

## **INITIAL STATEMENT OF REASONS**

### **CALIFORNIA SCHOOL FINANCE AUTHORITY**

#### **Article 1.6, Sections 10170.16 through 10170.24 Title 4, Division 15 California Code of Regulations**

#### **I. GENERAL PURPOSE OF PROPOSED REGULATIONS**

The California School Finance Authority Act (Act), was enacted in 1985. The Act declared it in the interest of the state and its people for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that fail to meet current structural safety requirements, acquire new school sites and buildings to be made available to schools districts, charter schools, and community college districts for the pupils of the public education system, and assist school districts and community college districts by providing access to financing for working capital and capital improvements. To achieve these goals, the Act created the California School Finance Authority (Authority) and endowed it with the power to administer the California School Finance Authority Fund and issue revenue bonds. (Ed. Code §§ 17170-17199.6)

In 2013, the State Legislature transferred administration of the Charter School Revolving Loan Fund Program (Program) from the California Department of Education (CDE) to the Authority, commencing in the 2013-14 fiscal year. The Program Code provides loans of up to \$250,000 to Charter Schools established pursuant to Education Code, Section 47605 et seq., that are not conversions from existing public schools. The Authority was granted the power to adopt any necessary rules and regulations to implement the Program, and adoption of such regulations was expressly deemed in statute to meet the emergency standard of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 or Title 2 of the Government Code). Adoption of Program regulations is deemed to be an emergency and necessary for the immediate preservation of public peace, health and safety, or general welfare. (Ed. Code § 41365(a) –(g))

On April 20, 2020, OAL approved the emergency regulations the Authority seeks to make permanent with this rulemaking action. These regulations are intended to refine and add clarity and specificity to the administration of the Program by defining terms, prohibiting charter schools operated as for-profit entities from applying for loans, and changing the loan application schedule from an annual to an ongoing, first-come, first-served basis based on the availability of funding. The Authority submits these proposed regulations to provide guidance to the public and those charter schools eligible for the Program. The purpose of each specific provision of these proposed regulations is set forth in Section [IV] below.

#### **II. PROBLEM INTENDED TO ADDRESS**

The California Legislature stated the importance assisting school districts and community college district by providing access to financing for working capital and capital improvements in its findings for the Act. It emphasized the significance of the Program as a means to this end by deeming adoption of regulations to implement and administer the

Program an emergency and necessary for the immediate preservation of public peace, health and safety, or general welfare.

Stakeholder feedback informed the Authority that the concept of good standing was too vague to provide School Districts, who the Authority asks to provide the good standing determination, and charter schools participating in the Program a shared understanding of the term. The Authority first introduced this definition of Good Standing, the related procedures, and the Good Standing Confirmation Form in its Charter School Facilities Program (SB740) and is updating these regulations to provide a consistent definition across programs administered by the Authority.

These proposed regulations are also intended to address changes necessitated by the passage of Assembly Bill (AB) 406 Chapter 291, Statutes of 2018, which prohibits a charter school from being operated as or by a for-profit corporation, for-profit educational management organization, or for-profit charter management organization. In addition, these regulations seek to neutralize the impact of Assembly Bill (AB) 1505 Chapter 486, which issues a two-year prohibition on the establishment of a new charter school offering nonclassroom based instruction, 2020 to Statutes of 2019 on the demand for this Program.

Section IV below details the specific purpose and rationale for why the regulations are reasonably necessary to carry out the purpose of the Act, as well as the benefits anticipated from the regulatory action. To the extent any exist, it also identifies any technical, theoretical, or empirical studies, reports, or similar documents relied upon in proposing the regulations, any reasonable alternatives considered, and to the extent that the regulation mandates a specific action or procedure, why the Authority believes these mandates are required.

### **III. SUMMARY OF BENEFITS**

The regulations will benefit the welfare of California residents because they will assist in providing school districts and community college districts access to financing for working capital improvements, a purpose the Legislature explicitly stated was in the interest of the state and its people. By providing a definition of Good Standing and describing the Authority's process of obtaining and considering Certificate of Good Standing Forms, the regulations allow charter schools and their authorizers to have a uniform understanding of what criteria the Program is requesting, from whom, and how that information is used.

These changes streamline and clarify Program requirements and procedures, helping to ensure the Authority has clear and uniform standards, internal controls, and guidelines that ensure consistent and effective administration of the Program. This in turn protects Program funds and clarifies Program expectations for the charter school community and the public at large. In addition, the amended regulations open funding rounds throughout the year, creating additional funding opportunities and benefits to the charter school community.

### **IV. PROPOSED REGULATIONS – PURPOSE, NECESSITY, AND BENEFITS**

#### Section 10170.17: Definitions

This section sets forth definitions of key terms used in the regulations adding Good Standing and Nonprofit Entity.

- Addition of new subdivision (j), which clarifies the definition of “Good Standing”. This change is necessary to clarify the use of Good Standing originally stated in Section 10170.18 (j), Section 10170.20 (b)(5), and Section 10170.22 (c)(4) of Program regulations. The Authority introduced a definition of “Good Standing” to address concerns raised by its stakeholders that the term was vague. The definition introduced here is based on language in Education Code 47607 (d) and (e), and is being applied to all Authority programs to ensure consistency for Program applicants.
- Modification of original subdivision (j) to (r) into the new positions of (k) to (t) due to the addition of the Good Standing and Nonprofit Entity definition. This is a technical edit without regulatory effect.
- Addition of new subdivision (n), which clarifies the definition of “Nonprofit Entity”. This change is necessary to conform to current state law: Assembly Bill (AB) 406 Chapter 291, Statutes of 2018.

#### Sections 10170.18: Eligible Applicant

This section sets forth requirements pertaining to Applicant eligibility.

- Addition of new subdivision (b), which sets forth the eligibility requirement that “The Charter School shall not operate as, or be operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit charter organization.” This change is necessary to conform to current state law: Assembly Bill (AB) 406 Chapter 291, Statutes of 2018.
- In revised subsection (k) the small “g” and “s” were replaced with a capital “G” and “S” so “Good Standing” would be consistent with the definition. This is a technical edit without regulatory effect.
- Addition of clarifying language in revised subsection (k) which references the proposed definition of "Good Standing", Section 10170.17 (j), as well as stating "an Applicant found not to be in Good Standing, as determined by their Chartering Authority, shall be ineligible for program funds".
- Addition of language in revised subsection (k) which prescribes a cure for a lack of Good Standing confirmation. The specific remedies are provided in new subsection (k)(1) and (k)(2).
- Addition of new subdivision (k)(1), which sets forth the remedy considering a lack of Good Standing confirmation by allowing the applicant to receive confirmation of Good Standing within the same fiscal year of application. This change is needed to allow for schools to receive funding once they meet all eligibility requirements.
- Addition of new subdivision (k)(2), which sets forth the remedy considering a lack of Good Standing confirmation due to a threat of charter revocation for "failing to meet generally accepted accounting principles, or engaging in fiscal mismanagement", Ed. Code 47607(f)(3). This change is needed to allow school's proof "fiscal solvency" and for CSFA to review the school's finances to confirm as well as ensure the decision was not related to Program funds being excluded.
- Modification of original subdivision (b) to (k) into the new positions of (c) to (l) due to the addition of the new subdivision (b) definition. This is a technical edit without regulatory effect.

### Sections 10170.19: Application Content and Submission

This section sets forth requirements pertaining to Application content and submission.

- Modification of original subdivision (a), which sets forth that the Application will be made available on the Authority's website, "based on available funding" rather than, the current deadline of no later than December of each year. The modification of this language is necessary for the Authority to have the ability to hold multiple funding rounds throughout the year.
- Omission of original subdivision (b), because it is not applicable to the Program since the application is available online.
- Addition of new subdivision (b), which establishes the Application be available "based on availability of funding" as well as the priority of the applicants based on date and criteria described in Section 10170.20. This allows the Authority to have the ability to hold multiple funding rounds throughout the year.
- Modification of original subdivision (c)(2) to (c)(14) into the new positions of (c)(3) to (c)(15) due to the addition of new subdivision (c)(2). This is a technical edit without regulatory effect.
- Modification of original subdivisions (c)(2) at new subdivision (c)(3) to clarify language.
- Addition of a new subdivision (d), which establishes the method and rights related to the new eligibility criteria set forth in the addition of Section 10170.18 (k) and defined in Section 10170.17(j). This change is necessary for the Authority to ensure compliance with eligibility requirement as well as providing the proper appeal rights to schools.
- Modification of original subdivision (d) to new subsection (e) due to the addition of new subdivision (d) above. This is a technical edit without regulatory effect.

### Section 10170.20: Application Review and Evaluation/Underwriting Criteria

This section sets forth criteria analysts consider while reviewing and evaluating Applications.

- Modification of subdivision (b)(5), which omits the words "Good standing in" for "Compliant with" based on the new definition of "Good Standing", the words were not used in the correct context. This change is necessary to clarify to the Applicant what may be considered during Application review. Furthermore, the following non-substantial changes were made: changed "a" to "all" and "loan" to "loan(s)".

### Section 10170.21: Loan Amount and Repayment Terms

This section provides clarification on how loan amounts and repayment terms are determined and when repayment of the loan shall begin.

- Modification of subdivision (c) reorganizes the original language for clarity. Furthermore, due to the recent change in the state accounting system, the Authority's internal disbursement process has changed and no longer uses the accounting office to determine the disbursement date. This change is necessary to clarify the process for Program Applicants.

### Section 10170.22: Loan Agreements

This section sets forth the requirements of the Loan Agreement and the repayment of the loan.

- In subsection (c)(4) the small “g” and “s” were replaced with a capital “G” and “S” so “Good Standing” would be consistent with the definition. This is a technical edit without regulatory effect.
- Modification of subdivision (d), clarifying that an Applicant will receive a loan repayment schedule. This change is necessary to clarify that a school will receive their loan repayment schedule after all disbursements have been made. Offset schedules are related to defaults and not provided in the Loan Agreement.
- Addition of new subdivision (h), officially establishes the Authority's ability to collect unpaid funds from unrestricted funds under the Authority's control. This change is needed to inform applicants in multiple programs of the Authority's ability to collect program funds which is necessary for the continued existence as a revolving loan program.

Section 10170.24: Funding Contingency

This section sets forth the Program’s funding contingency.

- Modification of subdivision (a) which omits the phrase “in each Fiscal Year”. This change is necessary to open up the possibility of multiple Program funding rounds in a single Fiscal Year.

**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 ANALYSIS**

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 providing Program loan 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 loan program that will assist Charter Schools in California with their start-up needs and to evaluate Applicants for Program loans. These are no provisions within the proposed regulations that place additional burdens, obligations, or expenses on existing businesses such that jobs would be created or eliminated as a result.

The proposed regulations may have an impact on the creation 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 loan program that will assist Charter Schools in California with their start-up needs and to evaluate Applicants for Program loans and provide additional application periods more frequent than once per year.

There are no provisions within the proposed regulations that place additional burdens, obligations, or expenses on existing businesses. It is possible that providing an additional application opening to receive a small short-term loan may create an opportunity such that businesses would be created. There is no provision that would eliminate a business. The proposed regulations are unlikely to 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 uniform and consistent criteria to administer a loan program that

will assist Charter Schools in California with their start-up needs and to evaluate Applicants for Program loans.

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 loan and proposed regulations is to set forth administrative criteria and requirements for administering a loan program that will provide per pupil funding to existing Charter Schools.

The proposed regulations are intended to assist Charter Schools throughout the State of California with their start-up needs, with priority given to new Charter Schools based on representation across four designated regions within California, and, in the event the Program is oversubscribed, priority is given to Charter School based on the highest Free and Reduced-Price Meal (FRPM) across regions, ensuring equal representation among regions. As such, to the extent that the awards benefit the long-term viability of Charter Schools and the expansion of New Charter Schools, the Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

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

The passage of Assemble Bill 1505 on October 03, 2019, which in part had a provision that prohibits, from January 1, 2020, to January 1, 2022, inclusive, the approval of a petition for the establishment of a new charter school offering nonclassroom-based instruction and funded as specified. By doing nothing, the Authority would not address this change in the law that will and has decreased the available application pool for this subject program and as such the program has become undersubscribed. The Authority rejected this course of action. These funds are entrusted to the Authority to appropriately distribute to new charter schools. By taking the proposed action of increasing the number of application periods from one to at least two per year, more funds will be made available for more new charter schools.

#### **VIII. REGULATIONS MANDATED BY FEDERAL LAW**

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

All initial statement of reasons requirements for the proposed regulations have been satisfied.