

## **California School Finance Authority**

Title 4, Division 15, Article 3

### **Finding of Emergency**

In late 2021, the Authority identified a concern with the Charter School Facilities Credit Enhancement Grant Program's (Program) current regulations as they relate to award caps. Due to the current language of the Program regulations, awards are capped at \$1,500,000 per application. A charter school management organization was issuing through the Authority for two charter schools. This organization applied for a credit enhancement grant award twice, once for each school. Nothing in Program regulations could prevent this action. The intent of the award cap was to be based on the debt service of the associated financing, not the number of schools in the obligated group. The ability to submit an application for every school in a financing could result in a larger obligated group applying for and absorbing all available funding and limit access for other schools. Program awards are given out on an on-going basis. As a result, this loophole needs to be closed as soon as possible to prevent the ability for a larger obligated group to absorb all available funding and limiting access for other school. CSFA staff drafted the associated regulation changes and presented them at the next available CSFA board meeting, January 27, 2022. The Authority received board approval prior to official regulatory action.

Credit Enhancement awards enhances bond financings and refinancings for school facilities by supplementing a school/borrower's debt service reserve fund. A school/borrower would otherwise need to provide those costs out of pocket via additional indebtedness. The inability to award enhancement funds would require the school/borrower to pay as-much-as \$2,000,000 out of pocket instead of via an award, plus additional fees and costs. Borrowers/awardees will not be able to meet their necessary pricing and closing dates at the significant expense of the schools/borrowers and could result in loss of said financings and associated educational facility(s) without approval of these emergency regulations.

Only the emergency rulemaking process will avoid these possible negative effects from happening at all as the regular rulemaking process could allow for the aforementioned actions to take place.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

### **Readoption of Emergency Regulations**

Pursuant to Government Code Section 11346.1(h), the California School Finance

Authority (Authority) seeks to readopt emergency regulations approved by the Office of Administrative Law on March 14, 2022 (OAL Regulatory Action # 2022-0310-03ER) and readopted on September 13, 2022 (OAL Regulatory Action # 2022-0970-03EE). The emergency regulations will expire on December 14, 2022, and thus must be readopted for an additional 90-day period to complete the regular rulemaking process and submit the Certificate of Compliance to the Office of Administrative Law. The Program as provided in the emergency regulations is still ongoing and the Authority is currently in the process of completing the necessary documents and requirements for the regular rulemaking process and Certificate of Compliance. The Authority also requires additional time to complete the Certificate of Compliance due to resource constraints such as staffing shortages. The Authority plans on submitting a notice for the associated permanent regulatory action and Certificate of Compliance in mid to late September. The circumstances surrounding the basis for the Emergency Rulemaking Action have not changed. Furthermore, no changes made to the proposed regulatory actions.

### **Anticipated Benefits**

With these regulations, more schools/borrowers will be able to access integral cost saving funding thus allowing more financings for the renovations, construction, and/or acquisition of charter school facilities, especially with smaller charter school operators. These financings are a major source for charter school facilities in the State as charter schools lack other facility financing actions available to traditional public schools and other local educational agencies.

### **Authority and Reference**

Authority: Section 17180 of the Education Code  
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### **Informative Digest**

The Authority received a grant award under the U.S. Department of Education's Credit Enhancement for Charter Schools Facilities Program (CFDA #84.354) (Grant). 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 2009, provides \$8,300,000 for the purpose of funding debt service reserves for the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt.

On January 27, 2022, the Authority's Board approved the emergency regulations at its board meeting; amendments adopted pursuant to emergency rulemaking are listed below:

1. Amendments to Section 10193 to include a definition of "Financing" as a part of amended regulations related to award caps mentioned below. The subsequent subsections will re-lettered due to the inclusion of "Financing".

2. Amendments to Section 10195(b) regarding the award cap language. The amendment changes the award cap to be based on the maximum annual debt service for a Financing with a maximum amount of \$2 million. This amendment better aligns the program with its intended purpose and agreements with the United States Department of Education as well as preventing larger obligated groups from absorbing all available funding in a single issuance.

### **Mandate on Local Agencies or School Districts**

The Executive Director of the Authority 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.

### **Evaluation of Inconsistency and Incompatibility**

The Authority performed a search in the California Code of Regulations and the proposed regulations are neither inconsistent nor incompatible with existing regulation.

### **Cost Estimate**

The Executive Director of the Authority has determined that these emergency regulations will involve no costs or savings to any State agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable cost to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.