

INITIAL STATEMENT OF REASONS

CALIFORNIA SCHOOL FINANCE AUTHORITY

Article 1.5, Sections 10170.1 through 10170.15

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 California School Finance Authority (Authority) to commence administration of the Charter School Facility Grant Program (Program) with the 2013-14 fiscal year and to adopt regulations to implement the statute. Effective July 1, 2013, the Authority initiated administration of the Program, and pursuant to Section 47614.5(m), the Authority adopted regulations through the Office of Administrative Law's Regular Rulemaking on August 6, 2014 (OAL Regulatory Action #2014-0625-01C). 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 March 27, 2015 (OAL Regulatory Action # 2015-0417-01E). In addition, the Authority adopted an emergency readopt of the emergency regulations to OAL pursuant to Government Code, Section 11346.1(h) and such readopt emergency regulations were approved by OAL on October 26, 2015 (OAL Regulatory Action # 2015-1015-03EE). 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 or regulations adopted by the California School Finance Authority. These funds also may be used for costs, including, but not limited to, costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites."

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"

The Act sets forth the definitions of certain terms. This section sets forth definitions of key terms used in the regulations, expanding the "Applicant", "First Year Charter School" and "Free or Reduced-Priced Meal Eligibility" (FRPM Eligibility) and a new

definition for “Average Daily Attendance” (ADA) and “Invoice Report”. The definitions are necessary to provide clarification of key terms used in the regulations and to ensure uniform application of the regulations.

A revised Charter School Facility Grant Program Application CSFA Form 740-01(Rev. 10/23/15) includes a checklist and related parties questionnaire. The checklist aids in the application processing and the additional related parties questions provide information for applicant review. The additional information allows the Authority to vet applications and award grants to the most qualified applicants.

Section 10170.3: “Eligible Applicant”

This section amends Applicants’ eligibility to participate in the Program and to meet certain minimum requirements. The Charter Schools meet one of the following criteria: (c) in the case of a first year charter, there is evidence that a charter petition has been submitted for approval to the Chartering Authority, (d) The Charter Schools meet one of the following criteria: (1) fifty- five percent (55%) or more of the student enrollment at the charter school site must be eligible for FRPM; or (2) the charter school site for which grant funds are requested must be physically located in an attendance area of a public elementary school that has fifty-five percent (55%) or more of its students eligible for FRPM pursuant to Education Code, Section 47614.5(c); (3) First Year Charter School’s not operational in the prior year shall be eligible in the current year if the school meets the FRPM Eligibility requirements based on current year data; (4) in the 2015-2016 fiscal year, the Authority may conduct an additional funding round; (5) in all subsequent funding rounds, all schools shall adhere to application dates outlined in Section 10170.5;

In addition (e) the Charter School, educational management organization, or charter management organization is not in default with the requirement of all other programs administered by the Authority; (f) the charter school is in good standing with its chartering authority and is in compliance with the terms of its charter at the time of application submission, and without interruption throughout the term of the grant. The Authority will rely on information from the chartering authority regarding the school’s good standing and compliance with the terms of its charter. Charter schools may appeal any response by the chartering authority’s staff directly to the chartering authority’s governing board. It shall be the charter school’s responsibility, and not the Authority’s, to ensure that the good standing and compliance response letter is received by the stated deadline.

The provisions within this section are necessary to comply with statutory requirements (AB 93) which lowered the current 70% FRPM to 55% FRPM expanding the eligibility for charter schools to participate in the Program. An additional 2015-16 funding round allows for ineligible schools and First Year Charter Schools to participate in the Program. Applicants’ eligibility is based on a charter school’s compliance with other Authority Programs and schools failing to provide current documents can jeopardize receiving SB 740 funds. The change to this section is necessary to provide program consistency with the Incentive Grant Program, as schools are eligible to participate in both Programs. These provisions ensure uniformity in the minimum threshold for

Applicant eligibility, as Applicants are apprised of the criteria for eligibility prior to submitting an Application.

Section 10170.4: “Eligible Costs”

This section establishes the eligible and ineligible uses of the Program funds. Grant funds may be applied toward a Charter School’s facilities costs for all of the following: (1) costs associated with facility rents or leases as evidenced by an executed rental or lease agreement; (2) costs associated with the facility but not limited to, remodeling building, deferred maintenance, initially installing or extending service systems and other built-in equipment, or improving sites; and common area maintenance charges that are based on the charter school’s usage of the facility are limited to maintaining and repairing the facility and its common areas; and (3) costs described in subdivisions (a)(1) and (a)(2) and associated with portions of school district or county office of education facilities that are not existing school district or county office of education facilities and are not reasonably equivalent facilities received from their charter authorities; (4) costs associated with a ground lease as evidenced by an executed rental or lease agreement where there is no existing district facility on the ground being leased.

Grant funds may not be apportioned for any of the following: (1) units of average daily attendance generated through nonclassroom-based instruction; (2) facility rent and lease costs associated with a charter school’s occupancy of existing district or county office of education facilities; and (3) facility rent and lease costs associated with a charter school’s occupancy of reasonably equivalent facilities from their chartering authorities. In addition, this section sets forth that Program funds may not be applied to (4) costs incurred to meet a charter school’s local match obligation for charter school facilities that receives funds pursuant to the Charter Schools Facilities Program, further clarification for (5) costs incurred for instructional costs including, but not limited to, salaries and benefits paid to teachers, instructional aides, the educational management organization or charter management organization responsible for managing the Charter School, or chartering authority and existing district personnel. (e) Where an application is for multiple school sites, each site’s eligibility and costs will be evaluated separately. The ADA applied to the determination of the grant, as described in subdivision (d), shall only be based on the eligible site(s).

The provisions within this section are necessary to clarify the eligible uses of the Program funds, outline those uses that are expressly ineligible, clarify that Grant funds must be expended and liquidated within the guidelines of this Article and the Program, and clarify for the Applicant the maximum Grant award. In addition language was removed to clarify eligible and ineligible cost for charter schools. The section clarifies first year charter schools eligibility, need for additional funding round in 2015-16 and application deadline.

Section 10170.5: “Application Submission”

This section sets forth requirements pertaining to Application submission, including, but not limited to, due date and time, submission of acceptable documents, the development of an online application and an additional 2015-16 funding round in January 2016.

The Application (CSFA Form 740-01, revised October 23, 2015), incorporated by reference, is necessary for Applicants to set forth basic information regarding the Applicant organization, authorizing board adoptions, charter school facilities and list of Current Board Members, Board of Directors or Governing Board of Charter Schools on behalf of which they are applying. For purposes of ensuring the Authority's appropriate processing, the Application requests information relating to minimum eligibility based on FRPM pursuant to Education Code, Section 47614.5(c). In order to ensure that the Applicant is clear of conflicts of interest, the Application requests information regarding the owner of property and whether there is any relationship with the charter school, or any employee or officer of the charter school's governing body.

The provisions are necessary for the following reasons: (1) to make the Application in April with a deadline of five weeks from the release date; (2) charter schools may submit documents via hard-copy, CD Rom or flash drive, except for the Application (CSFA Form 740-01) which must be submitted via hard-copy with original executed signatures; (3) development of an online application and clarification of all supporting documents and (4) adding an additional funding round for the 2015-16 program in January 2016 pursuant to Education Code, Section 47614.5(c). The provisions are necessary to provide guidance to the charter school community regarding the expansion of the program, and provide information about applying for funding under the new funding round. Schools are able to consolidate application submission documents thus making the submission process less cumbersome.

Section 10170.6: "Content of Application"

This section sets forth the specific documentation that is required for a Program Application to be considered complete while providing the Authority with the discretion to request additional documentation when deemed necessary.

The provisions within this section are necessary to apprise Applicants of the specific information needed by the Authority to make determinations for Program award and necessary for the following reasons: (a) the Application shall include a completed Legal Status Questionnaire, and signed certification that the data and information reported is true and correct and the charter will continue to comply with state and federal laws; (b) a copy of the Authorizing Board adoption, (d) charter schools requesting reimbursement for common area maintenance charges shall submit an Invoice Report no later than July 15 of the applicable Fiscal Year, (2) an Invoice Report as provided by the Authority detailing the costs to be reimbursed by the Authority.

First Year Charter schools shall submit supporting documentation listed in subdivisions (e) (1)-(3) as they are made available. Grant funds will not be disbursed

until items (1),(2) and (3) have been received by the Authority, (3) a Charter School 20 Day Attendance Report shall be submitted within 20 days of initial California Department of Education application submission date.

A provision regarding return of funds states (f) the Authority shall be entitled to the return of all grant funds from an Applicant if it is determined that the Applicant failed to provide complete and accurate information, or providing misleading information, that resulted in the disbursement of grant funds for which an Applicant is not eligible.

These provisions ensure that applicants provide all relevant information the Authority has deemed necessary to make eligibility determinations and identify eligible costs. An applicant receiving grant funds as a result of an incomplete application or misrepresentation during the Initial Apportionment, allows the Authority to have a means to seek reimbursement.

Section 10170.7: “Estimated Annual Entitlement Calculation”

This section informs Applicants with the basis by which the Authority will make an initial determination regarding each Applicant’s Annual Entitlement Calculation. (b)for each eligible Charter School, the Authority will determine the Estimated Annual Entitlement, pursuant to Section 10170.4(d), (c) the Estimated Annual Entitlement Calculation shall not include reimbursement of invoices as defined by Section 10170.4(a)(2). (f) Charter Schools that do not have Prior Year enrollment data, the Authority shall base the units of ADA on 90% of the school’s enrollment as reported in the Charter School 20 Day Attendance Report pursuant to section 10170.6(e)(3).

The provisions within this section are necessary to inform Applicants of the basis by which initial apportionments, pursuant to Education Code, Section 47614.5(c)(4)(A), are to be disbursed. Calculations based on documentation providing estimated lease and rent costs for reoccurring grantee’s and first-year grantee’s may change in the final fiscal year entitlement award.

Section 10170.8: “Final Fiscal Year Entitlement Calculation”

This section clarifies the basis by which the Authority will make its final fiscal year entitlement calculations and eligibility determinations based on final and actual rent, lease or additional facility costs submitted by an invoice for the fiscal year pursuant to Section 10170.4(a), final ADA, and final FRPM data.

The provisions within this section are necessary to assist Applicants in understanding the basis for their final fiscal year entitlement calculations and eligibility determinations, and calculations based on verifiable data rather than estimates.

Section 10170.9: “Apportionment of Grant Funds”

This section clarifies the timing and basis for each of three apportionments in relation to a Final Fiscal Year Entitlement as well as conditions under which a notice for reimbursement for overpayment is necessary and requirements for submission of evidence and added common area maintenance as a reimbursable cost. This section also states that the Authority reserves the right to: (f) if insufficient funds remain available from the fiscal Year's appropriation, the Authority shall determine the pro rata share to which each Grantee is entitled and disburse such amounts to each Grantee. The Authority shall calculate each Grantee's pro-rated award based upon the previous year's ADA and previous year's rent/lease costs unless current year's rent/lease costs are available at the time of submission. For Charter Schools that do not have Prior Year enrollment data, the Authority shall calculate the pro-rated award pursuant to Section 10170.7(f) Prior to disbursement of funds the Grantee shall complete an Invoice Report, provided by the Authority, as well as submit supporting documents to the Authority by July 15 of the applicable fiscal year. The Authority made non-substantive grammatical corrections to existing text.

The provisions within this section are necessary to inform Grantees of additional reimbursement costs of common area maintenance and completion of an Invoice Report submitted to the Authority by July 15. If the program is oversubscribed, the Authority shall disburse funds based on the criteria of ADA and facility costs.

Section 10170.10: "Notification of Grantee; Appeal Process"

This section provides clarification to Grantees about their right to appeal the Authority's estimated annual entitlement calculation, and a description of the Authority's appeals process.

The provisions within this section are necessary to assist Grantees in understanding the process by which they may appeal the Authority's estimated annual entitlement calculation if they do not agree with it. More specifically, the provisions are necessary to ensure adequate consideration of Grantees' requests through an appeals process. The Authority has established a 30-day process for review in order to ensure sufficient time for thorough consideration while at the same time ensuring timely resolution.

Section 10170.11: "Obligation and Expenditure of Grant Funds"

This section a non-substantial change was applied to change Free or Reduced-Price Meal to FRPM to maintain document consistency.

Section 10170.12: "Approval of Grant Use Change"

This section a non-substantial change was applied to change use to Use a capitalization correction.

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. The Program is unique to California and does not require federal regulations to govern the Program.

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 Charter School Facility Grant Program is a grant program designed to award state funds to charter schools for facility-related costs, and that the regulations do nothing more than provide for the application and evaluation process by which grant awards will be awarded. As a result, there can be no adverse economic impact on business by the adoption of the regulations.

7. Economic Impact Assessment

- a. With the exception of the addition of a limited number of additional full-time staff positions needed to administer the Program, 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.

- 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 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 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.

As discussed above, the Board concludes that the adoption of the proposed amendments will not have a significant adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

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 and ensure that Applications are evaluated in a consistent and fair manner, 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 ensure consistent and effective administration of the Program, the public understands the expectations of the Program, and the Program targets charter schools that are most in need in accordance with the Program's intent.