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GUIDANCE ON THE CALCULATION AND USE OF CUMULATIVE SURPLUS

This Guidance has been updated by the Education Collaborative Team, located in the Center for Educational Options. Originally issued in September 2015, the updated language reflects the new contact information for the Education Collaborative Team. All other content remains unchanged and addresses the following questions:

- What is the process for determining cumulative surplus and what are the limits?
- How should cumulative surplus funds be reflected in collaborative budgets?
- How and when can collaboratives use cumulative surplus funds to support an Other Post-Employment Benefits (OPEB) trust or a capital reserve fund?

This Guidance will address these specific questions and provide assistance to educational collaboratives on budget practices as they relate to the use of cumulative surplus. Both the authorizing law, [Massachusetts General Law c. 40 § 4E](#), and the accompanying regulations, [603 CMR 50.00](#), address cumulative surplus and collaborative budgeting practices. For additional information, consult the Department of Elementary and Secondary Education's (ESE) [Education Collaborative webpage](#).

Definitions

Anticipated Cumulative Surplus: The total amount of planned general fund surplus in the collaborative accounts, not yet certified through the annual independent audit.

Certified Cumulative Surplus: The total amount of general fund surplus in the collaborative accounts, as certified through an annual independent audit.

Member School District: A charter school board or school committee of a city, town, or regional school district that is a member of the educational collaborative.

The Determination of Cumulative Surplus

Cumulative surplus is derived from a collaborative's unexpended general funds over a number of fiscal years. Before determining surplus, it must be clear which funds are considered general funds and which are not.

General funds are for the most part, the funds that a collaborative receives from school districts for tuitions, dues, fees for service, and surcharges and any related accrued interest on these funds, as well as

indirect costs, allowed under certain grant awards, that are not earmarked under the conditions of the funding for a specific purpose, but may be used by the collaborative to support general collaborative programs and activities. Unexpended funds from these sources, and any other unexpended funds not specifically noted as excluded, must be included in the cumulative surplus determination.

Although the collaborative budget should reflect all planned financial activity, certain expenditures and revenues must be segregated in the collaborative budget. Specifically, grant funds, trust funds (foundations) and other funds that contain specific requirements/restrictions are not considered general funds, and balances in these accounts would not be included in the determination of surplus at the end of a fiscal year. The annual budget may also include deposits to an approved **capital reserve fund** or may include funds deposited in **trust** in accordance with M.G.L. c. 32B, § 20 (OPEB). These restricted funds may not be used for any other purpose and are not included in the determination of the collaborative's cumulative surplus. Likewise, funds **prepaid** to the collaborative by a school district for the next year's tuition or services for students (as is permitted by M.G.L. c. 40, § 4E) are earmarked in that next school year for a specific purpose and would not be counted as part of the surplus calculation of the previous year. All other funds to support the general purpose of the collaborative, and not restricted to a specific purpose by the condition of the donation, trust, foundation or grant are considered "general funds."

Unexpended general funds existing in the collaborative's budget at the end of a fiscal year constitute the current fiscal year's surplus. Cumulative surplus is derived from adding prior years' surplus funds to the current year's surplus funds. The amount of unexpended general funds in a given fiscal year's budget and the total amount of the collaborative's cumulative surplus cannot be determined with certainty until after an independent annual audit has been completed, following the close of the fiscal year.

Following the independent annual audit, the collaborative board is required to annually approve by majority vote the dollar amount designated as cumulative surplus. In taking such a vote, the collaborative board has certain limits as well as responsibilities, relative to the use of cumulative surplus.

Return and Retention of Cumulative Surplus Funds

Regulations require that collaborative agreements contain a limit on the amount of cumulative surplus that may be retained by the collaborative at the end of a fiscal year. In no case may the retained cumulative surplus exceed 25% of the audited year's general fund expenditures. For purposes of this calculation, the audited year's general fund expenditures shall include deposits to restricted accounts made during the audited year.

Cumulative surplus in excess of agreement limit: Cumulative surplus funds in excess of the agreement limit must be returned (or credited) to member districts consistent with the process outlined in the collaborative agreement. The collaborative board must vote on the amount of cumulative surplus funds in excess of the limit to be returned or credited to the member districts.

Cumulative surplus within the agreement limit: Cumulative surplus funds within the agreement limit may be retained by the collaborative. The collaborative board must also vote to either retain the cumulative surplus funds within the limit for the collaborative's use or return (or credit) all or some portion of the funds to the member districts. Determinations of the amount to be retained and the amounts to be returned may be made by a single vote of the collaborative board (or multiple votes). However, these

determinations must be done annually; collaborative boards may not vote to retain the allowable amount of cumulative surplus in future years, nor may agreements contain such language.

Method of returning cumulative surplus funds to member districts: The collaborative agreement must address how and under what conditions cumulative surplus funds may be returned to member districts or credited to support collaborative programs and services offered to member districts. The collaborative board, following a determination to return all or some of the cumulative surplus funds to member districts, must follow that process. Please consult your individual collaborative agreement.

Use of Cumulative Surplus in the Collaborative Budget

Cumulative surplus that is not returned to the member districts may be used by the collaborative board to support the current or subsequent year's budget. These funds can be used to offset expenses that might otherwise be borne by the member districts and/or to prepare for future obligations (OPEB, capital reserve¹).

Depending on the timing of the annual independent audit and the collaborative board's vote on the amount of cumulative surplus to be retained by the collaborative, the collaborative board may either amend its current year's budget to reflect the use of certified cumulative surplus as a revenue source or may plan to use anticipated cumulative surplus in the budget under consideration, but not yet approved. Since the results of the annual independent audit are not known until after the start of the fiscal year, the more likely scenario would be to amend the approved budget to reflect an increase based on the use of certified cumulative surplus funds. Cumulative surplus may be used to support any budgeted item, including: creating a new program or service, enhancing an existing program or service, supporting an unexpected expense, stabilizing tuitions, supporting a contingency line item or supporting a deposit into either an approved capital reserve fund or an approved OPEB trust.

All planned expenditures in a collaborative budget must have sufficient revenues to support the expenditures. If cumulative surplus is used to support planned expenditures in the collaborative budget or the amended budget, this information must be provided to the collaborative board and the member districts as part of the supplemental budget information.

In all cases, proposed budgets must be discussed at a public meeting of the collaborative board, with written advanced notice provided to member districts. The collaborative board must approve, by at least a majority vote, the collaborative budget for the upcoming fiscal year at a collaborative board meeting at least ten working days following the board meeting at which the budget was first proposed. Please note the following additional steps relative to the use of cumulative surplus in a planned budget.

1. **Using surplus as a revenue source in the budget under consideration:**

- The collaborative board may use anticipated cumulative surplus to support a planned fiscal year's budget. The budget and supplemental information must reflect the revenue source and the amount.

¹ Note that the collaborative board may establish a capital reserve fund to support costs associated with the acquisition, maintenance, and improvement of fixed assets, including real property, pursuant to a capital plan. The establishment of a capital reserve fund must be approved by two thirds of the member districts in accordance with the steps outlined in 603 CMR 50.07(10). Thus, a capital reserve fund must already be in existence before the meeting at which the surplus determinations are made.

- The collaborative board may use anticipated cumulative surplus to provide for a contingency line item in a fiscal year's budget for a reserve for extraordinary and unanticipated expenditures:
 - Unexpended amounts in a contingency line item will revert at the end of the fiscal year to surplus;
 - Expenditures may not be made directly from a contingency line item;
 - Funds in a contingency line item may only be used if the collaborative board approves a line item transfer (*see Budget Amendments*) to move funds to another line item established for a planned expenditure or deposit; and
 - Once funds are moved through a line item transfer from a contingency line item to a restricted line item (capital reserve or OPEB), they must remain in the restricted line item.

- The collaborative board may use anticipated cumulative surplus to support a deposit to a capital reserve fund or OPEB trust in a planned fiscal year's budget under the following conditions:
 - The budget must be presented and approved in accordance with law, regulations and the collaborative agreement;
 - The budget must include a line item that clearly indicates the purpose of the deposit (capital reserve or OPEB) and the amount;
 - The collaborative board must have a capital reserve fund or OPEB trust, approved in accordance with law and regulation;
 - Funds included in the budget for deposit to an OPEB trust or to a capital reserve fund may not be used for any other purpose; and
 - The collaborative board may not approve any amendments or line item changes to decrease the amount or alter the purpose of the deposit.

Collaborative boards entertaining the use of anticipated cumulative surplus (or any funds) to support deposits to an OPEB trust or capital reserve fund should be aware that a) once included in the budget for this purpose(s), these funds cannot be reinstated into your annual operating budget or revert to surplus, and b) the use of anticipated cumulative surplus cannot be predicted with confidence, until there is a final reconciliation of the true collaborative expenses; this will only occur when the annual independent audit is completed.

2. ***Using surplus as a revenue source to increase an approved budget:***

Budget Amendments: Once the budget is approved by the collaborative board, any changes to that budget may only be made through a budget amendment. The amendment must be approved by the collaborative board in accordance with the provisions of law, regulations and the collaborative agreement. Increases or decreases to the budget, line item changes or changes in the tuition or fee structure all constitute amendments and must be discussed and approved at an open meeting of the collaborative board.

- The collaborative board may use certified cumulative surplus or any other general funds to increase the budget under the following conditions:
 - The budget amendment must be presented to the collaborative board at a public meeting, with written advanced notice provided to the chairs of the member districts at least 48 hours in advance of the collaborative board meeting;
 - The budget must include a line item that clearly indicates the purpose of the deposit (support general programs, capital reserve or OPEB) and the amount; and

- o All budget amendments must be approved by the collaborative board by at least a majority vote.

Collaborative boards entertaining a budget amendment to use surplus or any other general funds to increase their budget to support a deposit to an OPEB trust or capital reserve fund should be aware that once these funds are earmarked for such a deposit, they cannot be reinstated into the annual operating budget or revert to surplus.

3. Line item transfers that do not represent an increase in the overall budget:

Throughout a fiscal year, the collaborative may recognize that a particular program or line item may need to be increased or decreased to more accurately represent actual projected spending. The surplus may remain reflected in the individual line item or programs from which it is derived, and, assuming the excess revenue remains for the entire fiscal year, that amount will be reflected as part of the current year's surplus at the end of the fiscal year. Alternatively, the collaborative board may move anticipated cumulative surplus funds from a contingency line item to create a new line item or supplement an existing line item or may move funds from an over budgeted line item to an under budgeted line item through a line item transfer. A line item transfer is a budget amendment that must be approved by the collaborative board. In approving a budget amendment, the collaborative should consult its own collaborative agreement relative to any required process or notifications. Such a budget amendment must be discussed and approved at an open meeting of the collaborative board.

A line item transfer (budget amendment) that moves funds to a category not included in the cumulative surplus determination (e.g., capital reserve, OPEB trust) must be submitted in writing to the chairs of the member districts at least 48 hours in advance of a final vote, as such a transfer would result in the funds not being considered in that year's cumulative surplus determination.

Allowable Waivers

Collaborative Regulations permit the Commissioner of ESE to waive the applicability of provisions of 603 CMR 50.00. Written requests for waivers relative to surplus determinations should be filed with the [Education Collaborative Team](#).