

## **INITIAL STATEMENT OF REASONS**

### **CALIFORNIA SCHOOL FINANCE AUTHORITY**

#### **Article 1.5, Sections 10170.2 through 10170.10 Title 4, Division 15 California Code of Regulations**

### **INTRODUCTION**

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

Pursuant to Education Code, Section 47614.5, the State Legislature directed the Authority to commence administration of the Program beginning with the 2013-14 fiscal year and to adopt regulations to implement the statute. Effective July 1, 2013, the Authority initiated its administration of the Program, and pursuant to Section 47614.5(m), a Certificate of Compliance was approved on August 6, 2014 (OAL Regulatory Action #2014-0625-01C).

OAL approved a second permanent rulemaking action pursuant to Government Code, Section 11346.1(h) on May 3, 2016 (OAL Regulatory Action # 2016-0401-02SR). A Certificate of Compliance was approved on May 6, 2016 (OAL Regulatory Action #2016-0401-02SR).

OAL approved a third permanent rulemaking action pursuant to Government Code, Section 11346.1(h) on August 24, 2017 (OAL Regulatory Action # 2017-0719-02S). A Certificate of Compliance was approved on August 24, 2017 (OAL Regulatory Action #2017-0719-02S).

The Authority adopted emergency regulations through the Office of Administrative Law's (OAL's) Emergency Rulemaking procedures, and such emergency regulations were approved by OAL on November 2, 2017 (OAL Regulatory Action # 2017-10230-02E). In order to establish permanent regulations for purposes of administration of the Program, the Authority is proposing permanent regulations through OAL's permanent rulemaking process and through submission of a Certificate of Compliance.

Pursuant to Education Code, Section 47614.5(f), the Program provides assistance to charter schools with the following: "costs associated with facilities rents and leases, consistent with the definitions used in the California School Accounting Manual (CSAM) or regulations adopted by the California School Finance Authority. These funds also may be used for costs, including, but not limited to, remodeling buildings, deferred maintenance, initially installing or extending service systems, other built-in equipment, improving sites, and common area maintenance (CAM)."

### **1. Specific Purpose, Necessity, Administrative Requirement or Other Condition or Circumstance That the Regulation is Intended to Address (Section-by-Section Analysis)**

### **Section 10170.2 “Definitions”**

Amendments to clarify Definitions (Amendments to Sections 10170.2) - the amendments provide further clarification on terminology used within the regulations.

In subdivision (b) – Since the paper application was converted to an online application form, amendments were made to the section. Amendments to the Application to include the words “completed”, “Online” and new date “December 2017”. The use of the words “completed and “online” provides clarity for the applicant when submitting an application for the Program. The application update revision occurred in December 2017.

In subdivision (e) “Average Daily Attendance Cap” (ADA Cap) shall mean for the 2017–18 fiscal year, an amount equal to one thousand one hundred seventeen dollars (\$1,117) per unit of ADA. Commencing with the 2018–19 fiscal year and moving forward, the amount of funding provided per unit of ADA in the preceding fiscal year, as adjusted by the Cost Of Living Adjustment Index or the amount specified in the current Budget Act.

In subdivision (g) “Cost Of Living Adjustment Index” (COLA Index) shall mean a percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 10 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 10 of the preceding fiscal year, as reported by the Department of Finance.

These amendments are necessary as they define the criteria used to calculate the charter school Fiscal Year’s apportionment. The new definitions will clarify how the Authority will calculate awards and assist schools in their budgeting process. The definitions are based on Education Code 47614.5 (b)(1)(B). The new definitions expanded the index from (e) to the letter (q).

In subdivision (p) – Amended the title of “Invoice Report” in the definitions to Invoice Expenditure Report (IER)(Form SB740-02, October 2017) and added the word annual. Applicants are required to submit the IER for reimbursement of rent/lease costs and other costs by July 15 each year. The Authority is requesting non-substantive corrections to existing text.

### **Section 10170.3 “Eligible Applicants”**

In subdivision (d)(4) – The amendment removes “In the 2015-2016 fiscal year, the Authority may conduct an additional funding round.” The 2015-16 additional funding round was a special funding round and no longer applicable to the Program. The Authority is requesting this non-substantive correction to existing text.

In subdivision (5) – The amendment repositions existing text (5) into the (4) position. The Authority is requesting this non-substantive formatting correction to existing text.

In subdivision (f)(1) the wrong sequence of letters were used. The letters “a, b, and c” are replaced with the letters A, B and C. The Authority is requesting non-substantive corrections to existing text.

**Section 10170.4: “Eligible Costs”**

The amendments provide further clarification on rent and lease costs and the increased ADA Cap.

In subdivision (1)(A) The amendment clarifies the reimbursable amount of increased rent or lease costs. Beginning with the 2018-19 funding round, reimbursable facility rent or lease costs may not exceed prior year’s costs, adjusted to be consistent with the current year COLA Index, as defined in Section 10170.2.

In subdivision (1)(B) Beginning with the 2018-19 funding round, the amendment shall require applicants submitting new facility agreements to submit an appraisal to validate rent or lease costs are at or below market rate.

The amendments made to (1)(A) and (1)(B) are necessary to discourage inflated lease or rent costs and ensure a fair distribution of funds to all eligible grantees.

In subdivision (d) the amendment increases the current program award amount to \$1,117 per unit of “the ADA Cap as defined in Section 10170.2 (f).”

These amendments are necessary to discourage inflated lease or rent costs and ensure a fair distribution of funds to all eligible applicants. The amendment to increase the ADA Cap from \$750.00 to \$1,117.00 to be in compliance with Education Code 47614.5 (b)(1)(B).

**Section 10170.5: “Application Submission”**

In subdivision (a) – This section has been amended in order to be consistent with the State Charter School Facilities Incentive Grants Program Section 10180 Application Submission language approved by OAL on November 29, 2017. The opening the paragraph was amended with an “(a)” to promote the use of the new online application. The Authority has fully developed and implemented the use of the online application for applicants. This addition replaces the outdated application submission language. The amendment is necessary to maintain application consistency between all programs administered by the Authority.

In subdivision (a) and (b) – The amendment repositions existing text (a) and (b) into the (b) and (c) position. The Authority is requesting this non-substantive formatting correction to existing text.

In subdivision (c) – The amendment removes entire section (c) as the information is outdated and only applied to the additional 2015-16 funding round pursuant to

Section 10170.3(d)(4) which is being removed. The Authority is requesting this non-substantive correction to existing text.

**Section 10170.6: “Content of the Application”**

The subdivision has been amended in order to be consistent with the State Charter School Facilities Incentive Grants Program Section 10180 Application Submission language approved by OAL on November 29, 2017. The opening paragraph was amended with “via the online application form (CSFA Form 740-01)” to promote the use of the new online application. The Authority has fully developed and implemented the use of the online application for applicants. This replaces the outdated application submission language. This amendment is necessary to support Section 10170.5(a).

**Section 10170.9: “Apportionment of Grant Funds”**

Amendments to clarify Apportionments of Grant Funds (Amendments to Sections 10170.9). The amendments provide further clarification on the pro rata calculation to be used to determine disbursement amounts when the Program is oversubscribed.

In subdivision (f) - In accordance with Education Code Section 47614.5 (b), the Authority will have to disburse available funds on a pro-rata basis. Amendments to this section are necessary to provide a comprehensive methodology for pro rata share disbursements. The pro rata share methodology is outlined in (f) subsections (1) – (6).

In subdivision (f)(1) The amendment states “The Authority shall determine the pro rata share to which each Grantee is entitled by calculating the percentage of the Fiscal Year’s appropriation as compared to the funds needed to fully award all Grantees. This percentage shall be applied to the Grantee’s annual award and shall serve as the Grantee’s pro rata share.” The amendment was added to clarify how the pro rata share is calculated and will be applied to each Applicants annual award. The intention of the pro rata share is to distribute the funds equally among the eligible schools.

In subdivision (f)(2) – The amendment outlines the three apportionments schools shall continue to receive as governed by Education Code(c)(4)(A)-(C).

In subdivision Subsections (A) and (B), the pro rata share calculation is based on the Grantee’s Maximum ADA Cap, as defined in Section 10170.2 (e) with the Grantee receiving 50% in the first apportionment and 25% in the second apportionment. The Authority staff reviewed data summaries and determined a Grantee disbursement awarded with this matrix would prevent overfunding. For example, in the 2017-18 funding round, the pro-rata reduction for each award will be calculated by dividing the total appropriation amount (\$112.4 million) by the total amount necessary to fund all eligible applicants’ Maximum ADA Cap Award to come up with a percentage (pro-rata percentage). The percentage will be applied to all applicants’ Initial and Second Awards.

In subdivision Subsection (C) the pro rate share calculation is based on the Grantee's final rent/ lease costs and other costs due to the Authority by July 15<sup>th</sup>. The Final Apportionment will be calculated using the same methodology to determine the remaining balance of the Final Fiscal Year Entitlement pro rata share.

In subdivision (f)(3) the amendment was added to ensure First Year charter schools remain eligible throughout the funding round. Charter Schools with no Prior Year enrollment data will use Period 1 FRPM Data, as certified by the Department of Education (Department), to meet the FRPM eligibility requirement.

In subdivision (f)(4)-(6) the amendment introduces the "Notice of Eligible Facility Costs"(Form SB740-03, October 2017) and aligns it with the appeal process in Section 10170.10. The notice shall provide a summary of the Grantee's eligible facility costs and provide schools the opportunity to appeal staff's determination. This addition will ensure the pro rata share is calculated correctly and provide schools with a specified window of time to appeal award calculations so the Authority can securely exhaust all Program funds within the fiscal year, while still providing schools the opportunity to question or appeal award determinations.

In subdivision (h) this amendment removed "2016-17" date, added the word "Facility" and "updated October 2017" as this document is updated annually as defined in Section 10170.2 Definitions (p). This is a document name change and the Authority is requesting non-substantive corrections to existing text.

**Section 10170.10 "Notification of Grantee: Appeal Process"**

The amendment provides additional time for schools to appeal and staff determination to be final, after the additional time lapses.

In subdivision (f) the amendment was added for staff to consider the request for an extension based on the showing of good cause and evaluated on a case-by case basis, based on factors such as: legal court proceedings, or requests for information from the educational management organization, charter management organization, charter authorizers, the California Department of Education (CDE) or other outside affiliates not associated with the school. Extensions granted under these conditions are considered final and not subject to an additional appeal process.

In subdivision (g) the amendment was added so if an appeal is not able to be resolved by the deadlines provided in Section 10170.10 (b), (d), and (f), the Authority shall deny the appeal based on a failure to comply with Program regulations. This decision is considered final and is not subject to an additional appeal. In 2017-18 the Program will be oversubscribed and Grantee appeals must be able to be resolved within the fiscal year. On-going, unresolved appeals and/or significant delays in the appeal process will delay and impact the 2017-18 Final Fiscal Year Entitlement calculation of all schools and cause future delays in grantee awards

In subdivision (h) – The amendment repositions existing text (f) into the (h) position. The Authority is requesting this non-substantive formatting correction to existing text.

## **CSFA Form 740-01**

CSFA Form 740-01 (the online application form) was updated to incorporate the online application revisions. All references to 2015-16 were removed from pages, 1, 3 and 4 of the application. Applicants complete a new online application for the prescribed funding round and the application content does not change. The due date on page 2 was removed, on page 7 the mailing address and due date were removed, as the application is completed online and a hard copy is not required by the Authority. Applicants receive a notification pursuant to Section 10170.5 (a) when the application is opened, along with the closing date and time.

The Eligibility section on page 4 was updated to accurately record eligibility status for applicants. Question 2 was removed because the Authority confirms the Free or Reduced-Price Meal Eligibility (FRPM) with the CDE through the California Longitudinal Pupil Achievement Data System (CALPADS) as defined by 10170.2(n). Question 3 was updated to record the preference in admission required by Section 10170.3(d)(2). Question 4 was added to determine the applicant's eligibility status pursuant to Section 10170.4(e), if the school is occupying a District/County Office of Education Facility during the upcoming funding round.

These amendments are necessary to determine the Applicants eligibility for the upcoming funding round. The program is currently oversubscribed and accurate information is required to determine Program eligibility.

### **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 expansion for charter school facilities throughout the state since the intent of the Program is to assist California charter schools in meeting their facility needs.

### **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 the California School Facility Grant Program is a grant Program designed to award financial assistance for charter school facilities. The regulations do nothing more than provide for the application and evaluation process by which grant awards are awarded. As a result, there can be no adverse economic impact on business by the adoption of the regulations.

**7. Economic Impact Assessment**

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 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.

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 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 of the proposed regulations.

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 uniform and consistent criteria to administer a Grant program that will provide per pupil facilities funding to existing charter schools.

The proposed regulations are intended to provide per pupil facilities funding to existing charter schools in need, especially serving communities with low-income households. The amount of per pupil funding increased from \$750 to \$1,117 pursuant Education Code Section 47614.5 (b). 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.

## **8. Problems and Benefits**

The Authority has emergency regulations for the Program, but they must be made permanent in order to effectively administer the Program on an ongoing basis. Without permanent regulations, the Authority does not have uniform standards and guidelines to administer the Program, ensure Applications do not receive a fair and consent evaluation, and Applicants do not have guidelines to direct them through the Application process.

The benefits of the proposed regulations are to ensure the Authority has uniform standards, internal controls, and guidelines to maintain consistent and effective administration of the Program. The public understands the expectations of the Program, which is to assist charter schools with facilities rents and leases costs. In addition, reimbursement for the schools other costs used but not limited to include: remodeling buildings, deferred maintenance, initially installing or extending service systems, other built-in equipment, improving sites, and CAM.