

INITIAL STATEMENT OF REASONS

CALIFORNIA SCHOOL FINANCE AUTHORITY

Article 2, Sections 10179, 10180, and 10181

Title 4, Division 15

California Code of Regulations

INTRODUCTION

The California School Finance Authority (“CSFA”) is organized and operated pursuant to sections 17170 through 17199.5 of the California Education Code (“Act”).

CSFA has received three grant awards under the State Charter School Facilities Incentive Grants Program (CFDA #84.282D) (“Grant” or “Program”) from the United States Department of Education. These Grants are authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001. These Grants, awarded in 2004, 2009, and 2014, are providing \$49,250,000, \$48,194,000, and \$50,000,000, respectively, for the purposes of funding per-pupil facilities aid programs for California charter schools.

Grant funds may be applied toward a charter school’s annual costs of rent, lease, mortgage, debt service, and Proposition 39 pro-rata payments for facilities, or toward the costs of purchase, design, construction, and renovation of a new or existing facility.

Effective July 1, 2013, the State-funded Charter School Facility Grant Program (SB 740) was transferred to the Authority from the California Department of Education. SB 740 provides for State-funded grants to charter schools for reimbursement of eligible lease costs as well as other facility-related costs. Both SB 740 and the Program provide grants of eligible lease costs and other specific facility-related costs. This fact, along with the federal statutory requirement stipulating that federal funds supplement rather than supplant State grant funds¹ (federal supplant/supplement requirement), has resulted in the Authority’s development of a methodology that complies with this requirement and that can be consistently applied to all schools eligible or both programs. This specific methodology is incorporated into the proposed amended regulations.

Section 17180(o) of the Education Code authorizes CSFA to adopt program guidelines for grants, establishing uniform terms and conditions that shall apply equally to all projects for funding. CSFA proposes to amend Sections 10179, 10180, and 10181, of Title 4 of the California Code of Regulations (“Regulations”) that implement its responsibilities pursuant to the Program.

¹ Section 1120(A)(b) of Title I of the Elementary and Secondary Education Act of 1965, as amended, sets forth, in relevant part, that “A State educational agency or local educational agency shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.”

1. Specific Purpose and necessity, administrative requirement or other condition or circumstance that the amendments are intended to address.

Section 10179 (“Maximum Grant”):

Subdivision (a)(1) is amended to make it explicit that, in the determination of an award, the Authority shall use current-year costs associated with lease, rent, mortgage, debt service, or a Proposition 39 pro-rata agreement, when available. Otherwise, the Authority shall use prior-year costs. This change is necessary to make explicit the fact the Authority’s policy to use current-year costs, when available, and to ensure consistency in the application of such costs in the award determination.

A new subdivision (c) is added to make explicit the Authority’s methodology to determine a Program award when an Applicant is deemed eligible under both the Program and SB 740 based on the same eligible lease/rent costs and the Program award is otherwise determined by \$750 per student pursuant to Education Code, Section 47614.5(b). This change is necessary to ensure compliance with the federal supplant/supplement requirement and to ensure consistency in the Authority’s methodology for calculating an award when an Applicant is deemed eligible for both programs based on the same eligible lease/rent costs. The Authority’s methodology clarifies that, in accordance with the federal supplant/supplement requirement, an Applicant can only be eligible for the difference between the amount eligible under the Program and the amount eligible for under SB 740.

A new subdivision (d) is added to make explicit the Authority’s policy to not issue a Program award when an Applicant is deemed eligible under both the Program and SB 740 for renovation costs at the same school site. This policy is necessary in order to ensure compliance with the federal supplant/supplement requirement. This policy does not apply if the Applicant is deemed eligible under both programs for renovation costs at different school sites. The Authority’s policy clarifies that, in accordance with the federal supplant/supplement requirement, an Applicant cannot receive reimbursement for the same general scope of project costs under both the Program and SB 740 at the same school site. The Authority needs to adopt this policy as a strict interpretation of the federal supplant/supplement requirement to preclude the comingling of funds across both programs. This change allows an Applicant the option of seeking reimbursement for a potentially higher award under the Program than under SB 740 by only applying for reimbursement under the Program for a specific school site.

Section 10180 (“Application Submission”):

Subdivision (b) is amended to reflect that February 1 deadline each year for the Authority’s posting of the Application (Form CSFA 05-01) and the deadline for Application submission is being replaced by a general deadline that the Authority post the Application form and deadline for Application submission at least 30 days prior to the actual Application submission deadline for that year. This change is necessary in order to allow the Authority flexibility in establishing its timeframes for each year’s funding round as part of the Authority’s efforts to efficiently coordinate the Program with SB 740.

Section 10181 (“Content of Application”):

The introductory paragraph is amended to indicate that an Applicant may submit an Application and supporting documents through an online system upon the development of such a system. This change is necessary to address the fact that the Authority is in the process of developing an online Application system and that, once this online system is developed, an Applicant may submit its Application and supporting documents through the system.

Application Form (Form CSFA 05-01)

In addition to non-material formatting changes, the Application Form (Form CSFA 05-01) is revised to reflect the following key changes: (1) the option to submit supporting documents via CD Rom or flash drive in addition to hard copy; (2) the option to indicate that the charter petition or lease agreement is on file with the Authority rather than having to resubmit the document, identifying the specific document; and (3) the addition of a statement to the declaration page requiring the Applicant to declare, under penalty of perjury, that to the best of the Applicant’s knowledge, the Applicant has “complied with 34 CFR 75.525(a) and (b) to ensure that there are no apparent or actual conflicts of interest.” The Authority is intending to adopt a new Application Form reflecting these changes and repeal the previously adopted Application Form.

The addition of the option to submit supporting documents via CD Rom and flash drive in addition to hard copy (item (1) above) is necessary to conform with Section 10181, which sets forth this option. The addition of the option to indicate that the charter petition or lease agreement is on file with the Authority (item (2) above) is necessary to reduce duplication of document submission and to enhance program efficiency. The additional statement in the declaration page (item (3) above) is necessary to ensure that Applicants exercise their due diligence to comply with Section 10190(b) to ensure that no apparent or actual conflicts of interest exist.

2. Technical, Theoretical, and/or Empirical Study, Reports, or Documents

The Authority did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the regulations.

3. Reasonable Alternatives to the Amendments to the Regulations and the Agency’s Reasons for Rejecting those Alternatives

No other alternatives to the regulations were presented to or considered by the Authority.

4. Reasonable Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Impact on Small Businesses

The Authority has not identified any adverse impacts nor have any adverse impacts otherwise been identified and brought to the attention of the Authority that would affect

businesses. In fact, the adoption of these regulations could result in greater opportunities for the expansion of charter school facilities throughout the state.

5. Description of Efforts to Avoid Conflict with and Duplication of Federal Regulations

Not applicable. The Authority is not a Department, Board, or Commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

6. Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business

The Authority relied on the fact that State Charter School Facilities Incentive Grants Program is a grant program designed to award federal funds to charter schools for facility-related expenses, and that the regulations do nothing more than provide for the application and evaluation process by which grant awards will be made. As a result, there can be no adverse economic impact on business by the adoption of the regulations.

7. Economic Impact Assessment

- a. The proposed regulations will unlikely have an impact on the creation or elimination of jobs within the State of California. In addition, the Authority is unaware of any reason providing Grant funds to awardees would result in the elimination of jobs. The purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a federal grant program that will disburse funds to existing charter schools in need across the State of California for per pupil facilities funding. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that jobs would be created or eliminated as a result.
- b. The proposed regulations will unlikely have an impact on the creation or elimination of new businesses within the State of California. As noted above, the purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a federal grant program that provides per pupil facilities funding to existing charter schools in need. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that businesses would be created or eliminated as a result.
- c. The proposed regulations will unlikely have an impact on the expansion of businesses currently doing business within the State of California. The purpose of the grant and proposed regulations is to set forth administrative criteria and requirements for administering a federal grant program that will provide per pupil facilities funding to existing charter schools.
- d. The proposed regulations are intended to provide per pupil facilities funding to existing charter schools in need, especially serving communities with low-income households. As such, to the extent that the awards benefit the long-term viability of charter schools, the Grant and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

8. Problems and Benefits

Pursuant to Education Code, Section 47614.5, effective July 1, 2013, the administration of SB 740 was transferred to the California School Finance Authority. Because of the federal requirement that the Grant supplement and not supplant funds issued through the State Grant Program, CSFA has recognized the need to make explicit its methodology and policy that ensure compliance with the federal supplant/supplement requirement in determining awards for Applicants deemed eligible under both programs, SB 740 and the State Charter School Facilities Incentive Grants Program. This is accomplished through new subdivisions (c) and (d) under Section 10179 ("Maximum Grant"). New subdivision (c) provides the benefit of making explicit the methodology for determining a Program award when the Applicant is deemed eligible under both programs based on the same eligible lease/rent costs when an Program award is otherwise determined by \$750 per student. New subdivision (d) provides the benefit of making explicit the policy that no Program award shall be issued when an Applicant is deemed eligible for renovation costs for the same school site under both programs.