

## **NOTICE OF PROPOSED RULEMAKING ACTION**

### **CALIFORNIA SCHOOL FINANCE AUTHORITY**

#### **Article 1.6, Sections 10170.16 through 10170.22 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 adopt 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, October 10, 2016. 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 10170.16 through 10170.22 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The Regulations implement CSFA's responsibilities related to the Charter School Revolving Loan Fund Program (Program).

#### **Authority and Reference**

**Authority:** Section 41365 of the Education Code. Section 41365(h) allows CSFA to adopt regulations in order to administer the Program.

**Reference:** Section 41365 of the Education Code, Section 41366.5 of the Education Code, and 47600 et seq. and 47605 of the Education Code. The Regulations include a number of the requirements of the Program contained in Section 41365.

#### **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).

Pursuant to Education Code, Section 41365, the State Legislature directed the California School Finance Authority (Authority) to commence administration of the Charter School Revolving Loan Fund Program (Program) with the 2013-14 fiscal year and to adopt

regulations to implement the statute. Pursuant to Education Code, Section 41365(c), the Program provides loans to Charter Schools of up to \$250,000 in-total during the lifetime of the Charter School in order to meet the purposes of the charter granted pursuant to Education Code, Section 47605. The Program provides financial benefits to New Charter Schools by assisting such schools in meeting their short-term cash flow needs when State revenues based on student attendance are not sufficient to cover the operating expenses. Also refer to “Results of Economic Impact Assessment” (item d), below.

Effective July 1, 2013, the Authority initiated its administration of the Program, and pursuant to Section 41365(h), 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 February 3, 2014 (OAL Regulatory Action # 2014-0123-02 E). In addition, OAL approved an emergency readopt of the emergency regulations pursuant to Government Code, Section 11346.1(h), on August 4, 2014 (OAL Regulatory Action # 2014-0723-03 EE). On July 24, 2014, the Authority approved permanent regulations and such permanent regulations were approved by OAL on March 10, 2015 (OAL Regulatory Action # 2015-0129-01 CR). In order to amend regulations for purposes of administration of the Program, the Authority is proposing regulations through OAL’s permanent rulemaking process.

The amendments to the Regulations are briefly summarized below which include, but are not limited to, the following: (1) additions and modifications to definitions; (2) modifications and additions to eligibility requirements, such as including that not only Charter Schools must be in compliance with other Authority programs, but school affiliate organizations must be in compliance as well; (3) replacement of the original Application Form with the new Application Form (CSFA RLF-01; revised August 10, 2016) and deletion of the Application Instructions; both documents are incorporated into this Notice by reference, with proposed changes; (4) omission of redundancies; (5) notation that upon implementation of an online application system, an Applicant must submit documentation through that system; (6) modification of the priority process when the Program is oversubscribed; (7) modification of the award process which sets forth that the loan term of a New Charter School will not exceed the length of the school’s approved charter term; and (8) modification that sets forth that Affiliated Organizations, if applicable, are required to repay the Charter School’s loan if the school is unable to repay the loan.

The proposed regulations offer the benefits of streamlining the application review process, clarifying program guidelines, and eliminating redundancies and inconsistencies within the regulations themselves. The revised Application form provides for a more efficient review process through identifying the appropriate support documents required for submission with the Application.

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 loan program. Therefore, the proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

The Regulations are briefly summarized below. Refer to the Initial Statement of Reasons for additional detail.

### **Section 10170.17 – “Definitions”:**

The amended Section adds new subdivision (a), which clarifies the definition of “Affiliated Organization”.

The amended Section modifies original subdivision (b), now subdivision (c) which revises the application form number to make consistent with other Authority program forms.

The amended Section adds new subdivision (i), which clarifies the definition of “Free or Reduced-Price Meal” or “FRPM”.

The amended Section adds new subdivision (l), which clarifies the definition of “New Charter School”.

### **Section 10170.18 – “Eligible Applicant”:**

The amended Section modifies subdivision (c) to ensure that a New Charter School shall submit evidence that its charter petition has been submitted to a chartering authority for approval and that it anticipated beginning operations in the following fiscal year.

The amended Section modifies subdivision (d) to ensure that an Applicant demonstrates that it is an Incorporated Charter School by providing Articles of Incorporation.

The amended Section adds new subdivision (h) originally located in Section 10170.19.(e)(4) and Section 10170.21.(c), to ensure that a Charter School will not receive more than \$250,000 in Program loans over the lifetime of their charter.

The amended Section modifies original subdivision (h), now subdivision (i), to include that not only Charter Schools, but Affiliated Organizations, if applicable, must be in compliance with all programs administered by the Authority.

### **Section 10170.19 – “Application Content and Submission”:**

The Authority is proposing a new application form (CSFA RLF-01; revised August 10, 2016) which is incorporated by reference, and is intended to replace the originally adopted application form (CSFA 14-01: July 24, 2014). The originally approved application instructions are proposed to be removed from the overall regulations.

The amended Section omits language in the introductory paragraph because the relevant information is relocated to subdivisions (b) and (c).

The amended Section relocates original subdivision (e)(2) to subdivision (a), sets forth that the application will be available on the Authority’s website no later than December of each year.

The amended Section omits specific language under subdivision (a) relating to required submission of loan amount, Articles of Incorporation, and the school’s legal status.

The amended Section relocates original subdivision (e)(3) to a new subdivision (b), which sets forth the application submission requirements relating to submission of a printed Application form and the submission deadline. In addition, this new subdivision (b) sets forth a new requirement that a copy of the Application form and supporting documentation required at new subdivision (c) must be submitted via flash drive or CD-ROM and that, upon implementation of an online application system, an Applicant must submit documentation through that system.

The amended Section adds new subdivision (c) (replacing original subdivision (d)), which sets forth the listing of the specific documents that must be submitted as part of the Application, and which provides for the following modifications: (c)(1) - consolidation of requirement for submission of Articles of Incorporation for an independent charter with requirement to submit an operational agreement or Memorandum of Understanding with chartering authority for a dependent charter (moved from original (d)(7)); (c)(3) – modification setting forth that the current charter petition should be provided rather than charter agreement, and addition of “evidence supporting charter approval and term” to the requirement to submit charter petition.

The amended Section omits original subdivisions (b) and (c) because the related submission requirements are incorporated into the listing of submission requirements as set forth in new subdivision (c).

The amended Section modifies original subdivision (d)(2), now subdivision (c)(5) which sets forth that an adopted budget, if available should be provided.

The amended Section modifies original subdivision (d)(3), now subdivision (c)(6) which sets forth that multi-year year budget projections for at least the five fiscal years beyond the first fiscal year for which the Applicant is applying should be provided.

The amended Section modifies original subdivision (d)(4), now subdivision (c)(7) which sets forth that the most recent business plan and/or strategic plan for at least the next five academic years should be provided.

The amended Section modifies original subdivision (d)(9), now subdivision (c)(11) which sets forth that targeted student population and demographics should be provided, and omits reference to student year-to-year retention rates.

The amended Section omits subdivisions (e)(1-4) due to subdivisions (2-4) being incorporated into other subdivisions, and subdivision (e)(1) being omitted as it relates to the 2013-14 academic year only.

The amended Section modifies original subdivision (e)(5), new subdivision (d), which clarifies that an Affiliated Organization must provide a separate application for each school that has a separate CDS Code.

#### **Section 10170.20 – “Application Review and Evaluation/Underwriting Criteria”:**

The amended Section modifies subdivision (c) which sets forth that if funds are left over after New Charter Schools are awarded, consideration for a Program loan will be given to

existing Charter Schools that have not had their charter's renewed. Reference to representation by Regions within this subdivision is omitted, as the application of Regions for purposes of setting priority among Applicants is clarified at subdivision (d)(1).

The amended Section modifies subdivision (d) which sets forth that if there are insufficient funds available during an application cycle, the process described in subdivisions (d)(1-2) will be followed, omitting specific language.

The amended Section adds new subdivision (d)(1-2), which first sets forth that priority will be established among New Charter Schools based on highest FRPM across Regions ensuring equal representation among Regions, to the extent feasible, pursuant to new Sections 10170.17(o)-(r). Second priority will be established among existing Charter Schools based on highest FRPM across Regions ensuring equal representation among Regions, to the extent feasible, pursuant to new Sections 10170.17(o)-(r).

The amended Section adds new subdivision (e), which sets forth that pursuant to subdivision (d), in the event that the Charter School's FRPM data is not available, the Authority shall award loans based on the FRPM of the school's projected elementary school attendance area.

**Section 10170.21 – “Loan Amount and Repayment Terms”:**

The amended Section adds new subdivision (b)(1), which sets forth that the loan term of a New Charter School will not exceed the length of the school's approved charter term.

The amended Section omits subdivision (c) which is incorporated into new Section 10170.18.(h).

The amended Section adds new subdivision (c), which sets forth loan payments shall begin the fiscal year following the fiscal year in which the school is disbursed the loan from the Authority, as determined by the Authority's accounting office.

**Section 10170.22: “Loan Agreements”:**

The amended Section modifies subdivision (e)(2), clarifying that if a school closes or fails to open, the Charter School will be invoiced for the loan balance.

The amended Section modifies subdivision (g), which sets forth that in the event the Charter School is unable to repay the loan and the Charter School is operated by an Affiliated Organization or Chartering Authority, the Authority will require the Affiliated Organization or Chartering Authority to repay the loan.

**Incorporated by Reference Form**

Charter School Revolving Loan Fund Program Application, CSFA RLF-01: revised August 10, 2016.

**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.

Pursuant to Education Code, Section 41366.6(a), the CSFA shall ensure that adequate funds are available in the Charter School Revolving Loan Funds to provide Program awards, and to facilitate the transfer of funds from the Charter School Security Fund to the Charter School Revolving Loan Fund, as necessary.

For the most recent 2015-16 funding round, approximately \$9 million was available in the Charter School Revolving Loan Fund to provide Program loans. 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 loan program available to New Charter Schools to assist in start-up costs.

**Cost Impacts**

The 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 loan 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 loan program for newly established Charter Schools across the State of California. 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 loan program for newly established Charter Schools across the State of California. 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 loan program for newly established Charter Schools across the State of California.
- d. The proposed regulations are intended to set forth administrative criteria and requirements for administering a loan program for newly established Charter Schools across the State of California. In the event the Program is oversubscribed, first priority will be given to New Charter Schools based on highest FRPM across Regions and second priority will be established among existing Charter Schools based on highest FRPM across Regions. If the Charter School's FRPM data is not available, the Authority shall award loans based on the FRPM of the school's projected elementary school attendance area. As such, to the extent the Program is oversubscribed, 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 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, would be as effective and less burdensome to affected private persons than the proposed action, 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 S. Spring Street, Suite 8500  
Los Angeles, CA 90013  
(213) 620-4467

or

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

or

[kjohantgen@treasurer.ca.gov](mailto:kjohantgen@treasurer.ca.gov)

or

[csrlf@treasurer.ca.gov](mailto:csrlf@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, October 10, 2016. 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](http://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.