

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA SCHOOL FINANCE AUTHORITY

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

NOTICE IS HEREBY GIVEN that the California School Finance Authority (Authority), to organize and operate pursuant to Sections 17170 through 17199.6 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than Monday, June 10, 2019. The Authority Board, 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 requested notification of any changes to the proposal.

Proposed Regulatory Action

The Authority proposes to adopt Sections 10170.2 through 10170.10 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The Regulations implement Authority's responsibilities related to the Charter School Facility Grant Program (Program).

Authority and Reference

Authority: Section 47614.5 of the Education Code. Section 47614.5(m) allows the Authority to adopt regulations in order to administer the Program.

Reference: Section 47614.5 of the Education Code, Section 47600, et seq., of the Education Code, Section 47605 of the Education Code, and Section 47612.5 of the Education Code. The Regulations include a number of the requirements of the Program contained in Section 47614.5. They also rely on specific provisions within the Charter Schools Act of 1992, commencing with Section 47600 of the Education Code.

Informative Digest/Policy Statement Overview

The Authority was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code Section 17170, et seq.). The Authority is authorized to adopt bylaws for the regulation and conduct of its business, and is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code Sections 17179 and 17180).

Pursuant to Education Code, Section 47614.5, the State Legislature directed the Authority to commence administration of the Program) 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 by the Office of Administrative Law (OAL) (OAL Regulatory Action #2014-0625-01C).

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.

The proposed regulations set forth Authority's policies and procedures for administering the Program, including: definitions; minimum eligibility requirements; eligible costs; application submission and content requirements; basis for determining estimated annual entitlement calculation; basis for final fiscal-year entitlement calculation; procedures for apportionment of grant funds and appeals; and policies governing Grantee obligations, responsibilities and approval of grant use change.

In order to be eligible for Program grant funds, Applicants are required to meet minimum eligibility requirements, which include, but are not limited to, the following: (1) applications are submitted by or on behalf of a Charter School; (2) a current charter has been awarded and is in place at the time of the application submission, or in the case of a first year charter, there is evidence that a charter petition has been submitted for approval to the Chartering Authority; and (3) either fifty-five percent (55%) or more of the student enrollment at the Charter School site must be eligible for free or reduced-price meals (FRPM) or the Charter School site for which grant funds are requested must be physically located in the local attendance area of a public elementary school that has fifty-five percent (55%) or more of its students eligible for FRPM.

Pursuant to Education Code, Section 47614.5(f), the Program provides assistance to Charter Schools with the following types of costs: costs associated with facilities consistent with the definitions used in the California School Accounting Manual or regulations adopted by Authority and costs associated with common area maintenance. For a description of further benefits, please see part "d" under the "Results of Economic Impact Assessment."

After conducting an evaluation of any related regulations on this matter, the Authority has concluded that these are the only regulations dealing with the Program, and therefore, these proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

The Regulations are briefly summarized below.

Section 10170.2 – “Definitions”:

- Addition of the words “in the Fiscal Year”, “The Appraiser must be”, “and shall” and removed the words “who” and “that”.

Section 10170.3 – “Eligible Applicant”:

- Addition of language prohibiting Charter Schools, Charter Management Organizations, Education Management Organizations, or any operator of a Charter School from being a for-profit organization.

Section 10170.4 – “Eligible Costs”:

- Removal of the language “The Authority shall base the annual COLA Index adjustment on the end of the prior year’s monthly rent”
- Addition of the language “The Authority will use the Independent Appraisal on file if the following conditions are met”
- Addition of the language “An Independent Appraisal completed within the last three fiscal years is on file with the Authority; and”
- Addition of the language “Rent or lease costs do not exceed prior year’s reimbursable costs, subject to an adjustment of the annual COLA Index (COLA Cap)”
- Reposition of existing paragraph (i) into the (ii) position.
- Addition of the language “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”
- Addition of the language “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.”

Section 10170.5: “Application Submission”

- Removal of the language “Applications received after the final filing date will not be accepted for review.”
- Added the language “Initial” and “period”
- Added the language “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.”
- Added the 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.”
- Replace section (c) with subsection (2)
- Reposition of existing sections (d) and (e) into the (b) and (c) position.
- Removal of the words “The Authority may waive procedural defects in the submission of an Application, such as an Application filed past the deadline”

Section 10170.6: “Content of the Application”

- Addition of the language “Requested documentation needed to complete the applicant’s eligibility review or award calculation shall be due to the Authority within 60 days of notice. 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)(2)”

Section 10170.7. Estimated Annual Entitlement Calculation

- Replaces existing text (c) with (a)(2) reference

Section 10170.9. Apportionment of Grant Funds

- Replaces existing text (c) with (a)(2) reference

**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 the Authority or to any specific Regulation or class of Regulations pursuant to Section 11346.5(a) (4) of the California Government Code pertaining to the proposed Regulations or the Authority.

Mandate on Local Agencies or School Districts

The Authority has determined that the Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Authority 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.

On an annual basis, the State Legislature will issue appropriations for purposes of the Program grant funds based on availability of funding and demand for the Program. For the current 2017-18 fiscal year, the State Legislature appropriated approximately \$112 million towards Program grant funds. The appropriation caused the Authority to apply the pro-rata share methodology since the ADA cost increased to \$1,117 for all eligible schools. There

will be no cost or savings to any State Agency pursuant to Government Code Sections 11346.1(b) or 11346.5(a)(6).

Initial Determination Regarding any Significant, Statewide Adverse Economic Impact Directly Affecting Business

The Authority 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

The Authority has determined that the adoption of the Regulations will not affect small business. The Program is a voluntary grant program available to Charter Schools to assist in the costs of Charter School facilities.

Cost Impacts

The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Cost Impact on Housing

The Regulations will not have any effect on housing costs.

Results of 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 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 funds to existing Charter Schools in need across the State of California for per pupil facilities funding. 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 administrative criteria and requirements for administering a Grant program that provides per pupil facilities funding to existing Charter Schools in need. 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 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 are intended to provide per pupil facilities funding to existing Charter Schools in need, 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.

Reasonable Alternatives

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority, would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the Regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Authority 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
at:

300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
(213) 620-4608

or

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

or

kjohantgen@treasurer.ca.gov

or

csfa@treasurer.ca.gov

The following person is designated as a backup Contact Person for inquiries only regarding the Regulations:

Ravinder Kapoor, Senior Attorney
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 the Authority. The written comment period on the Regulations will end on Monday, June 10, 2019. All comments to be considered by the Authority 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, the Authority 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. Such additional written comments 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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Suite 101, 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 the Authority's Web site 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 the Authority at least 15 days before the end of the written comment period. Such request should 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, the Authority may adopt the Regulations substantially as described in this Notice, without further notice. If the Authority 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 the Authority's Web site described above) for at least fifteen (15) calendar days before the Authority 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

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.