

MEMORANDUM

Date: November 9, 2011

Staff Summary No. 5

To: Members, California School Finance Authority

From: Katrina M. Johantgen, Executive Director

Re: Resolution No. 11-44 Approving New Regulations for the Charter School Facilities Credit Enhancement Grant Program and Authorizing the Rulemaking Process

Background: In 2009, the California School Finance Authority (Authority) applied for a \$15 million credit enhancement grant through the U.S. Department of Education's Credit Enhancement for Charter School Facilities Program (CFDA # 84.354A). Although the Authority was not awarded a grant in 2009, the Authority achieved an application rating high enough to be deemed an alternate in the event additional Program funds became available. As a result of its alternate status, the Authority was notified in a letter dated, July 20, 2010, that it had been awarded a credit enhancement grant under the Program in the amount of \$8.3 million. The Authority executed its Program Performance Agreement on June 6, 2011. Authority staff has worked with various charter school stakeholders to craft a program that best meets the needs of California charter schools.

Issue: The Authority has established proposed regulations for the purpose of implementing the Charter School Facilities Credit Enhancement Grant Program (Program). As currently envisioned, the Authority will serve as the debt conduit issuer or placement agent for financings through this Program, and credit enhancement funds would serve as a primary debt reserve. Through its Performance Agreement with the U.S. Department of Education, the Authority has established the broad program goals of serving communities in need, implementing the grant program in a timely manner, providing financing on more favorable terms, and ensuring adequate marketing and dissemination of Program information. More specifically, as memorialized in its Performance Agreement, the Authority has established the objectives of both targeting charter schools serving low-income students, with at least 50% of students eligible for free and/or reduced price meals and facilitating significantly lower cost financing for Program applicants that demonstrate the ability to access the capital markets with a minimum leveraging ratio of 8:1.

While addressing enhancing the financing of charter school facilities in low-income communities, the Program intends to use the Qualified School Construction Bond Program as a model in terms of giving priority to creditworthy applicants that show evidence of having a letter of credit, the capability and intent to commit substantial equity to a project, and/or received an investment grade credit rating. Per the Performance Agreement, the Authority will also give priority to applicants that have access to tax-advantaged financing instruments. The Authority intends to implement the Program in a manner that best diversifies the Authority's portfolio of charter school financing programs and that complements its working capital program. As such, the Authority envisions the Program as promoting the leveraging of primary debt reserve funds to achieve low to moderate sized financings (approximately between one million and six million dollars) for the renovation, construction, and leasehold improvements, as well as site acquisition of charter school facilities.

The proposed regulations, in addition to other requirements, set forth eligibility criteria for all applicants, the eligible uses of grant funds, the evaluation criteria for the Authority's approval of applications for awards, and definitions of terms, as well as special provisions and

requirements. The Authority has established an open application process for the receipt and review of all applications. Other proposed provisions include: the option that the Authority require an applicant to agree to the intercept mechanism pursuant to Section 17199.4 for repayment of debt; the maximum award amount of \$750,000; a required application fee of \$100; and the requirement that at least 80% of instruction be conducted at the school site and that the school achieve an average daily attendance (ADA) of 80%.

A summary of or actual language from each section within the proposed regulations is highlighted below.

Section 10192: "Purpose"

This Article implements the California School Finance Authority's administration of the Charter School Facilities Credit Enhancement Grant Program (CFDA #84.354A) funds(s) received under the U. S. Department of Education, which assists charter schools in enhancing their credit for purposes of gaining access to capital in order to address their facilities renovation, construction, and acquisition needs.

Section 10193: "Definitions"

- Defines the following terms used in the regulations: "Academic Performance Index Growth"; "Adequate Yearly Progress"; "Applicant"; "Application"; "CBEDS Report"; "Charter School"; "Chartering Authority"; "Classroom-Based Instruction"; "Free and Reduced Lunch"; "Grantee"; "Nonprofit Entity"; "Program"; and "Subgrantee or Participant."

Section 10194: "Applicant Eligibility Criteria"

Identifies seven basic criteria required of all charter schools in order to participate in the program, including:

- Having an approved charter;
- Being on good terms with the chartering authorizer and in compliance with the terms of the charter;
- Completion of at least one year of instructional operations under the current CDS code and charter school number;
- Having at least 80% of instructional time at the school site and an average daily attendance of at least 80% based on the most recent CBEDS report;
- Meeting the definition of "charter school" defined in Education Code 47600, et seq., and the federal definition of "charter school" per the No Child Left Behind Act of 2001;
- Having a lottery system for selection of students in the event more students apply than the school can accommodate; and
- Having at least 50% of pupils eligible for free or reduced price meals.

Section 10195: "Eligible Use of Program Funds and Maximum Award"

- Identifies eligible uses as funding the primary debt reserve for debt issued by a subgrantee to acquire, renovate, construct, or make leasehold improvements to charter school facilities.

- Sets a maximum award amount of \$750,000 per application.
- Establishes a maximum 30-year or useful life of financed asset for repayment of financing in conjunction with any grant award.
- Sets forth that no grant funds are to be released without prior approval of trustee or the authority.
- Sets forth that the award reservation of funds is to be released and returned to the authority when no longer needed.

Section 10196: “Application Review and Evaluation Criteria”

- Establishes an open application process.
- Sets forth priority criteria for the Authority’s approval of a Program award.
- Sets forth considerations that the Authority may take on a case-by-case basis, including academic performance, use of the intercept mechanism pursuant to Education Code Section 17199.4, having a prior reservation of funds, and review of any other documentation that the Authority deems necessary.
- Sets forth a mechanism for prioritizing applications based on receipt time in the event of oversubscription.

Section 10197: “Content of Application”

- Sets forth the scope of documents required for submission of a complete application, including, but not limited to: completion of a formal Program application; copy of current charter and expiration date; evidence of non-profit status, if applicable; audited financial statements for the past three years; budget for current fiscal year; projected budgets for the next three years; verification of good standing with the chartering authority without interruption; and submission of a \$100 application fee.

Section 10198: “Audits and Conflict of Interest”

- Sets forth specific provisions that allow the Authority and Bureau of State Audits to conduct audits as well as requirements governing issues with conflict of interest.

Section 10199: “Funding Contingencies”

This grant program is contingent upon the receipt and ongoing availability of funds as scheduled by the U.S. Department of Education.

Implementation: Given the Office of Administrative Law’s time requirements for rulemaking, and the Authority’s intent to initiate the rulemaking process, the Authority anticipates posting a notice and an application form on its website in February 2012 to announce that it will begin accepting applications for its review in March 2012.

Recommendation: Staff recommends that the members adopt Resolution 11-44 approving proposed regulations for the Charter School Facilities Credit Enhancement Grant Program. If approved, the Executive Director will initiate the rulemaking file for processing by the Office of Administrative Law, and will distribute the proposed changes to interested parties for public comment.