

**State of California
Office of Administrative Law**

In re:
California School Finance Authority

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 4, California Code of Regulations

OAL File No. 2013-0409-01 S

Adopt sections:

**Amend sections: 10192, 10193, 10194,
10195, 10196, 10197,
10198**

Repeal sections:

This rulemaking action by the California School Finance Authority updates the Charter School Facilities Credit Enhancement Grant Program (Program) within title 4 of the California Code of Regulations. These amendments allow more California charter schools to become eligible to apply for award reservations under the Program.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 5/16/2013 pursuant to section 11343.4(b)(3) of the Government Code.

Date: 5/16/2013



**Eric Partington
Staff Counsel**

**For: DEBRA M. CORNEZ
Director**

**Original: Katrina Johantgen
Copy: Jose Franco**

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
REGULAR (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2013-0409-015	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		2013 APR -9 11:12:33 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	

ENDORSED FILED
OFFICE OF

2013 MAY 16 PM 4:02

David M. ...
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY: CALIFORNIA SCHOOL FINANCE AUTHORITY per agency request

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input checked="" type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2013 7-2	PUBLICATION DATE 2/15/2013

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Charter School Facilities Credit Enhancement Grant Program

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: _____

AMEND: Sections 10192, 10193, 10194, 10195, 10196, 10197, and 10198

REPEAL: _____

TITLE(S): 4 per agency request

3. TYPE OF FILING

Regular Rulemaking (Gov. Code §11346)

Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

Emergency (Gov. Code, §11346.1(b))

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

Emergency Readopt (Gov. Code, §11346.1(h))

File & Print

Other (Specify) _____

Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(e))

Effective on filing with Secretary of State

§100 Changes Without Regulatory Effect

Effective other (Specify) Government Code Section 11343.4(b)(3)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON: Katrina Johantgen TELEPHONE NUMBER: 213-620-2305 FAX NUMBER (Optional): _____ E-MAIL ADDRESS (Optional): kjohantgen@treasurer.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE: *[Signature]* DATE: 4/8/12

TYPED NAME AND TITLE OF SIGNATORY: Katrina Johantgen, Executive Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 16 2013

Office of Administrative Law

TEXT OF REGULATIONS

CALIFORNIA CODE OF REGULATIONS Title 4, Division 15 California School Finance Authority

Article 3, Charter School Facilities Credit Enhancement Grant Program

Section 10192. Purpose.

This Article implements the California School Finance Authority's administration of the Charter School Facilities Credit Enhancement Grant Program (CFDA #84.354A) funds(s) received by the Authority from the U. S. Department of Education to provide credit enhancement to facilitate the purchase, construction, and/or renovation of facilities for California public Charter Schools.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.

Section 10193. Definitions.

For the purposes of this Article, the words and phrases defined in section 17173 of the Education Code shall have the same meaning as described therein. In addition, the following words and phrases shall have the meaning as described below:

- (a) "API" shall mean the Academic Performance Index summarizing a school's performance on the Standardized Testing and Report Program and California High School Exit Examination tests, as reported by the California Department of Education.
- (b) "Applicant" shall mean the Charter School, school district, or educational management organization applying on behalf of a Charter School for an award under this Article.
- (c) "Application" shall mean a completed Application for financing as defined and developed by the Authority and available on its website, and all other documents required to be submitted to the Authority.
- (d) "Awardee" means an Applicant awarded program funds ~~or awarded program funds~~ on behalf of a Charter School.
- (e) "Charter School" shall mean a school established pursuant to Education Code section 47600 et seq. and also meets the federal definition of Charter School as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.
- (f) "~~Chartering~~Charter Authorizerty" shall mean the governing board of the school district, county board of education, or the State Board of Education, that granted a school's petition to become a Charter School pursuant to Education Code section 47605.
- ~~(g) "Classroom-Based Instruction" shall have the meaning set forth in Education Code section 47612.5(e)(1).~~
- ~~(g)~~ (h) "Program" means the Charter School Facilities Credit Enhancement Grant Program (CFDA #84.354A).

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Sections 17173, 47600 et seq., 47605 and 47612.5 (e)(1), Education Code.

Section 10194. Applicant Eligibility Criteria.

An Applicant shall be eligible to apply for an award of a reservation of funds under this Program if all of the following conditions are met:

- (a) An approved charter has been awarded and is in place and current at the time of Application throughout the Application review and approval process and throughout the term of an award.
- (b) The Charter School is in good standing with its chartering Charter Authority and is in compliance with the terms of its charter at the time of Application submission. The Authority will rely on information from the chartering Charter Authority regarding the Charter School's good standing and compliance with the terms of its charter.
- (c) The ~~charter school~~ Applicant has completed at least one school year of instructional operations under its current County-District-School (CDS) Code and charter number issued by the California Department of Education.
- (d) At least eighty percent (80%) of the classroom-based instructional time offered by the Charter School shall be at the financed school site, and the Charter School shall attain an average daily attendance rate of at least eighty percent (80%) ~~based on the charter school's most recent California Basics Educational Data System (CBEDS) report.~~
- (e) The Charter School is established pursuant to Education Code section 47600 et seq., and also meets the federal definition of Charter School as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.
- (f) The Charter School admits students by lottery in the event more students want to attend the school than the Charter School can accommodate.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Sections 17180 and 47600 et seq., Education Code.

Section 10195. Eligible Use of Program Funds and Maximum Award.

- (a) Program funds must be applied toward funding the primary debt service reserve requirement for debt issued by or through the Authority for an Awardee to acquire, renovate or construct Charter School facilities, or refinance existing Charter School facility debt.
- (b) The Authority may make awards of up to \$1,500,000 per Application for uses listed in subdivision (a) above.
- (c) The term of repayment for any financing in conjunction with a Program award, pursuant to this Article, shall not exceed the useful life of the financed asset.
- (d) The grant award shall be held in trust by the Authority or an Authority approved financial institution, solely for authorized purposes and shall not be released to Awardees without the Authority's or trustee's approval. As deemed appropriate by the Authority, conditions for release of the Program grant funds throughout the term of the financing will be determined by the Authority, in collaboration with all lending parties, prior to closing of the financing.
- (e) Awards of a reservation of funds shall be released and returned to the Authority when the funds are no longer needed for the authorized purposes.
- (f) Awards of a reservation of funds will expire if the Awardee does not use the awarded funds within six months of Authority approval. Exceptions may be granted by the Authority.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.

Section 10196. Application Review and Evaluation Criteria.

The Authority will evaluate and determine Program awards based on the following:

- (a) The Applicant meets all Applicant Eligibility Criteria under Section 10194.
- (b) The Applicant demonstrates to the Authority all of the following:
 - (1) Agreement to use the intercept method to repay the associated its financed debt, pursuant to Education Code section 17199.4(a)(4);
 - (2) Ability to demonstrate to the Authority that Program funds are leveraged at a minimum of an 8:1 loanproject-to-award ratio. For purposes of the leverage calculation, the project funds may include, but not be limited to, loans and capital and equity contributions; and
 - (3) Ability to secure private placement of its debt with an investor(s), secure an investment grade credit rating from a national credit rating agency in conjunction with a public sale, or other evidence, satisfactory to the Authority, that the transaction will be completed.
- (c) In addition, the Authority may evaluate the following criteria as it relates to the Applicant:
 - (1) At least fifty-percent (50%) of the Ceharter Sschool's pupils are eligible for free and/or reduced meals as reported by the California Department of Education for the most current year.
 - (2) Student performance data for the last three academic years under the API, if available;
 - (3) A commitment of substantial equity toward the project being financed; and/or
 - (4) An award of additional tax-advantaged financing instruments.
- (d) Grants under the Program shall be available and awarded on a rolling first-come, first-served basis to the extent that funding and appropriations are available, and the requirements of the Program are satisfied. The Application review process will remain open only to the extent of available funding and appropriations.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.

Section 10197. Content of Application.

Completed Applications for award of a reservation of funds and all supporting documentation shall be submitted to the Authority and shall include, but not be limited to, all of the following:

- (a) Application for a reservation of funds designated by the Authority for an applicable financing program.
- (b) A detailed description of the school facility to be financed with the award.
- (c) Description of how the award provided through the facilities financing will be used.
- (d) Copy of current charter agreement and verification of the expiration date.
- (e) Evidence that the Ceharter Sschool operates as, or is operated by, a nonprofit public benefit corporation formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with section 5110) of Division 2 of Title 1 of the Corporations Code), or is organized under section 501(c)(3) of the

Internal Revenue Code or other evidence, satisfactory to the Authority, that the school operates on a nonprofit basis.

- (f) A completed questionnaire of the entity's legal status.
- (g) Adopted budget for the current year.
- (h) Projected budgets for the next three years.
- (i) Audited financial statements for the last three years, if applicable.
- (j) Information regarding student performance, attendance, enrollment and retention rates.
- (k) Documentation that the Applicant holds title or other interest in the financed facility, including right of access.
- (l) Verification the Charter School is in good standing with its Chartering Authority and in compliance with the terms of its charter at the time of Application submission and throughout the term the funds are reserved. Such verification must be provided directly from the Chartering Authority on a form provided by the Authority. Charter Schools may appeal any response by the Chartering Authority's staff directly to the Chartering Authority's governing board.
- (m) Any additional information that the Authority deems necessary to evaluate the Application.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code

Section 10198. Audits and Conflicts of Interest.

- (a) The State may conduct or require periodic audits to ensure Awardees are using funds consistent with the requirements and the terms of the Program, the related financing program, and this Article as approved. Awardees shall retain all documentation and financial data necessary to substantiate the purposes for which the financing funds were spent for a period of three years after the certification of completion and repayment of the debt or three years after the Program funds are no longer held in reserve, whichever is longer.
- (b) Applicants and Awardees must avoid apparent and actual conflicts of interest when participating in grants from the U.S. Department of Education. U.S. Department of Education regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family members; and (b) the person is a public official or has a family or business relationship with the Awardee. 34 CFR 75.525(b) provides further that an Awardee may not permit any person participating in a project to use his or her position for a purpose that is – or gives the appearance of being – motivated by a desire for a private or financial gain for that person or for others.
- (c) When relying on federal funds to enter into a contract, a State or local entity benefiting from a grant must comply with 34 CFR 80.36. These standards require federal grant Awardees to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the Awardee may participate in the selection, award, or administration of any contract supported by federal funds if a real or apparent conflict of interest exists.
- (d) The Authority reserves the right to conduct site visits to any Charter School facility or project receiving a reservation of funds pursuant to this Article.

- (e) Participants will be required to routinely submit documentation in order to support continued eligibility on at least an annual basis.
- (f) Awardees shall comply with all State and Federal requirements throughout the award period.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.