

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA SCHOOL FINANCE AUTHORITY State Charter School Facilities Incentive Grants Program

Article 2.0, Sections 10179, 10180, and 10181 Title 4, Division 15 California Code of Regulations

NOTICE IS HEREBY GIVEN that the California School Finance Authority (CSFA), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than 5:00 p.m. on Monday, December 21, 2015. The CSFA Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this notice as Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

Proposed Regulatory Action

CSFA proposes to amend Sections 10176, 10179, and 1080 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The amended Regulations implement CSFA's responsibilities related to the State Charter School Facilities Incentive Grants Program (Program).

Authority and Reference

Authority: Sections 17179 and 17180, Education Code. Section 17179 provides CSFA with the authority to do all things reasonably necessary to carry out its responsibilities. Section 17180(a) of the Education Code provides CSFA the authority to adopt bylaws for the regulation of its affairs and the conduct of its business. Subdivision (d) provides CSFA with the authority to receive and accept grants from the federal government. Subdivision (o) allows CSFA with the authority to adopt guidelines for grants.

Reference: Education Code, Section 17180(d) of the Education Code; and Section 47600, et seq., of the Education Code. These Regulations implement the State Charter School Facilities Incentive Grants Program (Grant) and include a number of the requirements of that program contained in the reference code provisions and their implementing Regulations. They also rely on a number of provisions in the Charter Schools Act of 1992, commencing with

section 47600 of the Education Code. Section 17180(d) provides CSFA with the authority to receive grants from the federal government.

Informative Digest/Policy Statement Overview

CSFA was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). CSFA is authorized to adopt bylaws for the regulation and conduct of its business, and is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code sections 17179 and 17180).

In 2004, 2009, and 2014, the United States Department of Education approved grant awards to CSFA pursuant to the State Charter School Facilities Incentive Grant (Grant), 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. The Grant provides for \$49,250,000 in 2004, \$46,132,749 in 2009, and \$50,000,000 in 2014, to be awarded over five-year periods 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, or Proposition 39 pro-rata payments for facilities, or toward the costs of purchase, design, construction, and/or renovation of a new or existing facility.

Pursuant to the federal rules governing the Grant, an annual portion of the funds must be allocated during each of five consecutive federal fiscal years. The first funding round began on June 28, 2005 when an emergency rulemaking file was approved by the Office of Administrative Law. Permanent Regulations implementing the Grant were approved March 24, 2006.

The allocation of these grant funds to eligible charter schools are based on preference points assigned for certain factors, including the low income population served by the school as reported by the percentage of students eligible to receive free and reduced price meals, the school's nonprofit status, whether a school is located in an overcrowded attendance area, whether the school has previously received a Program award, the school's academic performance as measured by its Annual Performance Index (API), and the school's academic performance in comparison to nearby schools as measured by API and Adequate Yearly Progress (AYP). Due to the transition to Common Core Standards, the use of academic performance for the determination of preference points has been temporarily suspended and is expected to resume either for the funding round commencing in spring of 2016 (Round 12) or the funding round commencing in the spring of 2016 (Round 13).

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 regulations requiring that federal funds supplement rather than supplant State grant funds (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. This specific methodology is incorporated into the proposed amended regulations.

The amendments to the Regulations are briefly summarized below and are intended to address the following: (1) use of current-year lease cost data for determining an award; (2) the federal requirement that Grant funds supplement and not supplant State grant funds; (3) replacement of the February 1 deadline for the Authority's posting of the Application and submission deadline on its website to the Authority's having to post such on its website within at least 30 days prior to the Application submission deadline for any specific funding round. The amended Application Form (Form CSFA 05-01, as revised) is incorporated into this Notice by reference, with proposed changes, in addition to formatting changes, to address: (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 has conducted an evaluation as to whether there are any related regulations on this matter and has found that these are the only regulations dealing with this type of program. Therefore, the proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

Anticipated Benefits of Proposed Regulations

Please see "Results of Economic Impact Assessment," item "d," for a description of benefits.

The amended Regulations are summarized below. The reader is referred to the Initial Statement of Reasons for a detailed explanation regarding the necessity of each amendment.

Section 10179 ("Maximum Award"):

The amended Section sets forth revised language within subdivision (a)(1) that makes explicit that the calculation of the "Maximum Award" shall be based on current-year cost data, when available, and only default to prior-year cost data, when current-year data is not available.

The amended Section adds a new subdivision (c), which sets forth the specific methodology for the calculation of the "Maximum Award" when and Applicant is deemed eligible under both the Program and SB 740 based on eligible lease costs, and where \$750 per student is less than 75% of eligible lease costs. This provision is intended to address the federal supplant/supplement requirement when a potential award is based on eligible lease costs.

The amended Section adds a new subdivision (d), which sets forth that, if an Applicant is deemed eligible for both the Program and SB 740 based on renovation costs for a specific school site, no Program award shall be issued. This provision is intended to address the federal supplant/supplement requirement when a potential award is based on eligible renovation costs.

Section 10180 (“Application Submission”):

The amended Section sets forth revision to subdivision (b) such that the previous February 1 deadline for the posting of the Application and submission deadline on the Authority’s website is replaced by the Authority having to post the Application and submission deadline at least 30 days prior to the Application submission deadline for any specific funding round.

Section 10181 (“Content of Application”):

The amended Section adds language to the introductory Paragraph, indicating that an Applicant may submit an Application and supporting documents through an online system upon the development of such a system.

**Other Matters Prescribed by Statutes Applicable
To the Specific State Agency or to any
Specific Regulation or Class of Regulations**

No other matters prescribed by statute are applicable to CSFA or to any specific Regulation or class of Regulations pursuant to Section 11346.5(a)(4) of the California Government Code pertaining to the proposed Regulations or CSFA.

Mandate on Local Agencies or School Districts

CSFA has determined that the Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

CSFA has determined that the Regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

While CSFA will incur additional expenses in implementing and administering the Grant, the U.S. Department of Education provides that CSFA may charge such additional expenses for CSFA’s administrative costs against the Grant, up to five percent. Therefore, there is no fiscal impact on the State’s General Fund or requirement of additional appropriations by the Legislature. There will be no cost or savings to any State Agency pursuant to Government Code Sections 11346.1(b) or 11346.5(a)(6).

Initial Determination Regarding any Significant, Statewide Adverse Economic Impact Directly Affecting Business

CSFA has made an initial determination that the Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on Small Businesses

CSFA has determined that the adoption of the Regulations will not affect small business. The Program is a voluntary grant program available to charter schools to assist in the costs of charter school facilities.

Cost Impacts

CSFA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Cost Impact on Housing

The Regulations will not have any effect on housing costs.

Results of 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 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 Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

Reasonable Alternatives

In accordance with Government Code Section 11346.5(a)(13), CSFA must determine that no reasonable alternative to the Regulations considered by CSFA or that has otherwise been identified and brought to the attention of CSFA would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the Regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CSFA invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

Agency Contact Person(s)

Written comments, inquiries, and any questions regarding the substance of the Regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director
California School Finance Authority
at:

300 South Spring St., Suite 8500
Los Angeles, CA 90013
(213) 620-4467

or

915 Capitol Mall, Room 101
Sacramento, CA 95814
(916) 651-7710

or

kjohantgen@treasurer.ca.gov

or

csfa@treasurer.ca.gov

The following person is designated as a backup Contact Person for inquiries only regarding the Regulations:

Mark Paxson, General Counsel
State Treasurer's Office
915 Capitol Mall, Room 110
Sacramento, CA 95814
(916) 653-2995

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to CSFA. The written comment period on the Regulations will end at 5:00 p.m. on Monday, December 21, 2015. All comments to be considered by CSFA must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the Regulations during the written comment period, CSFA will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of Proposed Regulations

CSFA has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at CSFA's office at 915 Capitol Mall, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on CSFA's Web site at www.treasurer.ca.gov/csfa.

Public Hearing

No public hearing regarding the Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to CSFA at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the hearing is being requested.

15-Day Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested, CSFA may adopt the Regulations substantially as described in this Notice, without further notice. If CSFA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through CSFA's Web site described above) for at least fifteen (15) calendar days before CSFA adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

Availability of Final Statement of Reasons

CSFA is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once CSFA has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on CSFA's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.