

ELI ILF Webinar Series: Advance Credits

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ILF Reforms for Equivalency

- The rule retains ILF mitigation but with significant reforms:
 - Advance planning requirement
 - *Cap on “advance” credits*
 - Financial accounting requirements
 - Similar admin/ecological standards as banks
 - Same public/IRT review process as banks



Compliance with Rule

- ▶ Deadline for compliance – June 9, 2010
 - ILFs approved before June 9, 2008 may continue to operate under that instrument for 2 years
- ▶ An additional 3 years is possible for “*good cause*”
- ▶ ILF instruments approved or modified on or after June 9, 2008 must comply with regs



Status of Compliance (as of April 2013)

47 active pre-rule ILF programs:

- **8 of those approved under rule**
- 7 not seeking reauthorization
- ***32 under extensions***

▶ **11 new ILFs approved**

▶ 20+ pending ILF proposals



Overview: ILF Instrument Development

- Draft prospectus
- Prospectus
- Draft instrument
- Final instrument



Prospectus includes:

33 CFR 332.8(d)(2):

- Objectives
- How ILF will be established and operated
- Proposed service area
- Need and technical feasibility
- Ownership arrangements
- Qualifications
- ***Compensation planning framework***
- ***Description of ILF program account***



ILF Sponsors

- Eligibility “governmental or non-profit natural resources management entity” [332.2]
 - ▶ “...operate explicitly in the public interest, rather than to serve the needs of investors...”
[FR 73, 19614]
- Qualifications of the sponsor to successfully complete the type(s) of mitigation project(s) proposed, including past experience [332.8(d)(2)(vi)]



ILF Instrument Includes:

33 CFR 332.8(d)(6):

- Service area(s)
- Accounting procedures
- Provision stating legal responsibility
- Default and closure provisions
- Reporting protocols
- ***Compensation planning framework***
- ***Advance credits***
- ***Method for determining fees and credits***
- ***Description of in-lieu fee program account***
- Any other information required by DE



ILF Instrument: Service Area

33 CFR 332.8(d)(6)(ii)(A)

Service area: Geographic area in which the ILF program is authorized to provide mitigation

ILF programs may have multiple service areas, but impacts & mitigation must be accounted for by *service area*.



ILF Program Account

33 CFR 332.8(i)

- Funds for mitigation projects only
- Interest income remains in account
- Administrative costs – small %
- Corps responsible for project approval
- Annual reports
 - ▶ Fees collected, funds expended
 - ▶ List of permits using ILF program
 - ▶ Credit balances, by service area
- Program audit



Legal Responsibility

33 CFR 332.8(d)(6)(ii)(C)

- Instrument must state legal responsibility for mitigation is transferred to sponsor once a permittee secures credits
 - ▶ Identify parties responsible for implementation, performance, and long-term management of projects
 - ▶ Documentation of transfer of responsibility to DE



Compensation Planning Framework

- Components:
 - ▶ Service area (watershed-based)
 - ▶ Analysis of historic aquatic resource loss and current condition
 - ▶ Threats to aquatic resources
 - ▶ How threats are addressed
 - ▶ Aquatic resource goals and objectives
 - ▶ Prioritize mitigation projects
 - ▶ Use of preservation
 - ▶ Description of stakeholder involvement
 - ▶ Long-term protection and management
 - ▶ Evaluation and reporting



ILF Program Advance Credits

33 CFR 332.8(d)(6)(iv)(B)

- Approved instrument required
- Limited number (cap) specified for each service area in the instrument.
- Available for sale prior to being fulfilled in accordance with mitigation project plan.
- As projects produce **released** credits, **advance** credits are fulfilled and available again.



ILF project implementation

- Land acquisition and improvements must be initiated by **3rd growing season** after first advance credit is **secured** (debited) by permittee



ILF Program Advance Credits

33 CFR 332.8(n)

- Number of advance credits based on:
 - Compensation planning framework
 - **Service area size**
 - Resources available to program
 - **Sponsor's past project performance**
 - Financing needed for mitigation projects
 - **Other considerations**



Possible approaches to determine the number of advance credits in a service area?

- No advance credits
- Large number advance credits
- % of **all** permitted impacts over time period
- % of **all** required mitigation over time period
- Credits needed to offset 3-5 years of impacts
- More credits for experienced/reliable sponsor than inexperienced
- Existing ILFs: % of approved but not implemented projects
- Others?



Examples of Approaches to Advance Credits

- VT ILF (DU)
- Living River Restoration Trust (VA)
- La Paz County ILF (AZ)



Razorback Sucker. Photo by J. Brooks, Arizona Department of Game and Fish



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NC EEP Advance Credits Calculation

- Based on EEP projected mitigation needs for next 5 years
- Calculated by River Basin and 8-digit CU
 - ▶ NCDOT: 5-year NCDOT forecast of mitigation need (TIP and other transportation plans)
 - ▶ MOU ILF (other ILF customers): Annual average of payments over last 7 years



NC EEP Advance Credit Allocation Cape Fear Basin

| River Basin | Cataloging Unit | Advance Stream Credits | Advance Wetland Credits |
|-------------|-----------------|------------------------|-------------------------|
| Cape Fear | TOTAL: | 170,000 | 635 |
| | 03030002 | 62,841 | 112 |
| | 03030003 | 29,571 | 8 |
| | 03030004 | 53,717 | 125 |
| | 03030005 | 13,458 | 368 |
| | 03030006 | 9,723 | 4 |
| | 03030007 | 691 | 18 |

NC EEP Advance Credits Calculation Cape Fear Basin

Cape Fear Calculation for Stream Mitigation



NCDOT 5 Year Forecast: 101,062

MOU ILF 7 yr Average * 5: 64,835

Subtotal: **165,897**

Rounded to nearest 5000

Grand Total Cape Fear Basin: 170,000



Existing ILFs may have released credits

- **AZ GFD** – Standing proposals
- **VARTF** - Exceeded mitigation obligations in some service areas

Credits meeting performance standards

- Credits needed for program obligations

Released credits



Credit Release Schedule

- Specified in each project site's mitigation plan
- Tied to performance-based milestones
- Reserve **significant** share of credits for release only after attainment of performance standards
- Credit release approval by Corps in consultation with IRT
- Can mirror schedules for bank sites



Initial Credit Release

% of total expected ILF *project* credits once:

1. Project plan approved
2. ILF site is secured
3. Financial assurances or contingency funding
4. Any other requirements set by Corps

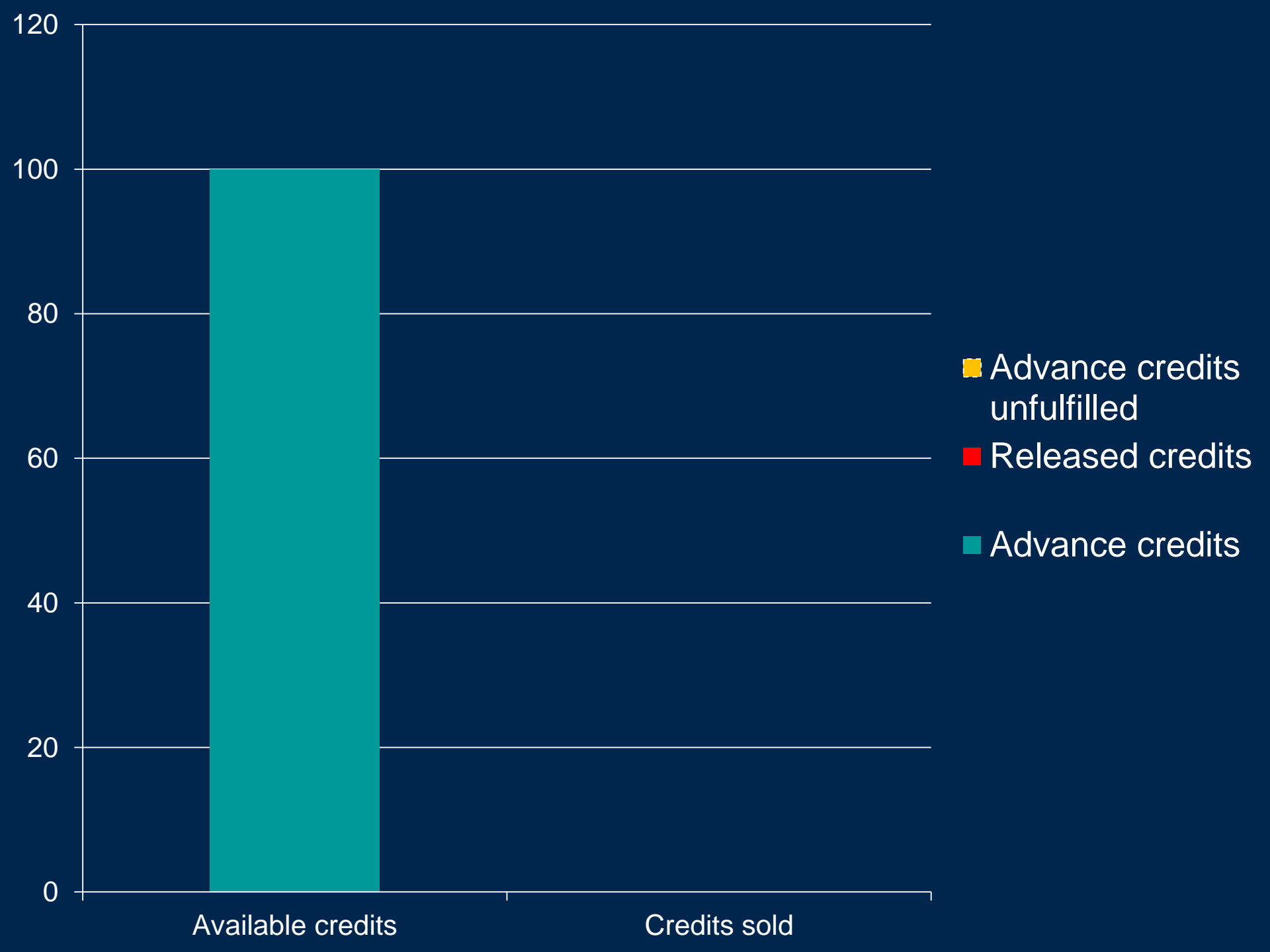


Wilmington District Credit Release Schedule for Wetlands (non-forested)

| | |
|--|-----|
| Instrument approved; Mitigation plan approved Site secured; Financial assurances Record long term mechanism (e.g., easement) | 15% |
| Initial physical & bio improvements | 15% |
| Meets success criteria | 10% |
| Meets success criteria | 15% |
| Meets success criteria | 20% |
| Meets success criteria | 10% |
| Meets success criteria (YR 5 Monitoring) | 15% |

Example of Debiting and Releasing Advance Credits

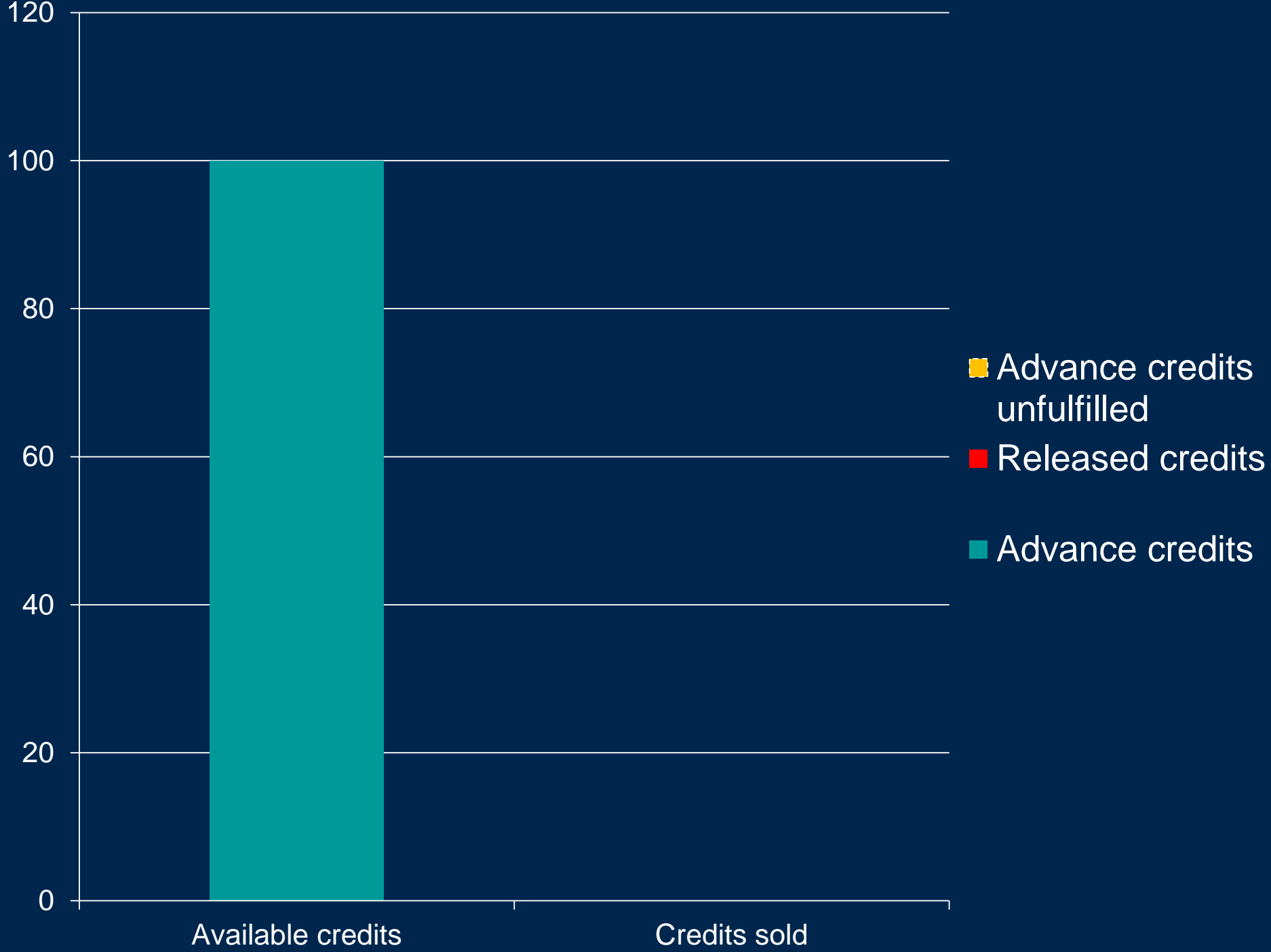


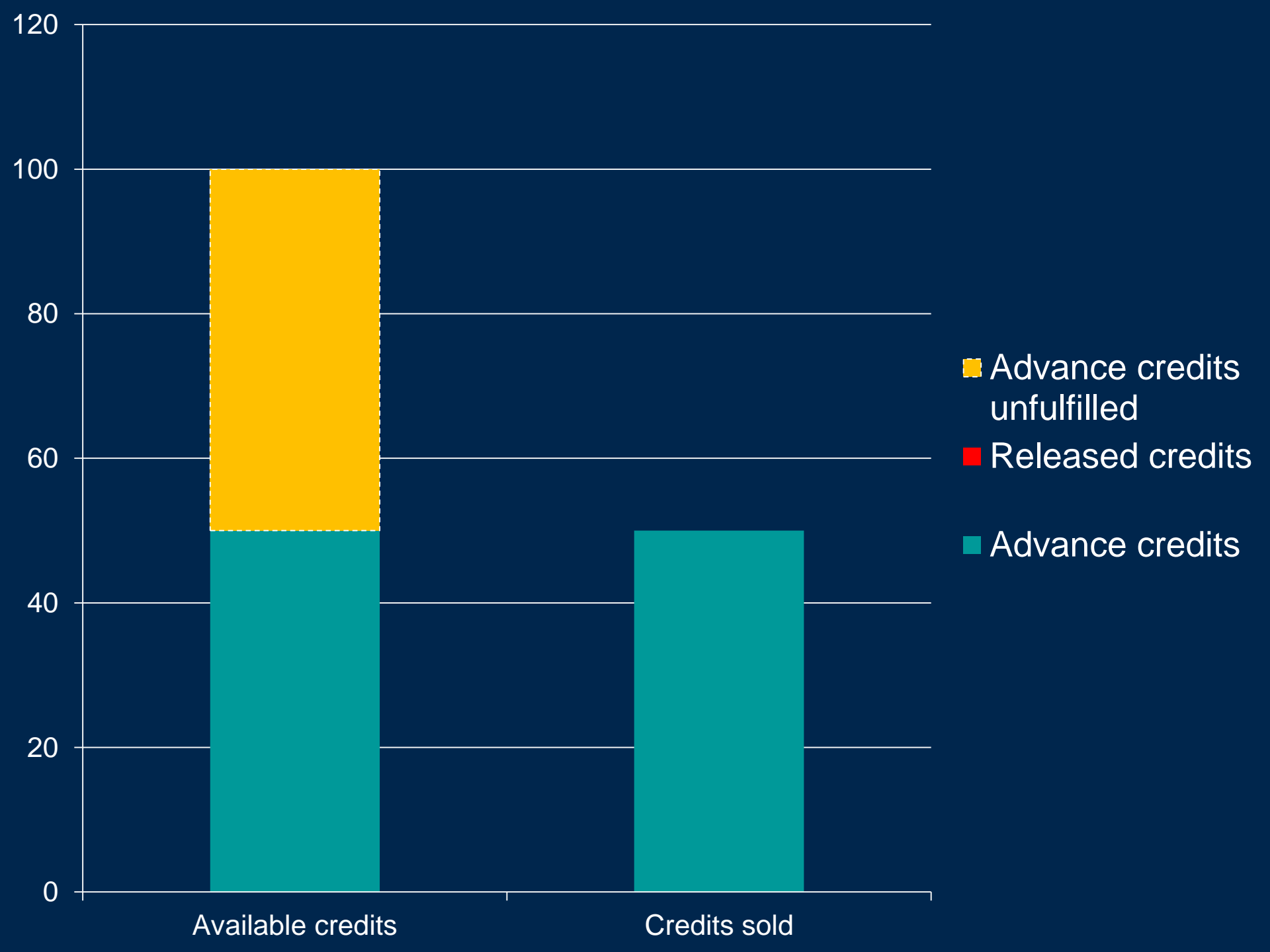


In the first year of ILF operation
50 advance credits are sold



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1 year after first debit occurs

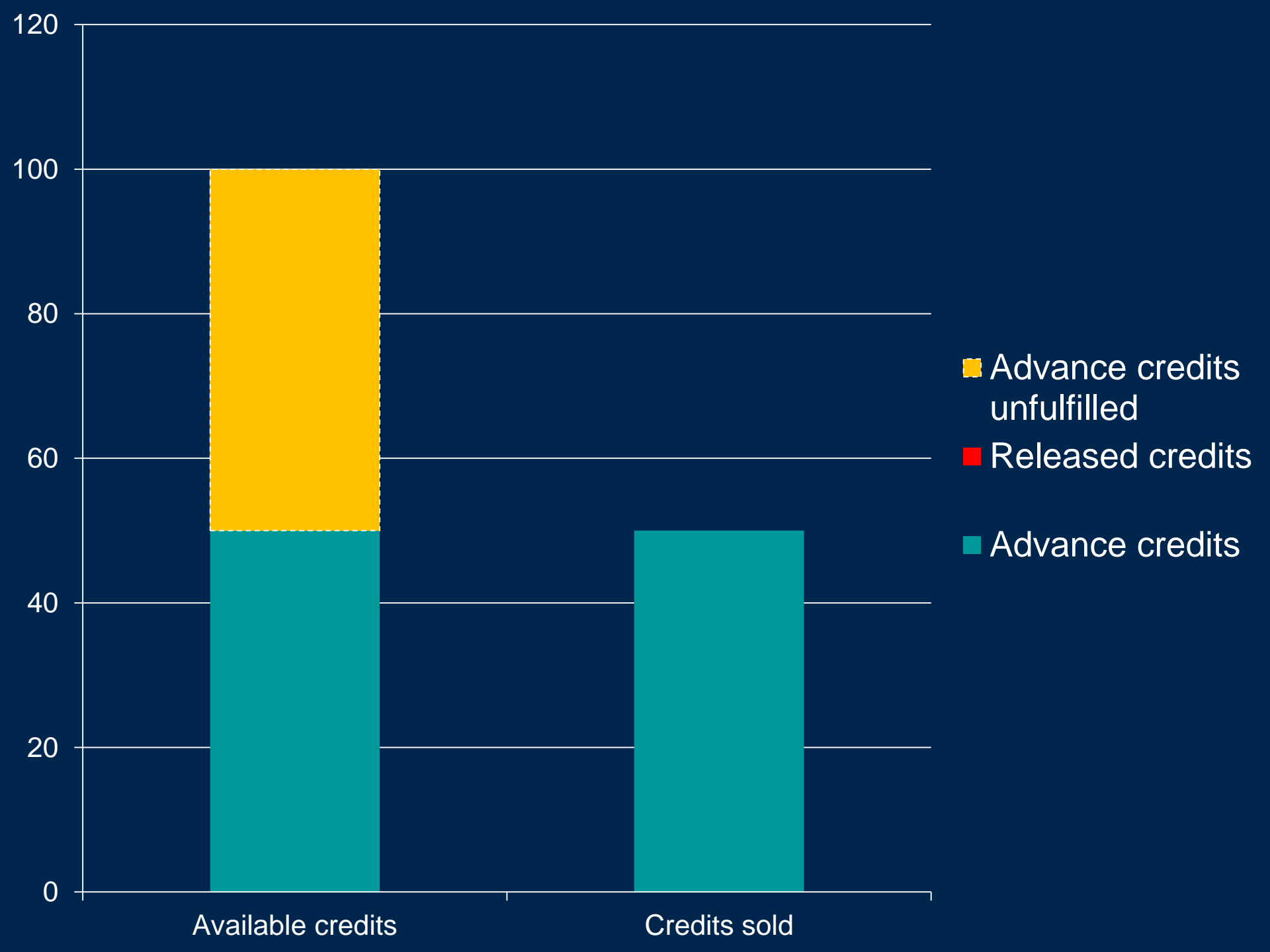
100 acre project site approved & initiated

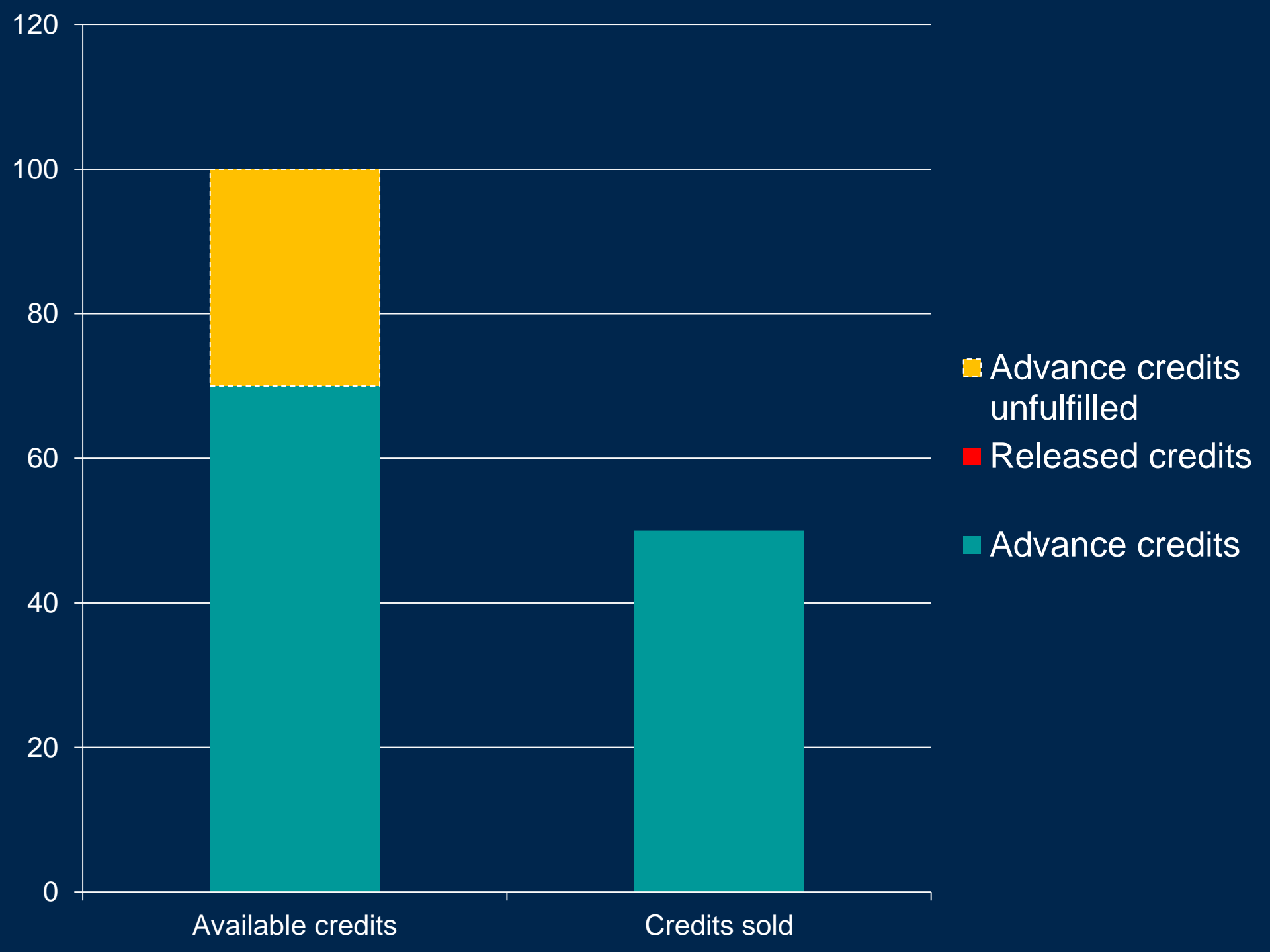
Potential yield of 100 credits

20 credits released

(20% initial credit release from site)





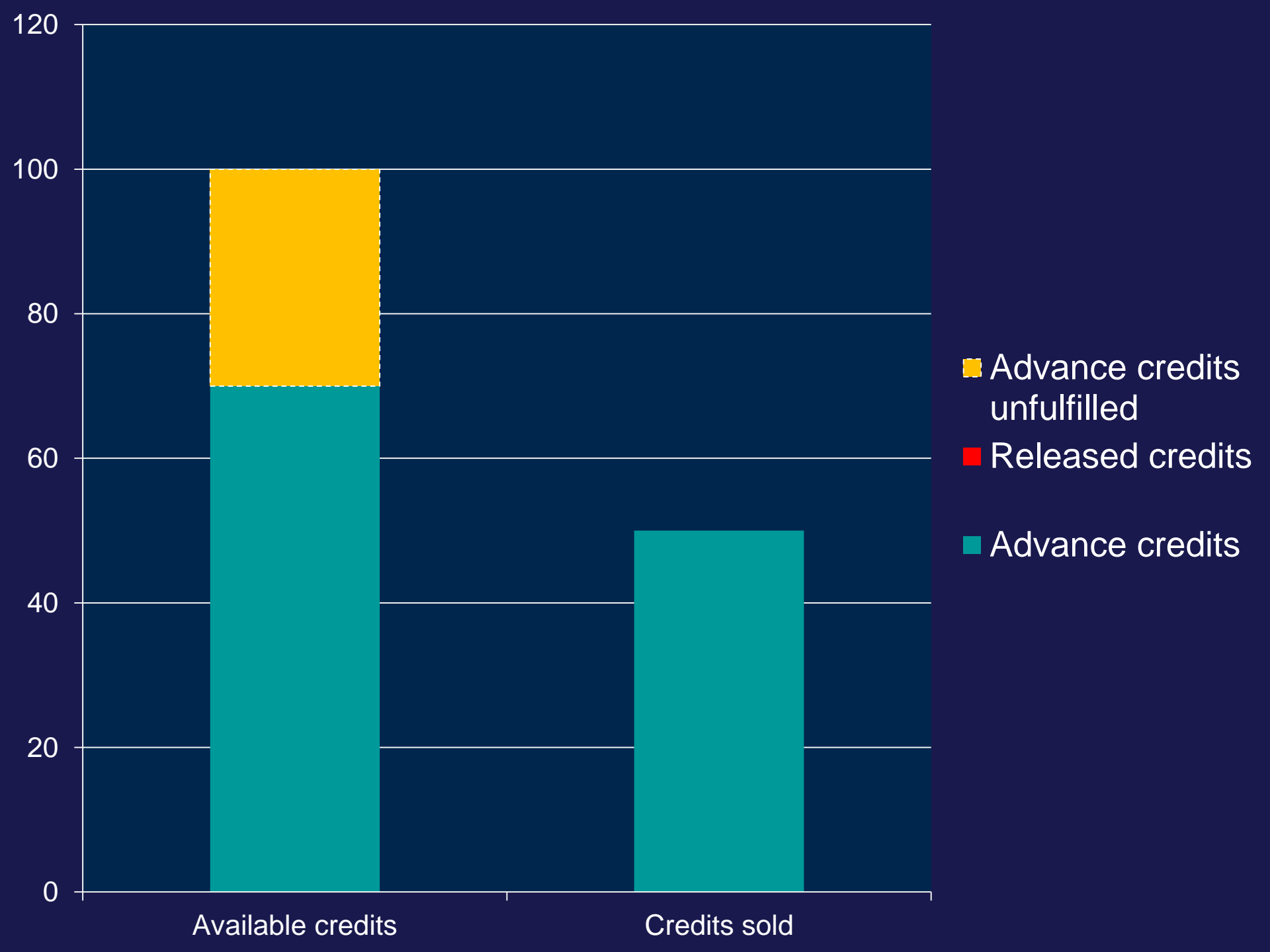


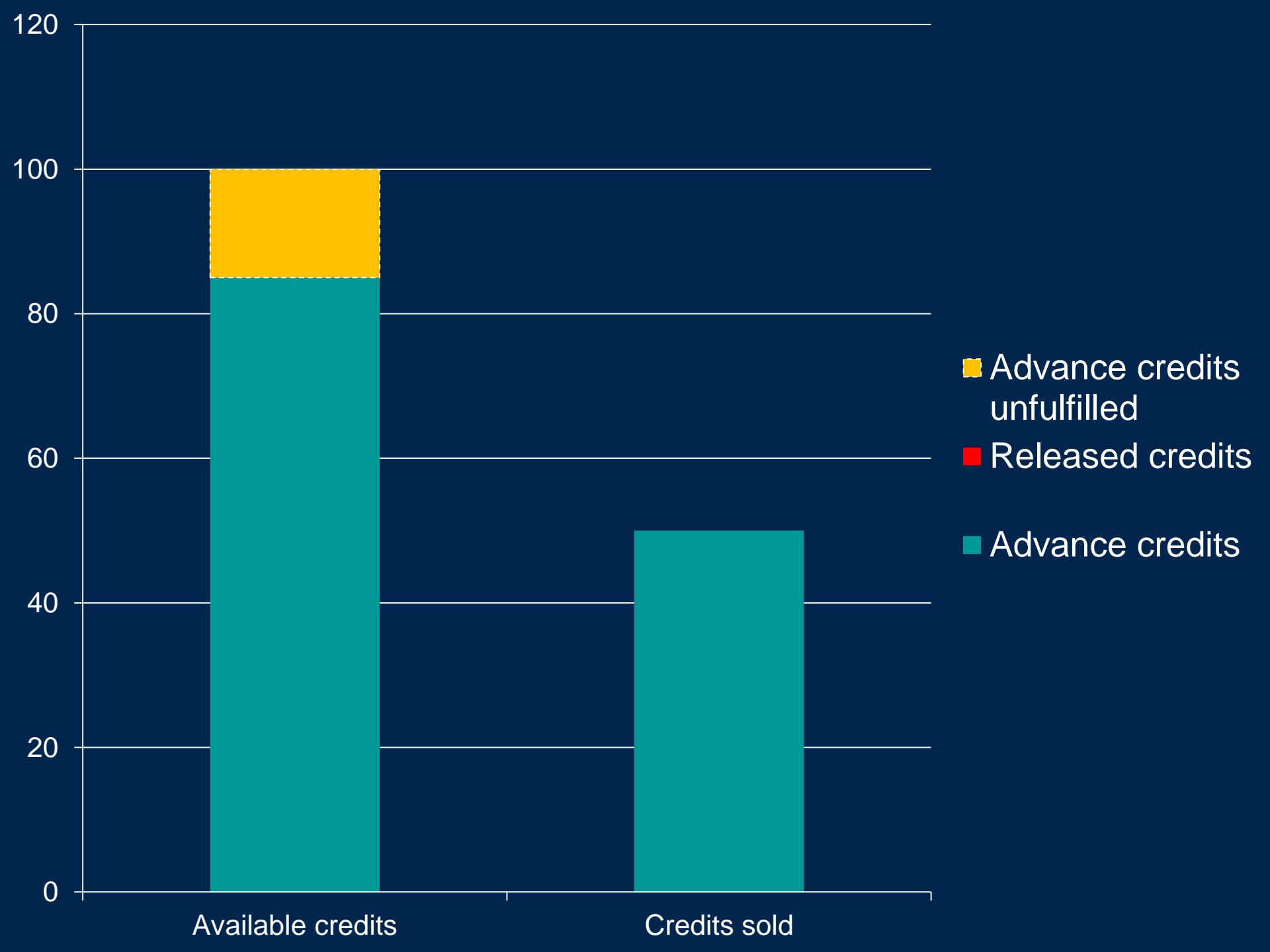
2nd year after 1st debit occurs

Year 1 Project Performance standards met

15 more credits released
(15% of project potential)





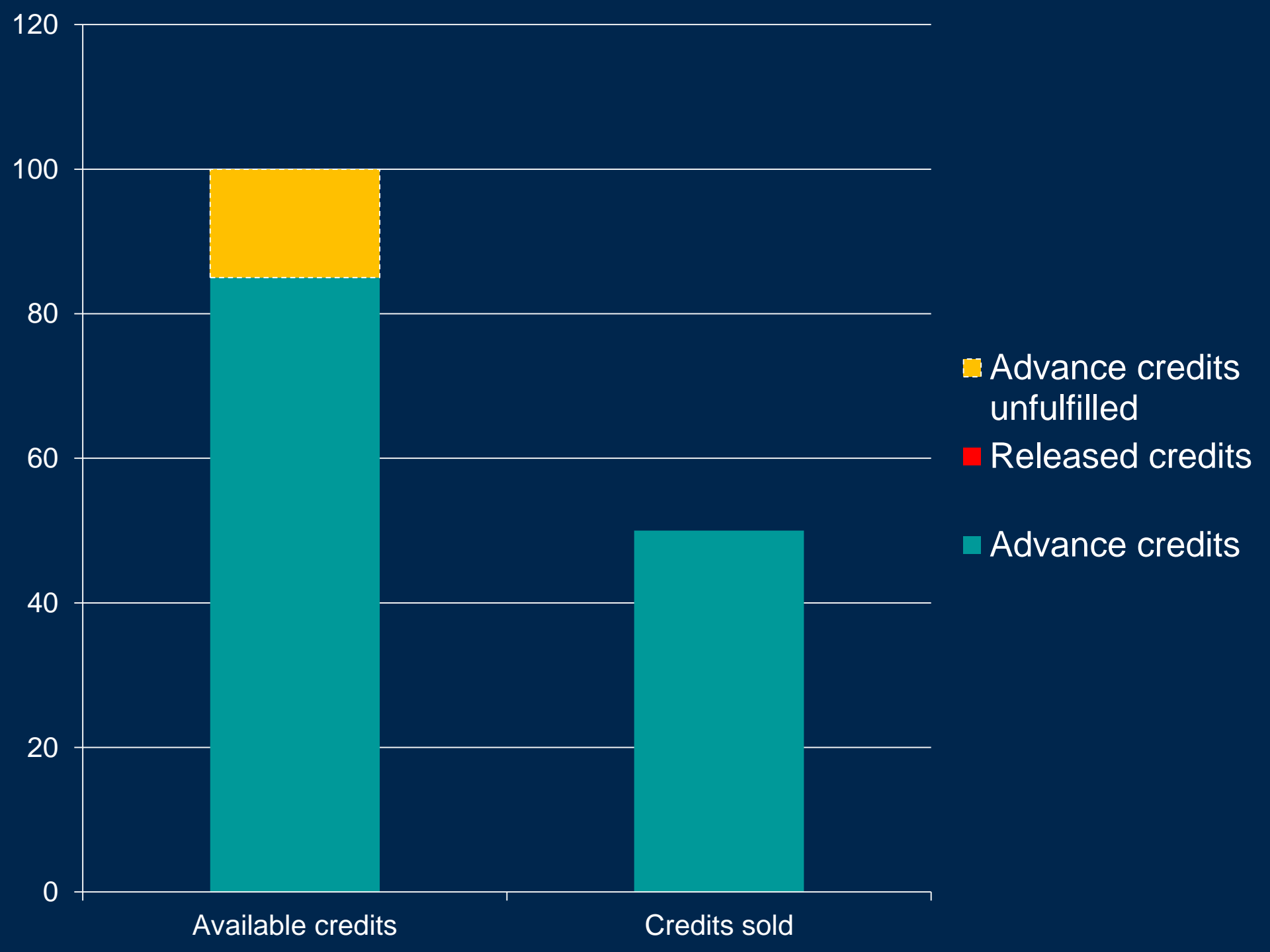


3rd year after 1st debit)

Performance standards continue to
be met

15 more credits released
(15% of potential credits)





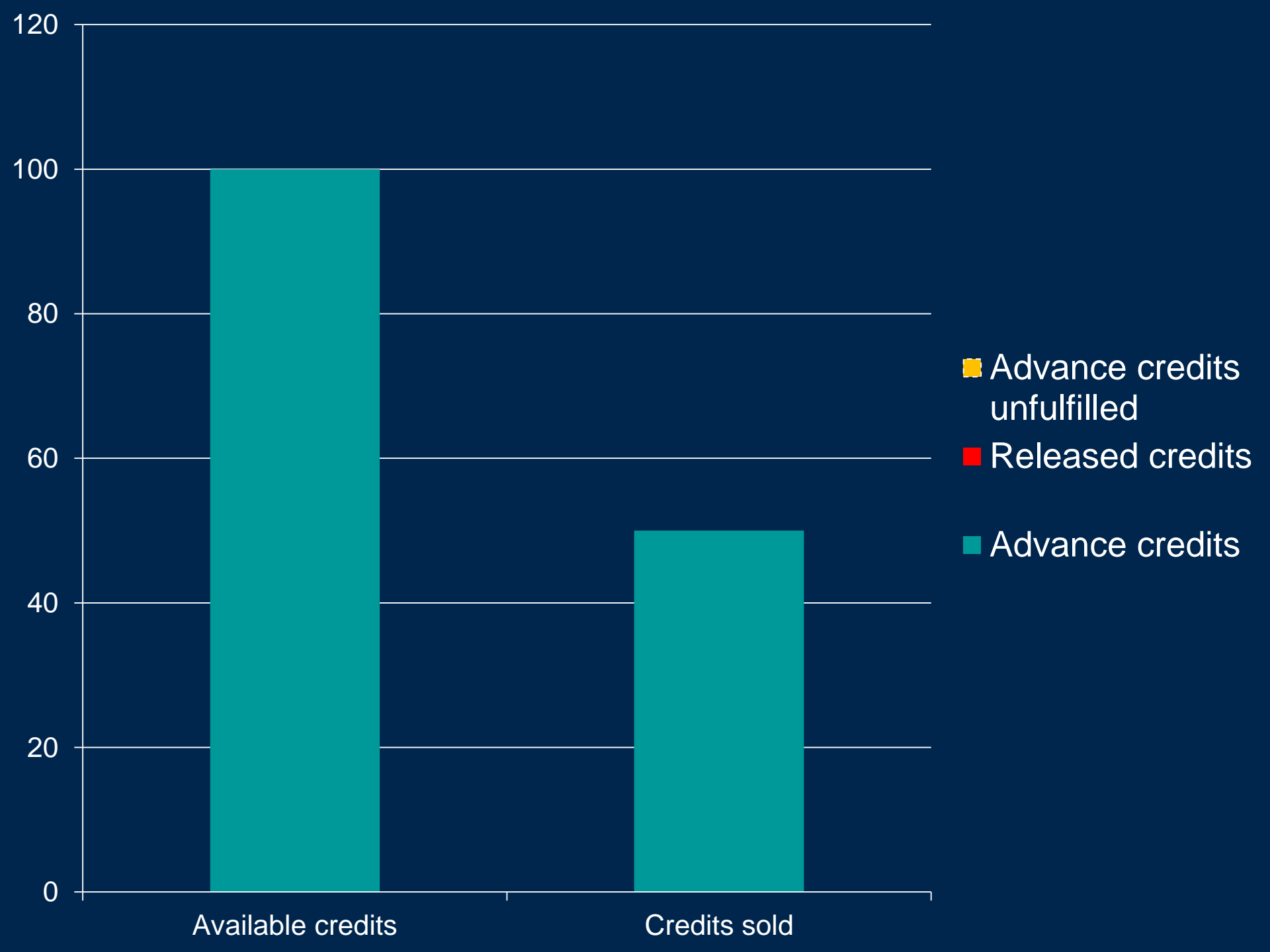


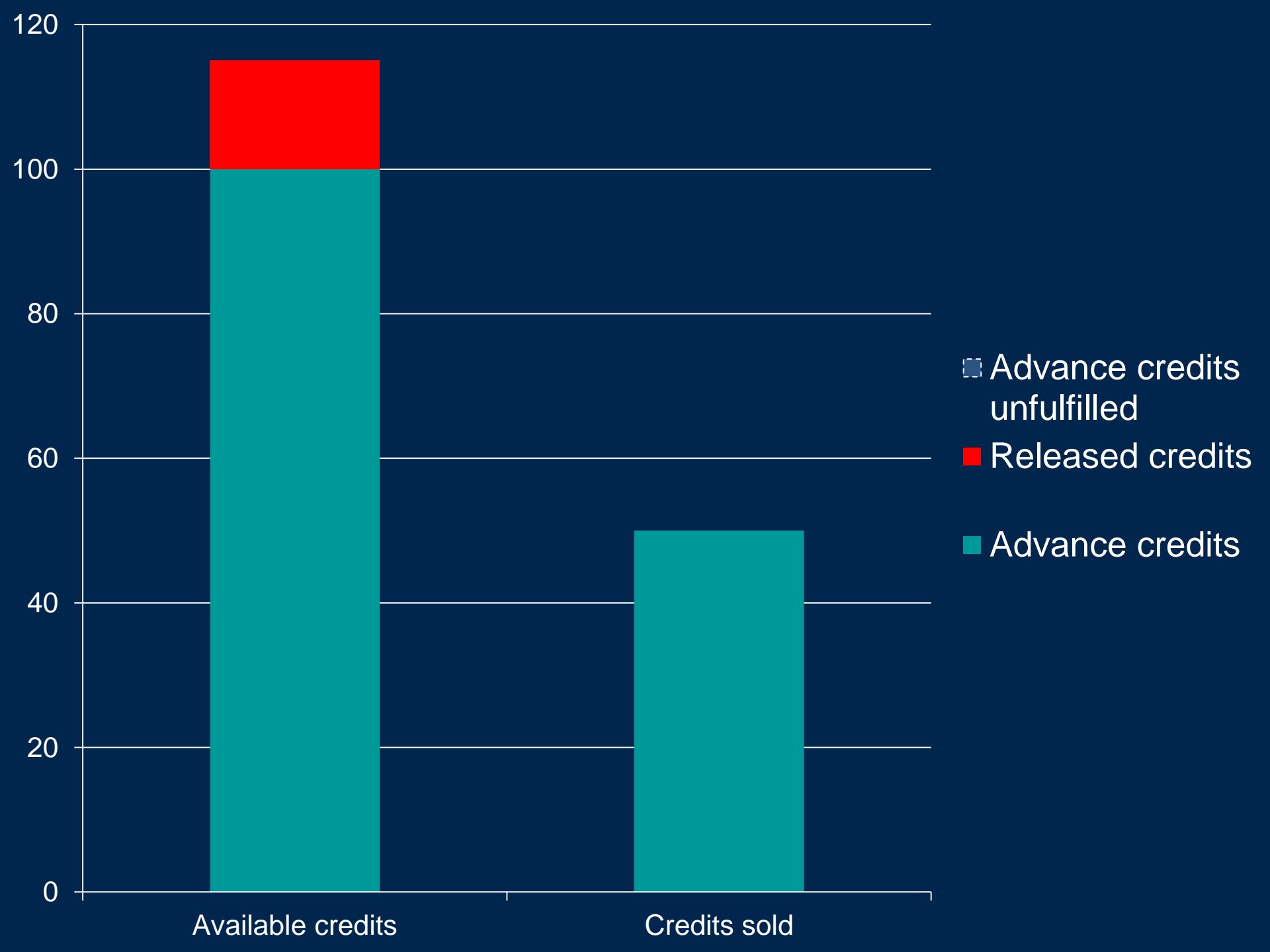
4th year after 1st debit

Performance standards met

15 more released credits
(15% of potential credits)



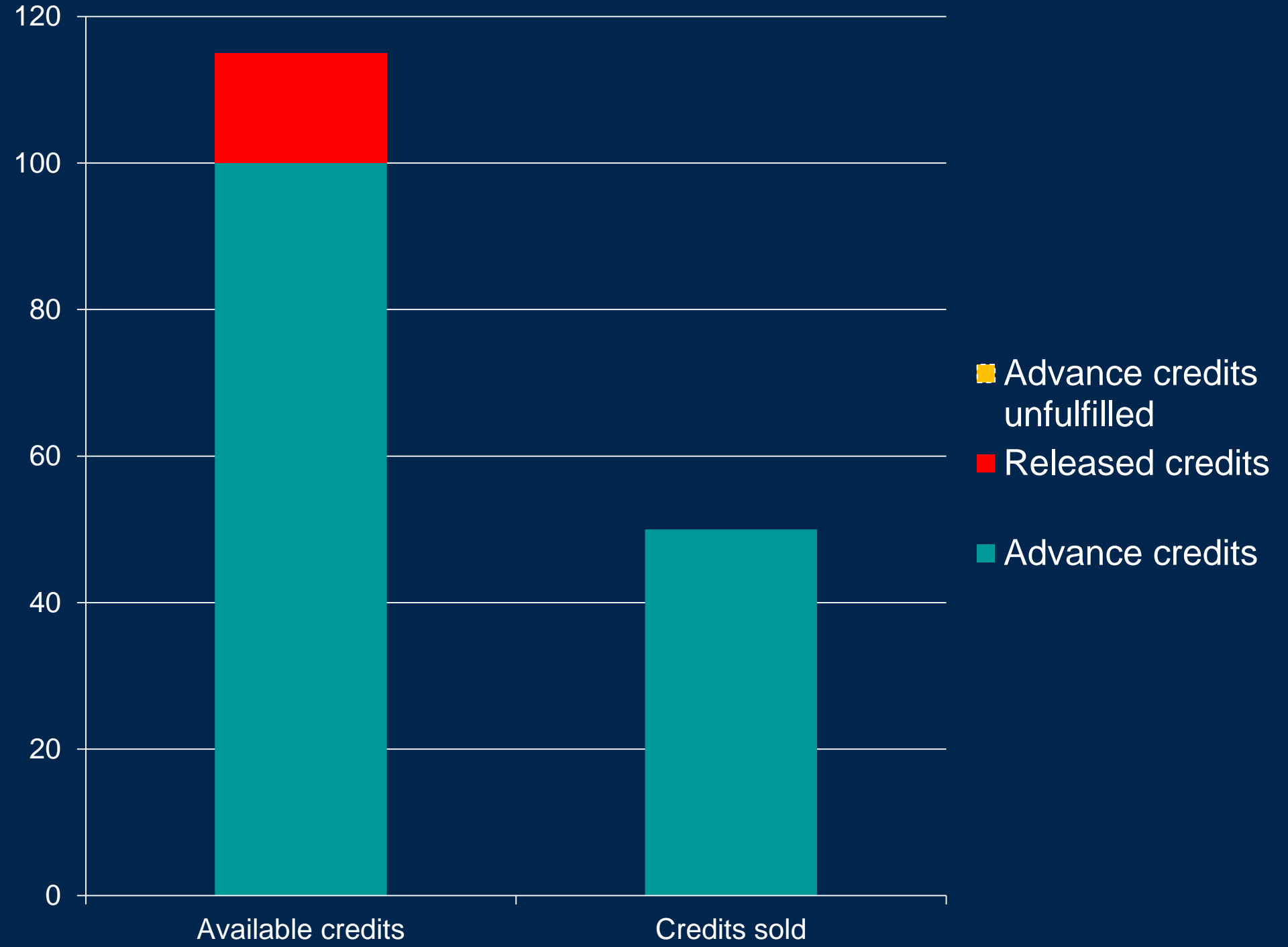


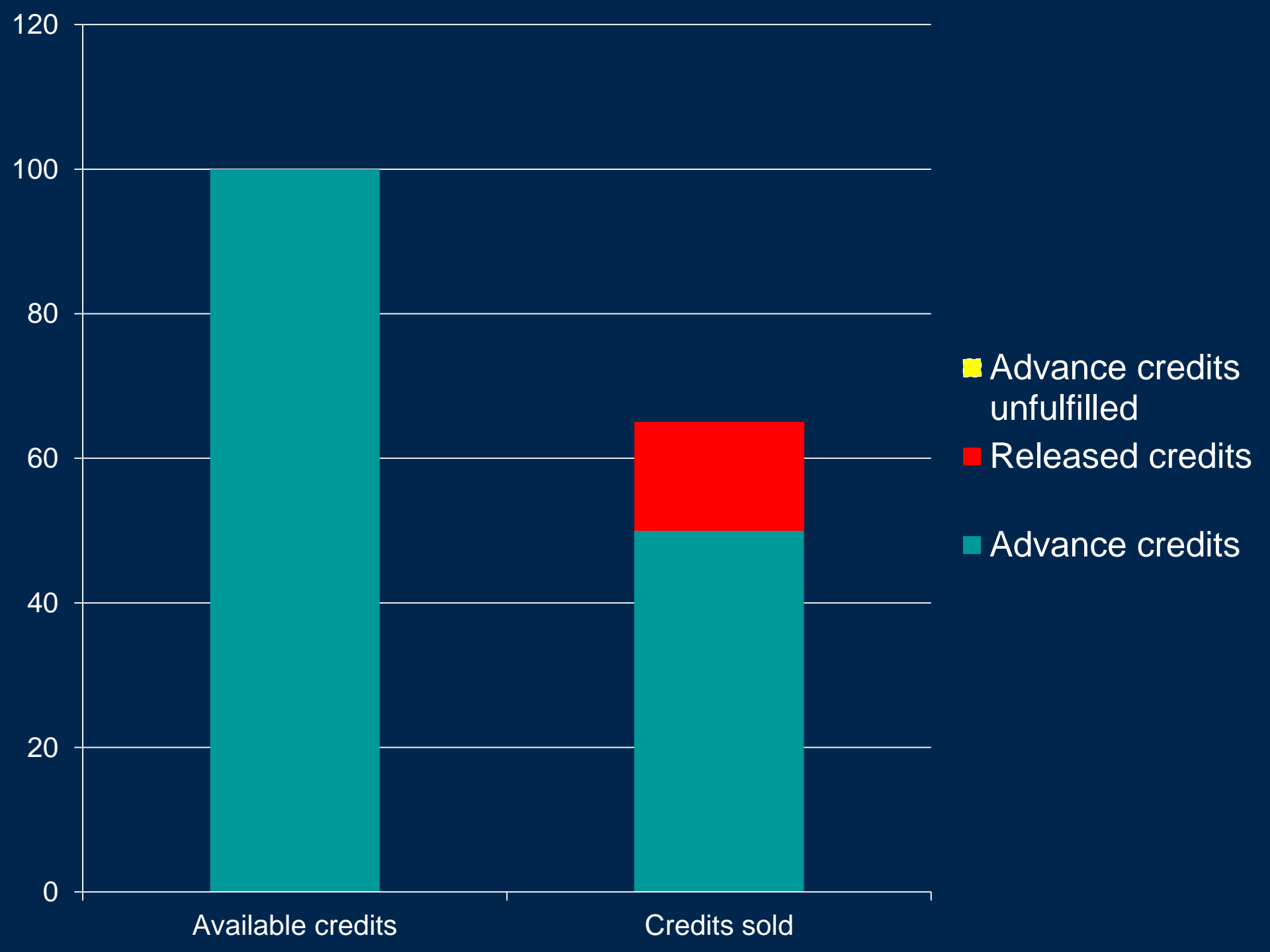


Sold 15 released credits



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Modification of ILF Instruments

- Modification including:
 - ▶ Umbrella bank sites
 - ▶ In-lieu fee project sites
 - ▶ Site expansion
 - ▶ New credit types
- *Streamlined process*
 - ▶ *Changes based on adaptive management*
 - ▶ *Changes in credit release schedules*
 - ▶ *Changes Corps determines are not significant*



Other Modifications

- Change in ownership
- Change in sponsor
- Transfer of mitigation lands or instrument
- New long-term steward
- Change in advance credits



Questions?

