13	Estimated maximum construction time: # of months between contract sign date (line 8) and CSC receipt date (line 4)	19 months