

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA SCHOOL FINANCE AUTHORITY

Article 1, Section 10152 through 10162, and 10164
Title 4, Division 15
California Code of Regulations

NOTICE IS HEREBY GIVEN that the California School Finance Authority (“CSFA” or the “Authority”), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code, proposes to amend the regulations as described below after considering all comments regarding the proposed action. Any person interested may present comments 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, May 14, 2018. CSFA, 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 required notification of any changes to the proposal.

Proposed Regulatory Action

CSFA proposes to amend Section 10152 through 10162, and 10164 of Title 4 of the California Code of Regulations (Regulations). The Regulations implement CSFA’s responsibilities related to the Charter School Facilities Program.

Authority and Reference

Authority: Sections 17078.57, 17179, and 17180 of the Education Code. Section 17078.57 requires that the Authority adopt regulations establishing uniform terms and conditions to apply equally to all applicants for financing. Section 17179 sets forth that the Authority is vested with all powers to carry out the powers and responsibilities expressly granted or imposed upon it. Section 17180(a) provides the Authority with the ability to adopt bylaws for the regulation of its affairs and the conduct of its business.

Reference: Sections 17078.52, 17078.53, 17078.54, 17078.56, 17078.57, 17078.58, and 17199.4, Education Code. The Regulations implement, interpret or make specific Sections 17078.52, 17078.53, 17078.54, 17078.56, 17078.57, 17078.58, and 17199.4 of the Education Code.

Informative Digest/Policy Statement Overview

Pursuant to Government Code section 11346.1 and Education Code section 17078.57(b), the California School Finance Authority (Authority) may adopt, amend, or repeal the rules and regulations for the Charter School Facilities Program.

Chapter 935, Statutes of 2002 (Assembly Bill 14), established the Charter School Facilities Program as a pilot program for the purpose of providing qualifying charter schools with funding to establish facilities for California students (Education Code section 17078.52(a)). The Program provides for \$900 million to be set aside from the bonds issued under the Kindergarten-University Public Education Facilities Bond Acts of 2002, 2004, and 2006, for the purposes of financing charter school construction projects. Modeled after the State's School Facilities Program, the Program funds the project costs with 50 percent of the project costs as a grant from the State, and the charter school is responsible for repaying the State for the balance of the project costs through either a lump sum matching payment, or a long-term loan from the State. A charter school, or school district acting on behalf of a charter school, may apply for financing under the Program to fund specified costs relating to charter school construction projects. Effective on March 5, 2012 the Authority received the Certificate of Compliance for Rulemaking file 201-2027-01C.

Through the passage of Propositions 47, 55, and 1D, and most recently, Proposition 51, \$1.4 billion has been made available to charter schools for construction of new facilities or rehabilitation of existing school district facilities. As a result of the passage of California State Proposition 51, which authorized \$500 in additional bond authority, a new funding round began in February 2017.

Pursuant to Education Code section 17078.57, the Authority is required to adopt regulations establishing uniform terms and conditions that shall apply to the process for determining the manner in which the entities receiving funding are to pay the local matching share, including the method for determining any loan payments.

Anticipated Benefits of the Proposed Regulation

These proposed amendments to the regulations will establish consistency with Program policy and practice, consolidate overlapping sections, reference correct statutes, reflect changes in statute, and set forth clarifying language. As such, the proposed regulations are expected to enhance efficiency and uniformity in program administration. The Authority is proposing permanent regulations through OAL's permanent rulemaking process and through submission of Certificate of Compliance.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After conducting an evaluation for other regulations on this matter, the Authority has found that these are the only regulations concerning the Charter School Facilities Program financial soundness determination. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Regulations are briefly summarized below.

Section 10152 Definitions

- Addition of "Certificate of Financial Soundness" which shall mean the Authority's adoption of a resolution determining that a charter school is "Financially Sound" for a period of 12 months, assuming that no material financial, operational, or legal

changes have occurred during this period that would otherwise change the determination;

- Deletion of “Co-borrower or Guarantor”;
- Addition of “Funding Round” which shall mean the opportunity for submission of Applications for purposes of Preliminary Apportionment, as authorized by the board based on the availability of bond authority;
- Expands definition of Financial Soundness to include the extent to which an Applicant or Obligor is Financially Sound;
- Addition of “Matching Share Payments” which shall mean payments made against the Program loan with the State for purposes of repaying the Local Matching Share pursuant to a payment schedule;
- Addition of “Obligor” which shall mean the entity responsible for the Local Matching Share, which may or may not be the same as the Applicant;
- Addition of “Project” which shall mean the specific facilities-related project that is the subject for Program funding within an Application and that has been approved for Program funding by the Office of Public School Construction; and
- Various clean-up changes that are considered non-substantive.

Section 10153 Application Submission

- Addition of language which specifies the required form, defines due date timeframe, and application submission format;
- Deletion of unnecessary language related to Preliminary Apportionment; and
- Various clean-up changes that are considered non-substantive.

Section 10154 Financial Soundness Review and Determination

- Addition of language which outlines the requirements of receiving a Good Standing Letter (GSL) and the resulting impact if the GSL is not received;
- Addition of language to outline what entity the Authority will perform financial analysis on when the school is represented by a contracted organization and does not meet the debt service coverage ratio;
- Deletion of language relating to Guarantor and Co-borrower regarding determining the debt service coverage ratio;
- Extending the validity of the Authority’s financial soundness review determination from six to twelve months;
- Addition of language which allows the Authority to require updated information related to the applicants’ legal status or financial or operating condition;
- Addition of language which allows the Authority to require updated information related to the applicants’ legal status or financial or operating condition as a condition for release of funds for Advance or Final Apportionment;
- Addition of language which allows the Authority to conduct reviews to determine whether the applicant continues to maintain financial soundness and, if applicable, require the applicant to submit a corrective action plan; and
- Various clean-up changes that are considered non-substantive.

Section 10155 Content of Application for Preliminary, Advance, and Final Apportionment

- Addition of “Content of” to Section title to clarify purpose of section;

- Deletion of references/sections related to Guarantor or Co-borrower;
- Addition of “or Obligor” on the list of financial information to be reviewed to indicate that the Obligor’s financial information will reviewed if there is an Obligor designated on the application;
- Addition of “Certificate of Financial Soundness for the Preliminary Apportionment is no longer valid” to clarify when the Authority would conduct a review;
- Addition of “or any sale of accounts receivable associated with anticipated Program proceeds” to the material changes section; and
- Various clean-up changes that are considered non-substantive.

Section 10156 Ongoing Monitoring of Applicant’s Financial Soundness

- Deletion of entire section as the language was redundant to other provisions in the regulations.

Section 10157 Use of a Guarantor or Co-Borrower

- Deletion of entire section, as the terms Guarantor and Co-Borrower were deleted.

Section 10158 Payment of Local Matching Share

- Change section number from 10158 to 10156;
- Addition of language which includes the Matching Share Payment schedule, clarification on when first payment would occur, and when interest will be accrued; and
- Various clean-up changes that are considered non-substantive.

Section 10159 Succession and Security Provisions

- Change section number from 10159 to 10157;
- Expand section to include “succession” to clarify what happens to the program-funded facility once a charter school no longer occupies the facility;
- Addition of language which specifies the conditions which must be met prior to a school district taking possession of a facility;
- Addition of language detailing the types of security provisions that are allowed and disallowed;
- Addition of language detailing what happens to security interest in the case of default; and
- Various clean-up changes that are considered non-substantive.

Section 10160 Reporting and Default Provisions

- Change section number from 10160 to 10158;
- Addition of the term “Matching Share Obligation”; and
- Various clean-up changes that are considered non-substantive.

**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 Government Code pertaining to the proposed Regulations or CSFA.

Mandate on Local Agencies or School Districts

CSFA has determined that these amendments to the program regulations do not impose any additional mandate on local agencies or school districts for a new program or higher level of service of an existing program.

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.

**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 Grant is a voluntary financing program available to charter schools to assist in the financing of charter school facilities.

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.

Results of the Economic Impact Assessment

CSFA has determined, pursuant to Government Code section 11346.3(b)(1)(A)-(D), that the Regulations will not have an effect on jobs and business expansion, elimination or creation. 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.

Cost Impact on Housing

The Regulations will not have any effect on housing costs.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13), CSFA must determine that no reasonable alternative to the Regulations 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 Regulations, 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
300 S. Spring Street, Suite 8500
Los Angeles, CA 90013

or

915 Capitol Mall, Room 101
Sacramento, CA 95814
(916) 651-7710

Or by email to katrina.johantegen@treasurer.ca.gov or csfa@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 May 14, 2018. 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. Any written comments on any modifications to the proposed regulations 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

Pursuant to the California Government Code, 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 website at 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 must 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 website

described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.