

INITIAL STATEMENT OF REASONS

CALIFORNIA SCHOOL FINANCE AUTHORITY

Article 1.5, Sections 10170.2 through 10170.10 Title 4, Division 15 California Code of Regulations

INTRODUCTION

The California School Finance Authority (Authority) is organized and operated pursuant to the California School Finance Authority Act (Act) under sections 17170 through 17199.6 of the Education Code.

Pursuant to Education Code, Section 47614.5, the State Legislature directed the Authority to commence administration of the Charter School Facility Grant Program (Program) beginning with the 2013-14 fiscal year and to adopt regulations to implement the statute. Effective July 1, 2013, the Authority initiated its administration of the Program, and pursuant to Section 47614.5(m), a Certificate of Compliance was approved on August 6, 2014 (Office of Administrative Law (OAL) Regulatory Action #2014-0625-01C).

The OAL approved a second permanent rulemaking action pursuant to Government Code, Section 11346.1(h) on May 3, 2016 (OAL Regulatory Action # 2016-0401-02SR). A Certificate of Compliance was approved on May 6, 2016 (OAL Regulatory Action #2016-0401-02SR).

OAL approved a third permanent rulemaking action pursuant to Government Code, Section 11346.1(h) on August 24, 2017 (OAL Regulatory Action # 2017-0719-02S). A Certificate of Compliance was approved on August 24, 2017 (OAL Regulatory Action #2017-0719-02S).

OAL approved a fourth permanent rulemaking action pursuant to Government Code, Section 11346.1(h) on October 18, 2018 (OAL Regulatory Action # 2018-0906-03C). A Certificate of Compliance was approved on October 18, 2018 (OAL Regulatory Action # 2018-0906-03C).

In order to establish permanent regulations for purposes of administration of the Program, the Authority is proposing permanent regulations through OAL's permanent rulemaking process and through submission of a Certificate of Compliance.

Pursuant to Education Code, Section 47614.5(f), the Program assists Charter Schools with the following: "costs associated with facilities rents and leases, consistent with the definitions used in the California School Accounting Manual (CSAM) or regulations adopted by the California School Finance Authority. These funds may also be used for costs, including, but not limited to, remodeling buildings, deferred maintenance, initially installing or extending service systems, other built-in equipment, improving sites, and common area maintenance (CAM)."

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

Section 10170.2. Definitions

In section (r) - The amendments to the definition of Independent Appraisal include “in the fiscal year”, “The Appraiser must be”, “and shall” and removed the words “who” and “that”. The Authority requests all appraisals to be completed in the requested fiscal year, to ensure the Appraisal’s findings reflect current market conditions, since the Authority is proposing a three-year effective term. Additionally, the Authority is requesting non-substantial language to clarify the existing text.

Section 10170.3. Eligible Applicant.

Section 10170.3 (f)(1)

In division (B) – The amendment “The Authority reserves the right to request an additional good standing confirmation during the fiscal year” was added and “In February, prior to the disbursement of the second apportionment as described in Section 10170.9(c); and” “(C) In June, prior to the disbursement of the Final apportionment as described in Section 10170.9(d).” was removed. The Authority will require one good standing verification during the time of application submission. Subdivision (B) allows the Authority to request a good standing at any time during the fiscal year. Since 2016, the Authority has requested a good standing confirmation three times a year. Stakeholders and charter school authorizers have expressed concern regarding the requirement to provide a good standing confirmation three times a year, stating it is overly cumbersome and an ineffective use of resources.

In section (g) - The amendment “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.” was added to this new subdivision to conform to current state law: Assembly Bill (AB) 406 Chapter 291, Statutes of 2018.

Section 10170.4 Eligible Cost.

Section 10170.4 (a)(1)(A)

In subdivision (i) - The amendment removes “The Authority shall base the annual COLA Index adjustment on the end of the prior year’s monthly rent.” The language is duplicative of subsection (B)(i)(b) and is no longer necessary to the operations of the Program. The COLA Index is defined in Section 10170.2(h). The Authority is requesting this non-substantive correction to existing text.

Section 10170.4 (a)(1)(B)

In subdivision (i) - The amendment was added, “The Authority will use the Independent Appraisal on file if the following conditions are met:” after the Authority consulted with stakeholders to establish parameters on evaluating leases that renewed annually. Of the 241 New Facility Agreements the Authority reviewed, about 50 percent (50%) were leases that renewed

annually, these leases were at, or below, the COLA Index applied to the 2016-17 lease costs. These proposed amendments will minimize the need for an Independent Appraisal and provide criteria for leases that renew annually in future funding rounds:

In paragraph (a) – The amendment, “[An Independent Appraisal, completed within the last three fiscal years is on file with the Authority; and](#)” was added to minimize appraisal costs incurred by the school. As a result of Assembly Bill (AB) 1808 Chapter 32, Statutes of 2018, the Authority began requiring appraisals for all New Facility Agreements in July 2018, specifically beginning with the 2017-18 funding round. In 2017-18, 159 sites required appraisals; in 2018-19, this increased to 241 sites that required appraisals - of which, 50 percent (50%) were renewal sites. The Authority received multiple requests from renewing leases schools regarding the need for a new appraisal. The renewing lease did not have any substantial changes that would warrant a revised appraisal.

In response the Authority established a three-year term on appraisals for the renewing lease schools in order to ease the financial burden since the cost of appraisals range from \$3,000-\$5,000 and the cost is not recognized as a reimbursable expense under this program.

In paragraph (b) – The amendment added, “[Rent or lease costs do not exceed prior year’s reimbursable costs, subject to an adjustment of the annual COLA Index \(COLA Cap\).](#)” The grantee would be exempt from obtaining a new Independent Appraisal, however, the grantee would be COLA capped for the second and third year of the lease agreement. These amendments are necessary to provide clarity and consistency with the use of the term Independent Appraisal.

In subdivision (ii) – The amendment repositions existing text (i) into the (ii) position. The Authority is requesting this non-substantive formatting correction to existing text.

In subdivision (iii) – The amendment added, “[Options to renew contained in existing rent or lease agreements on file with the Authority executed by the Charter School and the lessor will not be considered New Facility Agreements.](#)” Facility Agreements with an option to renew shall not be categorized as a New Facility Agreement. This amendment is necessary as it provides cost savings to grantees whose reimbursable rent will be based on the COLA cap rather than requiring a new Independent Appraisal be request and obtained. The Authority is requesting this substantive addition to existing text.

In division (C) – The amendment was added “[Rent or lease costs are reimbursable from time of occupancy. The Authority reserves the right to request a Certificate of Occupancy or other such evidence needed to establish the date the applicant began to occupy the site.](#)” to identify when a grantee is eligible to receive reimbursement of

other costs incurred during the lease agreement term. Grantee's, at times, have lease agreements that incur costs prior to the pupils/students occupying the site. This is necessary to ensure Program funds are only used on sites occupied by pupils during the applicable fiscal year. The Authority is requesting this substantive addition to existing text.

Section 10170.5. Application Submission

In section (a) - The amendment removed the language "Applications received after the final filing date will not be accepted for review." This language is duplicative of the subsection (3) which was added to clarify how the Authority will process late Application submissions.

In subsection (1) - The amendment words "Initial" Application "period" were added to section (b) and repositioned as subsection(1).

In subsection (2) - The following amendment was added and replaced section (c). "The Second Application period for each grant year shall be made available by the Authority on September 10 of the fiscal year. The Application deadline shall be 5:00 p.m. on October 15 of the fiscal year. The Authority shall make application materials available on the Authority's website and notify the public of the application release date. Under the following circumstances, an Application may be submitted during the second Application period:

- (A) A Charter School relocates from a facility that was ineligible for a grant award to a facility that is eligible and the Application includes a description of the change in facility circumstances; or
- (B) A First Year Charter School."

These amendments are necessary to clarify when the Second Application period opens and closes. Additionally, the language conforms to the Initial Application period described in subsection (1).

In subsection (3) The amendment language "Late Applications and late Facility Invoice Expenditure Report are ineligible for Program funds and are not eligible for the appeal process described in section 10170.10." was added to support the Authority position of not accepting late applications.

Amendments to subsections (1)-(3) are necessary to provide clear application submission processes and to eliminate the practice of accepting late applications. Acceptance of late applications has tied up critical staff resources, delayed the award process, and negatively affected the operating budget of timely grantees.

In section (d) and (e) – The amendment repositions the existing text (d) and (e) into the (b) and (c) position. The Authority is requesting this non-substantive formatting correction to the existing text.

In section (f) – The amendment removed the language "The Authority may waive procedural defects in the submission of an Application, such as an Application filed past the deadline." The Program provides Applicants the opportunity to appeal eligibility determinations as

outlined in Section 10170.10. This amendment is necessary as the Program is oversubscribed and late applicants have used this as a loophole to appeal ineligibility determinations. This has tied up critical staff resources, delayed the award process, and negatively affects the operating budget of timely grantees.

Section 10170.6. Content of Application

In section (h) - The Authority added the language "All requested documentation required in order to complete the applicant's eligibility review or award calculation shall be due to the Authority within 60 days of notification. Failure to submit this documentation by the stated deadline will result in ineligibility of the Program or applicable facility costs described in section 10170.4 (a)(1) and (a)(4)." The Authority was unable to meet the statutory deadlines, due to late submissions of requested documents needed to complete applicants' eligibility review or award calculation. For the 2017-18 funding round, the Authority requested appraisals from 138 schools in which, eighty percent (80%) completed the appraisal within the 60-day timeframe. The remaining schools completed the appraisals within 120 days, which caused a delay of final funds to the 228 eligible Other Cost schools. This amendment is necessary to ensure eligible grantees will receive their disbursements within the statutory deadlines. The Authority is requesting this substantive addition to existing text.

Section 10170.7. Estimated Annual Entitlement Calculation

In section (e) - The amendment replaces existing text (c) with (a)(2) reference. The Authority is requesting this non-substantive formatting correction to existing text.

Section 10170.9. Apportionment of Grant Funds

In section (b) - The amendment replaces existing text (c) with (a)(2) reference. The Authority is requesting this non-substantive formatting correction to existing text.

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 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. In fact, the adoption of these regulations is likely to result in greater opportunities for expansion for Charter School facilities throughout the state since the intent of the Program is to assist California Charter Schools in meeting their facility cost needs.

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 relies that the Charter School Facility Grant Program is designed to award financial assistance for Charter School facilities. The purpose of the regulations are to provide direction on how each application is evaluated. As a result, there can be no adverse economic impact on business by the adoption of the regulations amendments.

7. Economic Impact Assessment

The proposed 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 that providing grant funds to awardees would result in the elimination of jobs. The purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a Grant Program that will disburse needed funds to existing Charter Schools within the State of California for per pupil facilities funding. There 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 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 administrative criteria and requirements for administering a Grant Program that provides needed per pupil facilities funding to existing Charter Schools. There are no provisions within the proposed regulations that place additional burdens, obligations, or expenses on existing businesses such that businesses would be created or eliminated as a result of the proposed regulations.

The proposed regulations will unlikely 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 Grant program that will provide per pupil facilities funding to existing Charter Schools.

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

The proposed regulations are intended to provide needed per pupil facilities funding to existing Charter Schools, especially serving communities with low-income households. As such, to the extent that the awards benefit the long-term viability 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 current language within the regulations creates confusion, ambiguity, unnecessary investment in staff resources, inconsistent evaluations, and creating excessive additional cost to the certain applicants. Without the clarifying changes and additions proposed in this regulation change, the Authority does not have uniform standards and guidelines to administer the Program and ensure that Applications are evaluated in a consistent and fair manner, and Applicants do not have guidelines to direct them through the Application process

The benefits of the proposed regulations will ensure the Authority has uniform standards, internal controls, and guidelines to maintain and be consistent and effective for the administration of the Program. These amendments will reinforce the public's understanding and expectations of the Program, which is to assist Charter Schools with the cost for rent or lease cost of Charter School facility when occupied by students. In addition, reimbursement for the schools other costs used, but not limited to include remodeling buildings, deferred maintenance, initially installing or extending service systems, other built-in equipment, improving sites, and CAM.