



**CALIFORNIA SCHOOL FINANCE AUTHORITY
915 CAPITOL MALL, ROOM 101
SACRAMENTO, CA 95814**

**Title 4, Division 15, Article 5,
CALIFORNIA CODE OF REGULATIONS
Charter Access to Bank Loan Enhancement (Charter ABLE) Program**

INITIAL STATEMENT OF REASONS

I. INTRODUCTION

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

The Authority has received a third grant award under the U.S. Department of Education's (DOE) Credit Enhancement for Charter Schools Facilities Program (CFDA #84.354A). This federal grant is authorized under Title V, Part B, Subpart 2 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001. This grant, awarded in 2019, provides \$20 million for the purpose of funding debt reserves for the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt. For purposes of the Authority's implementation and administration of this grant program, the program shall be entitled the "Charter Access to Bank Loan Enhancement (Charter ABLE) Program" (Program). While the Authority's initial grant focused on credit enhancement for issuance of long-term debt, especially bonds and long-term notes, the Authority intends to earmark Charter ABLE Program funds for shorter term financings.

II. PROBLEM STATEMENT

Sections 17179 and 17180 of the Education Code endow the Authority with the general power to adopt regulations, as a power reasonably necessary to carry out the powers and responsibilities expressly granted or imposed under Chapter 18, as well as the specific power to adopt guidelines for grants, bonds, and other evidence of indebtedness. The Authority previously promulgated regulations at California Code of Regulations sections 10192 through 10199 (Charter School Facilities Credit Enhancement Grant Program) and 10200 through 10200.7 (Project Acceleration Notes and Credit Enhancement Alternatives (PANACEA) Program) to implement the previous two grant awards. The current regulations are proposed for the purpose of implementing the Charter ABLE Program.

III. ANTICIPATED BENEFITS

The proposed regulations provide specificity and guidance for applicant charter schools to permit an informed decision concerning Charter ABLE Program participation. By setting forth Program requirements and expectations, the proposed regulations reduce the potential for confusion or misinterpretation or misapplication of the rules and increase the likelihood of Program success. Additionally, by setting out clear program goals and requirements, these regulations provide transparency concerning the administration of a government program.

IV. SPECIFIC PURPOSE OF, AND RATIONALE FOR, EACH PROPOSED AMENDMENT

Section 10200.8. Purpose. The purpose of the regulations is set forth as the implementation of the Authority's DOE grant through the establishment of a program to be known as the Charter ABLE Program, intended to provide credit enhancement to facilitate financing of the construction and/or renovation of facilities for California public charter schools.

Section 10200.9. Definitions. Various words and phrases used in the regulations are defined. This is necessary to provide clarity and specificity where words of common usage may have a meaning specific to the Charter ABLE Program. The section also established the Charter ABLE Program Application – Form CSFA 03-22 (rev. March 2022) and is incorporated herein by reference.

Section 10200.10. Applicant Eligibility Criteria. This section sets forth the three conditions that must be met for an applicant to be eligible to apply for an award for Charter ABLE Program funds as well as setting forth the source from which the information will be sought. The regulations clarify that not only must an approved charter be in place and current at the time of application but must remain in place and current through the application review and approval process. In addition, the charter school must be in good standing with its Charter Authorizer and in compliance with the terms of its charter at the time the application is submitted. The regulations clarify that whether the school is in good standing and in compliance with the terms of its charter will be determined based on information obtain from the Charter Authorizer. Finally, to be eligible to apply for an award under the Charter ABLE Program, the school must be established pursuant to Education Code section 47600 et seq. and meet the federal definition of Charter School as set forth in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221 (i)), as amended by the No Child Left Behind Act of 2001. This provides predictability and uniform application of Charter ABLE Program rules as well as informing potential applicants and the public of the program standards and the source that will be used to verify applicant good standing and compliance with the terms of its charter.

Section 10200.11. Award Allocation and Eligible Use of Program Funds. This section describes the approved uses of Charter ABLE Program funds and explains how awards will be allocated. Subdivision (a) indicates that the purpose of awards is to fund the primary debt service reserve requirement for debt associated with the renovation and/or construction of charter school facilities. The limit for awards is set as up to a maximum annual debt service per Financing as defined in Section 10200.9, with an award dollar limit of \$2 million. This provides specificity regarding both the purpose of and amount of awards.

Subdivisions (b)-(d) describe award allocation. Awards shall be held in trust and only released to awardees upon the Authority's or an Authority's approved trustee's approval. Conditions for release will be determined by the Authority, in collaboration with all lending parties, prior to closing of the financing. When Program funds are no longer needed for the authorized purposes, they shall be released and returned to the Authority. If the awardee does not use the Program funds by closing the financing within six months of approval, the award will expire. Additional time may be granted on a case-by-case basis. These provisions are necessary to identify the responsible parties and relevant time frame for award allocation.

Subdivision (e) establishes an application filing fee for the Program to offset staff time devoted to

eligibility and application review.

Section 10200.12. Application Review and Evaluation Criteria. This section describes the availability of the Program application and sets out the criteria used to determine awards. Subdivision (a) establishes that applications will be made available to the extent that funding and appropriations are available, and will be provided on a first come, first served basis. The application period will close when funding is no longer available. This provision is necessary to provide notice to potential applicants that the application period is dependent upon the availability of funds and that, assuming Program criteria are satisfied, awards will be made on a first come, first served basis.

Subdivision (b) describes the criteria by which applications will be evaluated and awards made and provides that applicants must meet at least one criterion but will receive increasing preference for each criteria met. The criteria are either: 1) location in a district or county where at least 50% of students do not meet the state standard for proficiency in either math or language on the state assessment; 2) location in a district or county with more than 50% of the student population eligible for free or reduced-price lunch; or 3) more than 50% of current or projected enrollment are eligible for free or reduced-price lunch. These criteria are necessary to meet the program goal of providing preference to schools serving communities and families in need. This provision provides clarity in how the Authority intends to identify such schools.

Section 10200.13. Content of Application. This section sets forth the items that must be submitted to the Authority as part of an application for Program funds. This list is necessary to detail the specific information and documents required as part of a Program application, the relevant time frame for certain documents, and the reservation that the Authority may request any additional information deemed necessary to evaluate the application. This provision is necessary to provide consistency, clarity, and predictability for Program applicants.

Section 10200.14. Audits and Conflicts of Interest. Subdivision (a) reserves the ability for the Authority to conduct or require audits to ensure compliance with the requirements and terms of the Program, the related financing program, and the regulations, and requires awardees to retain documentation and financial data for three years after the certification of completion and repayment of debt or three years after the Program funds are no longer held in reserve, whichever is longer. These requirements are necessary to put awardees on notice of the potential for audit and to notify awardees of required document retention requirements.

Subdivision (b) establishes that the U.S. Department of Education conflict of interest rules apply to the Program. This provision is necessary to provide clarity and specificity to awardees and to assure Californians that the Program will be administered free from apparent or actual conflicts of interest.

Subdivision (c) establishes that the Program will be administered consistent with the federal post-award procurement requirements of 2 CFR 200.317 through 2 CFR 200.327 requiring federal grant awardees to develop written procurement procedures and conduct procurement transactions in a manner that provides open and free competition. In addition, this rule prevents any employee, officer, or agent of an awardee from participating in the selection, award, or administration of any contract paid by federal funds if a real or apparent conflict of interests exists. This provision is necessary to provide clarity and specificity to awardees and to assure Californians that the Program will be administered free from apparent or actual conflicts of

interest.

Subdivision (d) reserves the right of the Authority to conduct site visits to any school facility or project receiving Program funds. This provision is necessary to provide notice to awardees and for specificity and clarity regarding Program administration.

Subdivision (e) requires awardees to routinely submit documentation of continued eligibility on at least an annual basis. This provisions in necessary to provide notice to awardees of Program requirements and to provide specificity and clarity regarding Program administration.

Subdivision (f) requires awardees to comply with all State and Federal requirements throughout the award period. This provision is necessary to establish that awardees are required to comply with both State and Federal requirements for the entire award period. The regulation provides clarity and specificity regarding Program expectations.

Section 10200.15. Funding Contingency. This section provides that the release of Program funds is dependent upon the execution of a performance agreement between the Authority and the U.S. Department of Education and that the Program itself is contingent upon the receipt and availability of funds. This provision is necessary to describe the funding contingency of the Program and to provide clarity and predictability.

V. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Authority did not rely on any technical, theoretical, and/or empirical studies, reports, or documents in proposing the regulations.

VI. ECONOMIC IMPACT ASSESSMENT

The proposed regulations are unlikely to have an impact on the creation or elimination of jobs within the State of California. In addition, the Authority is unaware of any reason enhancing conduit financings would result in the elimination of jobs. Furthermore, the proposed regulations are unlikely to have an impact on the creation of new businesses or the elimination of existing businesses within the State of California.

The proposed regulations could likely impact the expansion of businesses currently doing business within the State of California. This program will enhance conduit financings for charter school facilities. These facilities are often an expansion of the associated charter school organizations to serve more students. It should be noted that not all charter school facility related financings are expansions. Some financings are replacement facilities, renovations, or site improvements.

Lastly, the proposed regulations will have no benefit to worker safety or the state's environment as a result of this rulemaking. The purpose of the program and proposed regulations is to set forth administrative criteria and requirements for administering this grant program. As the intent of the program is to enhance financings related to charter school facilities, the Program and its proposed

regulations have the potential to directly benefit the welfare of students and their related communities.

VII. REASONABLE ALTERNATIVES AND THE AUTHORITY'S REASONS FOR REJECTING THOSE ALTERNATIVES

There is no reasonable alternative as these are the establishing regulations for the Program.

IIIX. DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed regulatory action does not contain any regulations that are identical to or in conflict with any corresponding federal regulation.

IX. REGULATIONS MANDATED BY FEDERAL LAW

Program applicants are expected to comply with federal regulations related to conflicts of interest. These regulations are stated in proposed regulations Section 10200.14. Specifically, applicants must comply with the following federal regulatory code as required by the United States Department of Education as well as general conflict of interest compliance for federal grants.:

34 CFR 75.525(a) which prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or their immediate family members; and (b) the person is a public official or has a family or business relationship with the Awardee.

34 CFR 75.525(b) which provides further that an Awardee may not permit any person participating in a project to use their position for a purpose that is - or gives the appearance of being - motivated by a desire for a private or financial gain for that person or for others.

2 CFR 200.318 through 2 CFR 200.327. These standards require federal grant Awardees to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the Awardee may participate in the selection, award, or administration of any contract supported by federal funds if a real or apparent conflict of interest exists.

The full text of the federal regulations referenced above are found in the Code of Federal Regulations, which is available online at <https://www.ecfr.gov/>.