

MEMORANDUM

Staff Summary No. 11

Date: December 15, 2022
To: Members of the California School Finance Authority
From: Katrina M. Johantgen, Executive Director
Re: Resolution 22-59 - Adoption of the Emergency Regulations for the Charter School Facility Grant Program

The Charter School Facility Grant Program or SB 740 Program (Program) provides annual assistance with facilities rent and lease costs for pupils in California’s charter schools. Since 2013-14, the Authority has made changes to the regulations that guide this Program. The Authority is requesting approval of these most recent revisions based on feedback from stakeholders and to improve Program efficiencies. Upon board approval, the changes will become part of the program regulations once approved by the Office of Administrative Law.

These recent proposed amendments to the regulations address the following: (1) remove Section 10170.14 "Conflicts of Interests"; (2) add “COVID-19 mitigation modification/improvements”; and (3) additional formatting change/edits related to the revisions.

The Authority intends to submit these proposed regulations through the Emergency Rulemaking Action upon the Authority Board’s approval of the following proposed regulations:

Section 10170.4. Eligible Applicant

(a)(2) –Add “COVID-19 mitigation improvements/modifications (only incurred during the 2022-2024)” as prescribed by AB 187 (2022) providing additional funding for other facility related costs as well as the addition of any improvements and/or modification to mitigate COVID-19 during the 2022-23 and 2023-24 funding rounds.

Section 10170.6. Content of Application

(d)(2) – Removal of the subsection due to the removal of the refence to section 10170.14. Applicants are already required to use certificated appraisers which are subject to their associated bylaws, regulations, and statues.

Renumber the subsequent sections to ensure proper subsection numbers after the removal.

Section 10170.14. Conflicts of Interest

Removal of the entire section to ensure better compliance with Government Code (GC) 1090 and its associated sections. As stated in GC 1097.1, the Fair Political Practices Commission (FPPC) has the “jurisdiction to commence an administrative action, or a civil action” related to GC 1090 violations or violations of the associated sections. With the passage of SB 126 (2019), charter school governing boards are subject to GC 1090 and therefore, conflicts of interest as described in GC 1090 fall under the said jurisdiction of the FPPC.

The Authority will still require applicants to confirm compliance with our regulations but will now direct any conflict of interest concerns, both internal and external, to the FPPC for a determination.

If the FPPC determines there is a conflict of interest violation, a 1090 violation would also violate the compliance statement and the applicant may be determined to be ineligible for any funding.

Section 10170.15. Eligible Applicant

Change to Section 10170.14 as the above section is being removed.

Recommendation: Authority staff recommends the Board adopt Resolution 22-59, approving the proposed emergency regulations for the administration of the Charter School Facility Grant Program. If approved, the Executive Director will include the Resolution demonstrating the Board approval with the rulemaking file to the Office of Administrative Law.

TEXT OF REGULATIONS

CALIFORNIA CODE OF REGULATIONS

Title 4, Division 15, Article 1.5 Charter School Facility Grant Program

§ 10170.4. Eligible Costs.

- (a) Grant funds may be applied toward a Charter School's facilities costs for all of the following:
- (1) Costs associated with facility rents or leases as evidenced by an executed rental or lease agreement and beginning with the 2017-18 funding round, shall be subject to one of the following conditions:
 - (A) Reimbursable facility rent or lease costs do not exceed prior year's reimbursable costs on file with the Authority, subject to an adjustment of the annual COLA Index (COLA Cap); or
 - (B) The rent or lease costs of New Facility Agreements are at or below Fair Market Rent based on an Independent Appraisal as described in Section 10170.6(d) and paid for by the Applicant.
 - (i) If the Independent Appraisal finds the rent and lease costs above the Fair Market Rent, the costs will be based on Fair Market Rent as determined by the Independent Appraisal.
 - (2) If funds remain, costs associated with the facility but not limited to, remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, [COVID-19 mitigation improvements/modifications \(only incurred during the 2022-2024\)](#), and common area maintenance charges that are based on the Charter School's usage of the facility and are limited to maintaining and repairing the facility and its common areas will be evaluated for an award.
 - (3) Costs described in subdivisions (a)(1) and (a)(2) and associated with portions of school district or county office of education facilities that are not existing school district or county office of education facilities and are not reasonably equivalent facilities received from the Charter Authority.
 - (4) Costs associated with a ground lease as evidenced by an executed rental or lease agreement where there is no existing district facility on the ground being leased.
- (b) Grant funds may not be apportioned for any of the following:
- (1) Units of ADA generated through nonclassroom-based instruction as defined in Education Code Section 47612.5;
 - (2) Facility rent and lease costs associated with a Charter School's occupancy of existing district or county office of education facilities;
 - (3) Facility rent and lease costs associated with a Charter School's occupancy of reasonably equivalent facilities received from its Chartering Authority pursuant to Education Code Section 47614;
 - (4) Costs incurred to meet a Charter School's local match obligation for Charter School

- facilities that receives funds pursuant to the Charter School Facilities Program;
- (5) Costs incurred for instructional or administrative costs including, but not limited to, salaries and benefits paid to teachers, instructional aides, the educational management organization or charter management organization responsible for managing the Charter School, or the Chartering Authority and existing district personnel;
 - (6) Lease costs assessed to the Charter School based on grant funds awarded to the school by the Authority during the same funding round;
 - (7) Facility rent and lease costs associated with a facility previously purchased and paid in full by the Charter School with State Charter School Facilities Incentive Grants Program funds unless those costs are associated with capital improvements;
 - (8) Facility rent and lease costs associated with lease-to-purchase agreements where the rent and lease costs lower the final purchase price;
 - (9) Facility rent and lease costs associated with a facility that is inaccessible to the Applicant. The Authority reserves the right to request evidence such as a Certificate of Occupancy or letter from the lessor that establishes the date the Applicant began to occupy the leased site; or
 - (10) Costs incurred during any period the Applicant is found not to be in Good Standing.
- (c) Grant funds must be expended and liquidated within the guidelines of this article and the Charter School Facility Grant Program.
 - (d) No grant, whether for costs described in subdivision (a)(1), (a)(2), (a)(3), (a)(4), or a combination of, shall exceed the ADA Cap as defined in Section 10170.2(e) or 75% of the annual facility rent and lease costs for the Fiscal Year for which the Application is submitted, whichever is less.
 - (e) Where an Application is for multiple school sites, each site's eligibility and costs will be evaluated separately. The ADA applied to the determination of the grant, as described in subdivision (d), shall only be based on the eligible site(s).
 - (1) Where the Charter School's students migrate between eligible and ineligible school sites, the ADA applied shall be based upon the square footage ratio of eligible facilities to all facilities.
 - (2) Where the Charter School's students do not migrate between eligible and ineligible school sites, the ADA applied shall be based upon the school's self-certification of the ADA for the facility the students are assigned to.

Note: Authority cited: Section 47614.5, Education Code. Reference: Sections 47612.5 and 47614.5, Education Code.

§ 10170.6. Content of Application.

Completed Applications and all attachments shall be submitted to the Authority via the online Application form (CSFA Form 740-01) and shall include all of the following items.

- (a) Application. The Application shall include identifying information, a completed Legal Status Questionnaire, and signed certification that the data and information reported is true and correct and the charter will continue to comply with state and federal laws.

- (b) Copy of current charter agreement and verification of Authorizing Board adoption and expiration date.
- (c) Copy of the rent or lease agreement contract, or other documentation, verifying the Charter School's facilities rent or lease costs for the Fiscal Year for which a grant award is requested, and evidence that the rent or lease term matches or exceeds the anticipated grant term. If the Charter School does not have an executed rent or lease agreement for the Fiscal Year, the Applicant shall produce an executed lease or rental agreement for the Prior Year or other documentation sufficient to show the Charter School's actual facilities rent or lease costs for the Prior Year. If the Charter School does not have a rental or lease agreement for the Fiscal Year or Prior Year, the Applicant shall provide such other evidence to the satisfaction of the Authority, such as a pending lease agreement, that establishes the Applicant's best estimate of such costs for the Fiscal Year.
- (d) After the Authority has confirmed the Applicant's eligibility and determined one or more of the Applicant's facilities is a New Facility Agreement, the Authority will use an Independent Appraisal, completed within the last three Fiscal Years, that was previously filed with the Authority during a prior Application round. Otherwise, the Authority will request an Independent Appraisal completed within the Fiscal Year. The Appraisal shall be consistent with the USPAP, and at a minimum contain the following items:
 - (1) Use a Certified Real Estate Appraiser or Certified General Appraiser licensed by the California Department of Real Estate Appraisers;
 - ~~(2) The Appraiser shall not be a Related Party as defined in Section 10170.14(a)(3);~~
 - ~~(3)~~ (2) "Client" shall be the Charter School;
 - ~~(4)~~ (3) "Intended User" shall be the California School Finance Authority for Charter School Facility Grant Program eligibility;
 - ~~(5)~~ (4) Provide a Fair Market Rent Analysis including an explanation that supports the conclusions reached; and
 - ~~(6)~~ (5) Signed Certification consistent with language found in USPAP.
- (e) An Applicant requesting reimbursement for Charter School costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites and common area maintenance charges shall submit no later than July 15 following the applicable Fiscal Year all of the following:
 - (1) A description of the work for which the reimbursement is requested, including how it meets one of the categories of eligible work;
 - (2) A Facility Invoice Expenditure Report, as provided by the Authority, detailing the costs to be reimbursed; and
 - (3) Applicable contracts for work to be performed to the extent they exist at the time of the Application.
- (f) An Applicant applying for or on behalf of a First Year Charter School shall submit an Application and the supporting documentation listed in subdivisions (f)(1)-(3), as they are made available. Grant funds will not be disbursed until items (1), (2) and (3) have been received by the Authority.
 - (1) An approved charter agreement evidencing the First Year Charter School's intention of operating a Charter School during the Fiscal Year for which grant funds are requested. If an approved charter agreement is not available, the Applicant shall submit the charter petition and Application and additional documentation demonstrating its intent to receive charter approval to operate a Charter School during the Fiscal Year for which grant funds are requested;
 - (2) An executed rental or lease agreement for the Fiscal Year for which grant funds are requested. If an executed rent or lease agreement is not available at the time of

Application, the Applicant shall submit an estimate of rent or lease costs for the Fiscal Year; and

- (3) A Charter School 20 Day Attendance Report shall be submitted within 20 days of initial California Department of Education Application submission date.
- (g) The Authority shall be entitled to the return of all grant funds from an Applicant if it is determined that the Applicant failed to provide complete and accurate information, or provided misleading information, that resulted in the disbursement of grant funds for which an Applicant is not eligible.
- (h) All requested documentation required to complete the Applicant's eligibility review or award calculation shall be due to the Authority within 60 calendar days of notification. Failure to submit this documentation by the stated deadline will result in Program ineligibility or ineligibility of applicable facility costs described in Section 10170.4(a)(1)-(4).
- (i) The Authority will request completion of the GSCF directly from the Chartering Authority. This form shall be completed and returned only if the Chartering Authority is aware of any outstanding compliance or revocation issues; otherwise, no action is necessary. An Applicant may appeal any response by the Chartering Authority's staff directly to the Chartering Authority's governing board.
 - (1) Requests for completion of the GSCF will be sent out to the Chartering Authority upon receipt of each Application.
 - (2) The Authority reserves the right to request completion of an additional GSCF at any time during the Fiscal Year.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

~~§ 10170.14. Conflicts of Interest.~~

~~(a) For purposes of this section, the following definitions shall apply:~~

~~(1) "Affiliate" shall mean a shareholder, partner, member, officer or board member of, or person who directly or indirectly controls, a Corporate Entity.~~

~~(2) "Corporate Entity" shall mean any type of organization or legal entity other than an individual, including a corporation, partnership, limited liability company or unincorporated association.~~

~~(3) "Related Party" shall mean:~~

~~(A) School Official or a spouse, domestic partner, or dependent child of a School Official; or~~

~~(B) A Corporate Entity if a School Official or a spouse, domestic partner, or child of a School Official is an Affiliate of the Corporate Entity, except that a non-profit Corporate Entity formed exclusively for the purpose of managing or providing support to the Applicant or Charter School or to a group of related charter schools, and any direct or indirect wholly owned subsidiary of any such Corporate Entity, shall not be considered a Related Party.~~

~~(C) "School Official" shall mean a board, member, officer, or employee of an Applicant or the Charter School.~~

~~(b) Grantees must avoid actual conflicts of interest when applying for or receiving grants from the Authority.~~

- ~~(c) Grant funds may not be used by an Applicant or Charter School to pay for any lease or rental or service agreement with a Related Party, unless all of the following conditions are satisfied:~~
- ~~(1) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, abstains from voting, or participating in the discussion of the governing board of the Charter School, regarding approval of the lease, rental agreement, or any amendment thereto;~~
 - ~~(2) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, abstains from voting, or participating in the discussion of the governing board of the Charter School, regarding the decision to apply for a grant to cover costs associated with the lease or rental agreement, as well as abstaining from participating in the Application for grant funds or administration of the Charter School's receipt of grant funds;~~
 - ~~(3) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, discloses its interest in the lease or rental agreement to the governing board of the Charter School;~~
 - ~~(4) The amount of the lease or rent is at or below Fair Market Rent based on an Independent Appraisal paid for by the Applicant or Charter School or the governing board in approving the lease or rental agreement or amendments there to has made a finding that the agreement is reasonable under the circumstances, and~~
 - ~~(5) The lease or rental agreement is not signed by the Related Party, or in the case of a Corporate Entity, by any School Official who is an Affiliate of the Corporate Entity, on behalf of the Applicant or Charter School.~~
- ~~(d) Nothing in this section is intended to supersede Government Code Section 1090, the Political Reform Act (commencing with Government Code Section 81000), or any other conflicts of interest laws that may be applicable to the Applicant or Charter School's participation in the program.~~

~~Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.~~

§ 10170.145. Funding Contingency.

- (a) Funding for this grant program in each Fiscal Year is contingent upon the appropriation of funds.
- (b) Apportionments to each Grantee will be contingent upon the Grantee's continuing eligibility to receive such apportionments.
- (c) The Authority or Authority staff may seek third party verification regarding any and all applicable costs associated with the facility/project receiving a grant pursuant to this Article.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.