

INITIAL STATEMENT OF REASONS

CALIFORNIA SCHOOL FINANCE AUTHORITY

Article 1, Sections 10152 through 10158 Title 4, Division 15 California Code of Regulations

INTRODUCTION

The California School Finance Authority (Authority) is organized and operated pursuant to sections 17170 through 17199.5 of the Education Code. In 2002, the Charter School Facilities Program (Program) was created under sections 17078.52 through 17078.66 of the Education Code to provide funding to qualifying entities for the purpose of construction of school facilities, either through new construction or rehabilitation, for charter school pupils. The Program provides for funding of construction project costs, consisting of a 50% State grant and 50% local matching share, and is jointly administered by both the Authority and the Office of Public School Construction. Pursuant to bonds issued under the Kindergarten-University Public Education Facilities Bond Acts of 2002, 2004, and 2006, stemming from Propositions 47, 55, and 1D, respectively, \$900 million was allocated for the purposes of financing charter school facility construction projects. Funding rounds were also established in 2009 and 2014 as a result of additional funds stemming from previous Applicants having rescinded their Program awards. Pursuant to Proposition 51 in 2016, an additional \$500 million in bond authority was set aside for an additional funding round. Program recipients are required to repay to the State, the local matching share of 50-percent of the total project costs through a lump sum payment, Program loan payments, or a combination of both.

Education Code section 17078.57. states that the Authority shall adopt regulations establishing uniform terms and conditions that shall apply equally to all facility projects seeking Program funding.

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

The proposed amendments to the regulations, identified below, establish consistency with Program policy and practice, enhance Program efficiency, consolidate overlapping sections, establish internal consistency, correct references to statutes, clarify definitions, set forth additional definitions, and set forth clarifying language. Overall, the proposed regulations are intended to ensure effective and consistent administration of the Program. The summary of the amendments to the regulations is set forth below. Where applicable, additional clarification regarding the need for such amendments is provided.

Section 10152 – “Definitions”:

Amendments to clarify Definitions (Amendments to Sections 10152) - the amendments provide further clarification on terminology used within the regulations.

In subdivision (d) – the amendment removed the website reference “www.treasurer.ca.gov/csfa/charter/application.pdf” since the Application is only available during the Application Submission period. The amendment corrected a typographical error, “Web site” to “website”. The Authority is requesting non-substantive corrections to existing text.

In subdivision (e) – This amendment added the words “California School Finance Authority as further defined” and statute “17173”, to clarify who is the Authority and updated the reference statute. The words “have the” were removed to provide clarity when using the term “Authority”. The Authority is requesting non-substantive corrections to existing text.

In subdivision (g) – This amendment added a new definition “Certification of Financial Soundness”, pursuant to the passage of Proposition 51, the schools financial soundness certification is valid for one year from the Authority Board adopted resolution. Schools are required to submit financial documents for an annual financial soundness review. The terms “financial soundness” and “financially sound,” both set forth in the regulatory text, are used by the Authority to describe the financial status of the school. This is necessary for purposes of consistency with the Authority’s resolution of establishing a 12-month certification for continual eligibility status.

In subdivision (h) - This amendment corrected a typographical error, “school” to “School” and is being applied throughout the entire regulation text. The Authority is requesting this non-substantive typographical correction to existing text.

In subdivision (i) – This amendment removed (h) and reassigned (i), in addition to removing the text “governing board of the” because not all chartering authorities have governing boards. The Authority is requesting this non-substantive correction to existing text.

In subdivision (i) – This amendment removed (i) “Co-borrower or Guarantor”, given that these terms are no longer applicable to the Program. Under current Program policy, the Authority established the term “Obligor” as the responsible party for repayment of the Local Matching Share, either the Applicant itself, or a charter school’s management organization, when applicable. The removal of “Co-borrower” or “Guarantor” is necessary for purposes of consistency with the Authority identifying the term for the repayment of grant funds.

In subdivision (k) - This amendment was updated to replace the word “lease” with “Matching Share,” and the word “lease” with “Funding”. The word “lease” caused conflict with the California School Facility Grant Program (SB740) as this program reimburses school lease costs, but the reimbursement of matching share funds is ineligible. All references to “leases” within these regulations will be updated to

“matching share”. This change is necessary for purposes of consistency with other references within these regulations.

Also the amendment corrected a typographical error, “hardship” to “Hardship”, “payments” to “Payments” and “applicant’s” to “Applicant’s”. The Authority is requesting a non-substantive typographical correction to existing text.

In subdivision (l) - This amendment clarifies that “Financial Soundness” is a direct reference to whether or not the Applicant or Obligor are “Financial Sound”. Also the amendment corrected a typographical error, “sound” to “Sound” and is being applied throughout the entire regulation text. The Authority is requesting this non-substantive typographical correction to existing text.

In subdivision (n) – This amendment added “Funding Round” to better identify the Applications received during the Preliminary Apportionment for each Funding Round mentioned in the introduction. This is necessary as it supports the reference in amended Section 10153(a), as it relates to application submission.

In subdivision (o) – This amendment replaced Education Code, Section 17199.4(a)(4) with Section “17199.4”, since the broader Section number is the correct citation. The Authority is requesting a non-substantive correction to existing text.

In subdivision (p) – This amendment added the language “or the unpaid portion of these costs remaining after a lump-sum payment is made”, to better clarify the terms Local Matching Share or Matching Share are used synonymous with each other. The applicant is required to repay the state 50% of the loan either by a payment plan or a lump-sum payment. The amendment removed the phrase “to the State” as dilatory and unnecessary. This is necessary as it provides clarity for the Applicant and the Authority to identify the type of loan payment.

In subdivision (q) – This amendment added “Matching Share Payment” to identify the type of payment applied to the Program loan. This is necessary as it clearly defines what a Matching Share Payment is and how it will be applied.

In subdivision (t) – This amendment added “Obligor” to denote the party responsible for repayment of the Local Matching Share. In the case of an Applicant, that is a charter school, overseen by a management organization, the term “Obligor” shall be applied in the event the management organization is to be designated as the subject for financial soundness review. This is necessary as the term “Obligor” simplifies the responsible party names since the terms “Co-borrower” or “Guarantor” were removed.

In subdivision (x) – This amendment added “Project” to clarify the use of this term within the regulatory text in relation to the project submitted to the Program within an Application by the Applicant. This is necessary as the term has a common use.

The subdivision incurred the reposition of existing text (g) - (i) formerly (g) and (h); and (n) – (x) formerly (n)- (t) caused by the addition of new definitions and deletion of obsolete definitions to the subdivision. The Authority is requesting this non-substantive formatting correction to existing text.

Section 10153 – “Application Submission”

The word “Submission” was added to the Section title. The amendment is necessary to maintain application consistency between all programs administered by the Authority.

In subdivision (a) – This subdivision has been added, repositioning existing text into (b) position, in order to describe an Application submission process consistent with the SB740 Application Submission language approved by Office of Administrative Law (OAL) on May 2, 2016. The opening paragraph was amended with an “(a)” to set forth the specific required procedure for submission of the Application Form CSFA 03-01, the number to be submitted, and the necessity of an original, signed copy. The section also specifies the delivery methods acceptable for the Application and the fact that late applications will not be accepted.

In subdivision (a) and (b) – The amendment repositions existing text into the (b) position. The subdivision omits specific original language within the newly created subdivision (b) regarding submission of Applications for Preliminary Apportionment, as this is captured in newly created subdivision (a). Additional language was added “at which time the Authority shall notify the Board of that determination” to allow the Authority to notify the State Allocation Board of receipt of an incomplete application.

These changes to Section 10153 are necessary to ensure consistency in the manner and format in which Applications are submitted, requirements regarding deadlines are sufficiently explicit and consistency applied, and make explicit the Program policy that failure to submit required information, upon repeated requests, may be grounds for ineligibility.

Section 10154 – “Financial Soundness Review and Determination”-

In subdivision –(a)- (o) strikeouts and underlines were applied to “Charter School”, “Financially Sound”, and “Application” disbursed throughout the section text. The Authority is requesting this non-substantive typographical correction to existing text.

The subdivision incurred the reposition of existing text “(f) - (o)” formerly (g) and (p); and numbers “(d)(1) – (11)” formerly (d)(2)- (12) caused by the addition of new definitions and deletion of obsolete definitions to the subdivision. The Authority is requesting this non-substantive formatting correction to existing text.

In subdivision (d)(1) – The amendment combines subdivisions (1) and (2). It clarifies that failure to demonstrate compliance with the terms of the charter and good standing with the chartering authority is grounds for deeming a charter school not financially sound and that the Authority shall rely on confirmation from the chartering authority, whereas the receipt of such confirmation shall be the responsibility of the charter school .

In subdivisions (d)(4),(5),(6),(7),(8), and (11) (newly created (d)(3)(4)(5)(6)(7), and (10), adds the phrase “or Obligor” to denote that a charter school’s management organization may be designated as the financial obligor that is the subject of the specified financial review considerations (also refer to definition of “Obligor”).

These changes are necessary to make explicit the Program eligibility requirement based on compliance with the terms of the charter and good standing with the chartering authority, as well as consider either the Applicant or a separate Obligor when applying the specified considerations for financial soundness.

In subdivision (f) – the amendment under (f)(formerly subdivision (g)) removed the subdivision (f) as it applied to the co-borrower or guarantor which is no longer applicable to the Program. Under current Program policy, the Authority establishes the term “Obligor” as responsible for repayment of the Local Matching Share, either the Applicant itself or a charter school’s management organization, when applicable. Therefore, the consideration of a “Co-borrower” or “Guarantor” is no longer relevant to Program policy.

In subdivision (h) – the amendment under (h)(formerly subdivision (i)) added “or Obligor(s)” in reference to determining financial soundness based on meeting specific criteria. This change is necessary to consider either the Applicant or Obligor (refer to definitions) when requesting updated information.

In subdivision (i) – the amendment under (i)(formerly subdivision (j)) added “12” and removed “six” to reflect the Program policy of 12-months certification for financial soundness that became effective in March 2016. This change is necessary to reflect correct Program policy within the regulations.

In subdivision (k) – the amendment under (k)(formerly subdivision (l)) added the clause, “to the extent feasible”, and replaces “may” with “shall,” and replaces “Education Code” section “17199.4(a)(4)” with section “17199.4” to reflect that requiring the Intercept mechanism for repayment of the Local Matching Share is a standard Program requirement. “To the extent feasible” was added to allow for occasional exceptions due to unique circumstances such as when an Applicant agrees to make a lump-sum payment to cover the Local Matching Share. This change is necessary to reflect correct Program policy within the regulations.

In subdivision (l) – the amendment under (l)(formerly subdivision (m)) replaces “its initial” with “any prior” as it relates to a determination of financial soundness, and removed “prior to the Final Apportionment by the Board” to denote that the Authority may withdraw a determination of financial soundness at any time before or after Final Apportionment, in the event that a material change to the charter school occurs and warrants such an action. This change is necessary to reflect Program practice and policy that the Authority reserves the right to withdraw its determination of financial soundness at any time.

In subdivision (m) – the amendment moved a portion of Section 10156(a) to new subdivision (m) to reflect Program policy that, as a condition of a determination of financial soundness, or subsequent to any determination of financial soundness, the Authority may require a charter school to submit updated information to demonstrate continued financial soundness. These provisions were deemed more relevant to Section 10154; hence the rationale for moving them. This change is necessary to consolidate the regulations, and make the regulations less cumbersome and more efficient.

In subdivision (n) – the amendment moved Section 10156(b)(2) to new subdivision (n) to reflect Program policy that, as a condition for release of funds for Advance or Final Apportionment, the charter school must agree to notify the Authority of any material changes to its legal, operational, or financial status within 30 days of the occurrence of such changes. These provisions were deemed more relevant to Section 10154; hence the rationale for moving them. This change is necessary to consolidate the regulations, and make the regulations less cumbersome and more efficient.

In subdivision (o) – the amendment moved Section 10156(d) to new subdivision (o), to reflect Program policy that pursuant to new subdivision (m), the Authority reserves the right to review the updated information submitted by the charter school to determine whether the charter school has maintained its financially sound status. In the event the Authority determines that it is no longer financially sound, the Authority will immediately notify the Board of that finding. This new subdivision also reflects Program policy that the Authority may require a charter school to submit a corrective action plan or inquire with the chartering authorizer as to whether there have been any changes to the condition of the charter. These provisions were deemed more relevant to Section 10154; hence the rationale for moving them. This change is necessary to consolidate the regulations, and make the regulations less cumbersome and more efficient.

Section 10155 – “Content of Application for Preliminary, Advance, and Final Apportionment.”

The word “Content of” was added to the Section title to add clarity to the purpose of the section. The amendment is necessary to maintain consistency with the Program.

In subdivisions (a)-(f) - strikeouts and underlines were applied to “Charter School”, “Chartering Authority”, “Financially Sound”, Local Matching Share, and “Application” disbursed throughout the section text. The Authority is requesting this non-substantive typographical correction to existing text.

In subdivision (a) – the amendment replaced “Charter School’s” to “Charter School’s or Obligor’s” under Subdivision (a) (Subsections (a)(3)(A),(B), (C), (D), and (E)), in reference to the required submission of financial information in order to consider the possibility of requiring information from a charter school’s management organization when the charter school is the Applicant.

In subdivision (a) – the amendment removed Subsection (a)(3)(G) based on the fact that consideration of a “Co-borrower or Guarantor” is no longer relevant to Program policy and practice. Under current Program policy, the Authority established the term “Obligor” as the organization responsible for repayment of the Local Matching Share, either the Applicant itself or a charter school’s management organization, when applicable; therefore, the consideration of a “Co-borrower or Guarantor” is no longer relevant to Program policy.

In subdivision (a) – the amendment removed Subsection (a)(6) at “www.treasurer.ca.gov/csfa/charter/application.pdf” since the Legal Status Questionnaire (LSQ) is available during the Application Submission period. The text “on the Authority website” was added since the Authority notifies all interested parties by email of the Application availability with the LSQ as part of the application criteria.

In subdivision (b) – the amendment added the clause, “If the Certification of Financial Soundness for the Preliminary Apportionment is no longer valid to indicate the if the financial soundness determination for Preliminary Apportionment is no longer valid, the Authority may need to conduct another review and request updated information,prior to the Advance Apportionment.information. Obsolete text referencing the “Co-borrower or Guarantor” was also removed as it is no longer relevant to Program policy and practice.

In subdivision (c)(K) – the amendment omitted reference to “updated information regarding the guarantor or coborrower, if applicable,” as consideration of guarantor or co-borrower is no longer relevant to the Program. Under current Program policy, the Authority establishes the term “Obligor” as responsible for repayment of the Local Matching Share, either the Applicant itself or a charter school’s management organization, when applicable; therefore, the consideration of a “Co-borrower” or “Guarantor” is no longer relevant to Program policy.

In subdivision (c)(K) – the amendment under (K)(formerly subdivision (L)) added the text “or any sale of accounts receivable associated with anticipated Program proceeds” This change is necessary based on the fact that a charter school selling operating receivables, even those associated with the Program proceeds, may be under financial duress and the Authority needs know this information before making a decision on Final Apportionment.

These changes to Section 10155 are necessary to reflect current Program policy and practice, and that all Program-specific terms used in the regulatory text are appropriately defined.

Section 10156 – “Ongoing Monitoring of an Applicant’s Financial Status.”

This Section is omitted entirely as the Authority’s process for ongoing monitoring to determine continued financial soundness, and the agreement to notify the

Authority of material changes as a condition for release of funds is fully addressed by Sections 10154(m), (n), and (o), with these Sections resulting from transfer, in part, from Sections 10156(a), (b)(2), and (d), respectively. The omission of subdivision (c) is based on the fact that consideration of a “Co-Borrower or Guarantor” is no longer relevant to Program practice or policy. These changes are necessary to make the regulations more efficient and less redundant, consolidating related sections as much as possible. Because Sections 10156(a), (b)(2), and (d) are considered highly relevant to Section 10154 (“Financial Soundness Review and Determination”), consolidation into one section provided more efficiency.

Section 10157 – “Use of a Guarantor or Co-borrower.”

This Section is omitted entirely based on the fact that consideration of a Co-Borrower or Guarantor is no longer relevant to Program practice or policy. Under current Program policy, the Authority establishes the term “Obligor” as responsible for repayment of the Local Matching Share, either the Applicant itself or a charter school’s management organization, when applicable; therefore, the consideration of a “Co-borrower” or “Guarantor” is no longer relevant to Program policy. These changes are necessary to make the regulations more efficient and less redundant, consolidating sections as much as possible.

Section 10156 – “Payment of Local Matching Share” (formerly Section 10158)

In subdivision –(a)- (g) strikeouts and underlines were applied to “Charter School”, “Applicant”, “Local Matching Share”, “Matching Share Payments” and “Project” disbursed throughout the section text. The Authority is requesting this non-substantive typographical correction to existing text.

In subdivision (b) – the amendment replaced “Applicant” with “Applicant or Obligor,” replaced “lease” with “Matching Share,” and added “and such a payment schedule shall be an exhibit to the Applicant’s or Obligor’s Funding Agreement.” This change is necessary to delineate a separate “Obligor,” denote that the Program loan is not a lease, and to disclose that the payment schedule associated with the Program loan is to be an exhibit to the Funding Agreement.

In subdivision (c) – the amendment was added to set forth the options of either monthly or semi-annual payment schedules and the specific terms and conditions associated with each, relative to first payment, last payment, and accrued interest. Specifically, the option of monthly or semi-annual payments was established to allow Applicants flexibility based on their cash flow needs. The provisions requiring repayment in no more than 30 years and specifying interest accrual rates (one month prior to first payment for monthly payments and six months prior to first payment for semi-annual payments) were added to be consistent with standard loans within the banking industry. The provision specifying first payment occurring no less than one year after project occupancy was established to provide schools a full year after transitioning into the new

building to maximize student enrollments so they would have adequate resources to make the first payment. The new section also states that the payments are to be Intercepted pursuant to Education Code, Section 17199.4. These changes are necessary to make explicit Program policy with respect to an Applicant's repayment of the Matching Share via a payment schedule.

In subdivision (g) – the amendment under (g) (old subdivision (f)), replaced statutory reference of Section 17199.4(a)(4) with Section 17199.4 to set forth the correct reference, which is broader in scope. The removal of the text “may” with “shall” is consistent with the use of the Intercept mechanism for repayment of the Local Matching Share as a standard Program requirement. This change is necessary to consolidate the regulations, and make the regulations less cumbersome and more efficient.

Section 10157 – “Succession and Security Provisions” (formerly Section 10159)

The words “Succession and” was added to the Section title to add clarity that this section is to address both succession and security provisions, as these two elements are inextricably linked. The amendment is necessary to maintain consistency with the Program.

In subdivision –(a)- (h) strikeouts and underlines were applied to “Charter School”, “Applicant”, “Local Matching Share”, “Matching Share Payments” and “Project” disbursed throughout the section text. The Authority is requesting this non-substantive typographical correction to existing text.

In subdivision (a) – the amendment added subdivision (a) to set forth the Program policy and practice regarding the Authority's succession requirements and to make more explicit succession requirements set forth in Education Code Section 17078.62. This change is necessary to ensure that when a charter school is a Program awardee and no longer occupies a Program facility, the district in which the charter school is located must exercise due diligence to ensure that an alternative charter school (under the auspices of the district in which the charter school is located) occupies the facility prior to a non-charter public school occupying the facility.

Section 10158 – “Reporting and Default Provisions” (formerly Section 10160)

In subdivision –(a)- (b) strikeouts and underlines were applied to “Charter School”, “Matching Share Payments”, “Memorandum of Understanding”, “Efunding Agreement”, and “Chartering Authority” disbursed throughout the section text. The Authority is requesting this non-substantive typographical correction to existing text.

In subdivision (a)(3) – the amendment replaced “lease” with “Matching Share.” This change is necessary to denote that the Program loan is not an ordinary lease, which is normally associated with a rental agreement; hence the need to make Matching Share payments rather than lease payments.

In subdivision (b) – the amendment replaced “lease” with “Funding” in relation to the term, “Agreement”; and replaced “lease” with “Matching Share obligation.” This change is necessary to denote that the Program loan is not an ordinary lease, which normally associated with a rental agreement.

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 amendments to 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.

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 amendments to the Program regulations are designed to better assist charter schools with their facility-construction costs, and that the amendments do nothing more than provide the Authority with improved consistency, uniformity, and efficiency in establishing Program awards for charter schools. As a result, there can be no adverse economic impact on business by the adoption of the amendments to the regulations.

7. Economic Impact Assessment

The proposed amended 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 Program funds to awardees would result in the elimination of jobs. The purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a program that will assist charter schools in California with their facility construction costs, and assist the Authority in determining the credit worthiness of such charter schools. 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 uniform and consistent criteria to administer a program that will assist Charter Schools in California with their facility construction costs, and assist the Authority in determining the credit worthiness of such charter schools. 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.

The proposed regulations will unlikely have an impact on the expansion of businesses currently doing business within the State of California. As noted above, the purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a program that will assist Charter Schools in California with their facility construction costs, and assist the Authority in determining the credit worthiness of such charter schools.

As noted above, the purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a program that will assist Charter Schools in California with their facility construction costs and assist the Authority in determining the credit worthiness of such charter schools. As such, to the extent that the awards benefit the long-term viability of charter schools and the expansion 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 amended regulations to establish consistency with Program policy and practice, enhance Program efficiency, consolidate overlapping sections, establish internal consistency, correct references to statutes, clarify definitions, set forth additional definitions, and set forth clarifying language. Without these amended regulations, the Authority's administration of the Program would be rendered less efficient with the risk of inconsistency in its evaluation of Applicants.

The benefits of the proposed regulations are to ensure the Authority has clear and uniform standards, internal controls, and guidelines to ensure consistent and effective administration of the Program.