

## Staff Summary No. 4

**Date:** October 12, 2011  
**To:** Members of the California School Finance Authority  
**From:** Katrina M. Johantgen, Executive Director  
**Re:** Consideration of Changes to the Charter School Facilities Program Regulations (Resolution 11-40)

---

Staff is proposing changes to the regulations that guide the Charter School Facilities Program (Program). This staff summary outlines the proposed changes to the regulations. The proposed amendments include:

### **Section 10152 – “Definitions”**

- Definition of “Account” is amended to reference the correct statute within the Education Code, Section 17078.52(c)(2).
- Definition of “Advance Apportionment” is moved from Section 10164(a) and amended to clarify the need to meet specific OPSC requirements prior to release of funds.
- Definition of “Applicant” is amended to reference the correct statute in the Education Code, Section 17078.53(c), and to include charter school operator, or any entity that sponsors or applies on behalf of a charter school, as an eligible entity to apply for charter financing and to meet Program criteria.
- Definition of “Authority” is amended to reference the correct statute in the Education Code, Section 17078.52(c)(1).
- Definitions of “Co-borrower” and “Guarantor” are added together to address their reference in Section 10159 (Section 10157 in revised regulations).
- Definition of “Final Apportionment” is added to address its references in Sections 10158 and 10159 (changed to Section 10155 and 10157, respectively, in revised regulations) and to ensure consistency with the OPSC regulations at CCR, title 2, section 1859.165.
- Definition of “Financially Sound” is amended to reference the correct statute in the Education Code, Section 17078.52(c)(4).
- Definition of “Funding Agreement” is added to address one of the two specific program agreements that require execution prior to release of funds.
- Definition of “Intercept” is added to address reference to the intercept method for payment on the local matching share in revised Section 10158.
- Definition of “Local Matching Share” is added to address its reference in Sections 10160 and 10161 (Sections 10158 and 10159 in revised regulations).
- Definition of “Memorandum of Understanding” is added to address one of the two specific program agreements that require execution prior to release of funds.
- Definition of “Preliminary Apportionment” is amended to reference the correct statute in the Education Code, Section 17078.52(c)(3), and include reference to its representing a reservation of funds.

- Definition of “Program Agreements” was added to address their reference at Sections 10164 (Section 10155(a) in the revised regulations), Section 10155(e) in the revised regulations, and Section 10160 (Section 10158 in the revised regulations).

### **Section 10153 – “Application”**

There are no changes to this section.

### **Section 10154 – “Financially Sound Determination”**

- Incorporates Section 10156, with the exception of Sections 10156(h) and (j), and the first sentence of Section 10156(i), in order to consolidate all financial soundness review considerations with financial soundness requirements into a single section.
- Amends title to “Financial Soundness Review and Determination” to denote both the financial soundness review and financial soundness determination.
- Clarifies relevance of financial soundness determination to preliminary, advance, and final apportionment.
- Amends language for clarity and syntax.
- Replaces “charter school” with “applicant” to include a school district or an entity that is sponsoring or applying on behalf of a charter school.
- Incorporates Sections 10160(d)(2) and (3) to clarify that as a basis for making a determination that an applicant is financially sound, the applicant must be able to make payments on the local matching share at the interest rate set forth in Education Code, Sections 17078.57(a)(1)(D) and (E), and meet the minimum debt service coverage ratio of 1.00 x (100%).
- Clarifies language to give the authority flexibility to allow an applicant to use restricted funds or to subordinate oversight fees to meet the debt service coverage requirement.
- Adds language to clarify the requirement regarding an applicant having qualified management and staff.
- Adds language to clarify the requirement that the applicant be free of material risks that would threaten its financial or operational viability or that of the charter school.
- Clarifies the authority’s review of updated information and rendering of updated determinations of financial soundness for advance and final apportionment.
- Clarifies that the authority’s determination of financial soundness shall apply to either preliminary and/or advance apportionment, or to final apportionment, and that the authority’s determination of financial soundness is valid for a period of six months and meets the Office of Public School Construction’s definition of certification of current financial soundness.
- Clarifies that the authority may require an applicant to agree to specific contingencies in order to be determined to be financially sound.
- Clarifies that, as a condition for a determination of financial soundness, the applicant may be required to agree to the intercept method of payment pursuant

to Section 17199.4(a)(4) addition to any other contingencies, in order to be determined to be financially sound.

**Section 10155 – “Preliminary Application Information”**

- Incorporates Section 10158(a) and (b) and Sections 10164 (b), (c), and (d) in order to consolidate application requirements for preliminary, advance, and final apportionment into a single section.
- Amends title to “Application for Preliminary, Advance, and Final Apportionment” to denote applicability to preliminary, advance, and final apportionment.
- Replaces “charter school” with “applicant” to include a school district or an entity that is sponsoring or applying on behalf of a charter school.
- Amends references to other sections within the regulations to address revised section numbers.
- Clarifies language based on revised definition of applicant.
- Amends language requiring applicants to submit attendance data along with enrollment data for purposes of financial soundness review for preliminary, advance, or final apportionment.
- Amends language for submission of financial projections to include projections for at least five year, or the first two full fiscal years following occupancy of the Program-funded facility, whichever is longer.
- Adds language requiring applicants to submit project information, where available or applicable, for consistency with the application form 03-01 and with the Office of Public School Construction’s application requirements.
- Adds language to clarify that the Authority reviews information on private contributions.
- Amends language regarding required submission of year-to-date financial statements to include only a current total year budget, year-to-date actuals, and an estimated annual financial statement based on the year-to-date actuals.
- Adds language to clarify that, as a condition for release of funds for Final Apportionment, the applicant must submit executed Program Agreements.

**Section 10156 – “Method of Determining Whether a Charter School is Financially Sound”**

- Subsumed under Section 10154, with the exception of Sections 10156(h) and 10156(j), and the first sentence of Section 10156(i), for purposes of consolidating all financial soundness review and determination considerations.
- Omits Section 10156(h) to clarify that the authority does not consider the chartering authority’s oversight in its determination of financial soundness.
- Omits the first sentence of Section 10156 (i) to clarify that the authority does not consider the applicant’s management of its contracts in its determination of financial soundness.
- Omits Section 10156(j) to clarify that the authority no longer conducts site visits pursuant to Section 10154(e) due to a change in the law.

### **Section 10157 – “Ongoing Monitoring of Applicant’s Financial Soundness”**

- Section number is changed to 10156 due to incorporation of Section 10156 into Section 10154.
- Amends Section 10157(a)(4) to change the required timeframe for notice to the authority of material changes from 45 days to 30 days.
- Omits Section 10157(a)(5) to clarify that the authority does not review the chartering authority’s oversight activities.
- Omits reference to “upon request” in order to allow the authority to require applicants to provide notice of material changes pursuant to Section 10157(a)(4) (Section 10156(a)(8) in proposed revised regulations).
- Adds additional types of updated information that the authority may request for its ongoing review, including academic performance results, revised financial projections, updated legal status questionnaire, and updated enrollment.
- Adds language to require applicants to submit specific updated information following release of funds for purposes of the authority’s oversight, including: payment records on matching share lease obligations; material changes to enrollment, charter status, academic performance, and financial status within 30 days of such a change; engagement in material contracts in excess of five percent of the applicant’s net revenues; and incurrence of additional debt that may have a significant impact on the applicant’s financial status.
- Adds the word, “same,” to clarify that the same or similar information as required pursuant to Section 10156(a) for the authority’s determination of an applicant’s ongoing financial soundness may also be required of guarantors or co-borrowers.
- Adds language to make explicit that, upon submission of updated information pursuant to this Section, the authority may conduct a financial soundness review and notify the board in the event that an applicant is no longer financially sound, and may require a remedial action plan or follow up with the chartering authority.

### **Section 10158 – “Final Application Information”**

- Subsumed under Section 10155 in order to consolidate application requirements for preliminary, advance, and final apportionment into a single section.

### **Section 10159 – “Use of Guarantor or Co-borrower”**

- Changes section number to 10157 due to incorporation of Section 10156 into Section 10154, and Section 10158 into Section 10155.
- Amends 10159(b)(7) regarding submission of financial projections for consistency with changes to Section 10155.

### **Section 10160 – “Payment of Local Matching Share”**

- Changes section number to 10158 due to incorporation of Section 10156 into Section 10154, and Section 10158 into Section 10155.
- Omits Section 10160(d)(1) to clarify that the requirement of demonstrating financial soundness is not limited to matching share financing and is duplicative to Section 10154.
- Moves Sections 10160(d)(2) and (3) to Section 10154 to incorporate the consideration of ability to make payments on the local matching share at the interest rate set forth at Education Code sections 17078.57(a)(1)(D) and (E), and debt service coverage into the financial soundness review.
- Amends Section 10160(e) to clarify that the Authority does not prepare Program Agreements on behalf of the Board, retaining the language identifying the general contents of such agreements.
- Replaces “charter school” with “applicant” to include a school district or an entity that is sponsoring or applying on behalf of a charter school.
- Clarifies that the authority’s preparation of, and the applicant’s execution of, program agreements, are prerequisites for the release of funds, and that conditions for release of funds are contained in the program agreements.
- Clarifies that, as a condition for release of funds, the applicant may require an applicant to agree to the intercept method of payment on the local matching share pursuant to Section 17199.4(a)(4).

### **Section 10161 – “Security Provisions”**

- Changes section number to 10159 due to incorporation of Section 10156 into Section 10154, and Section 10158 into Section 10155.
- Sets forth requirement for applicant to establish a separate and distinct account for deposits of all Program loan proceeds.

### **Section 10162 – “Reporting and Default Provisions”**

- Changes section number to 10160 due to incorporation of Section 10156 into Section 10154, and Section 10158 into Section 10155.
- Adds language allowing the Authority to require reports detailing disbursements and interest earned as it relates to the separate Program account established pursuant to Section 10161(b).
- Amends language to require reporting to the authority of material changes within 30 days of such changes.

### **Section 10164**

- Subsumed under Section 10155.

Staff recommends that the members approve Resolution 11-40 authorizing the proposed amendments to the regulations. If approved, the Executive Director will initiate the rulemaking file for processing by the Office of Administrative Law, and will distribute the proposed changes to interested parties for public comment.