

NOTICE OF PROPOSED RULEMAKING ACTION

CALIFORNIA SCHOOL FINANCE AUTHORITY

Sections 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, and 10190

Title 4, Division 15, Article 2 California Code of Regulations

NOTICE IS HEREBY GIVEN that the California School Finance Authority (Authority), organized and operating pursuant to Sections 10175 through 10191 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 5:00 p.m. on Monday, June 11, 2018. 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 amend Sections 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, and 10190 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The amended Regulations implement the Authority's responsibilities related to the Charter School Facilities Incentive Grants Program (Program).

Authority and Reference

Authority: Section 17179 and 17180 of the Education Code Section 17179 provides the Authority with the ability to do all things reasonably necessary to carry out its responsibilities. Section 101780(a) provides the Authority the ability to adopt bylaws for the regulation of its affairs and the conduct of its business. Subdivision (d) authorizes the Authority to receive and accept grants from the federal government. Subdivision (o) allows the Authority the right to adopt guidelines for grants.

Reference: Education Code, Section 17180(d) of the Education Code; and Section 47600, et seq., of the Education Code. These Regulations implement the Program and include a number of the requirements of that Program contained in the reference code provisions and their implementing Regulations. They also rely on a number of provisions in the Charter Schools Act of 1992, commencing with Section 47600 of the Education Section. Section 17180(d) provides the Authority with the ability to receive grants from the federal government.

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).

In 2004, 2009, and 2014, the United States Department of Education approved grant awards to the Authority pursuant to the State Charter School Incentive Grant (Grant), authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001. The Grant provided for \$49,250,000 in 2004, \$46,132,749 in 2009, and \$50,000,000 in 2014, to be awarded over five-year periods for the purposes of funding per-pupil facilities aid programs for California charter schools. Grant funds are applied toward a charter school's annual costs of rent, lease, mortgage, debt service, or Proposition 39 pro-rata payments for facilities, or towards the costs of purchase, design, construction, and/or renovation of a new or existing facility.

Pursuant to the federal rules governing the Grant, an annual portion of funds must be allocated during each of five consecutive federal fiscal years. The first funding round began on June 28, 2005, when an emergency rulemaking file was approved by the Office of Administrative Law. The Authority adopted regular regulations through the Office of Administrative Law's (OAL) Rulemaking process, and the regulations were approved by OAL on March 24, 2006 (OAL Regulatory Action # 05-0907-02). 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 a Certificate of Compliance.

The allocation of these grant funds to eligible charter schools is based on preference points assigned for certain factors including the low income population served by the school as reported by the percentage of students eligible to receive free and reduced price meals, the school's nonprofit status, whether a school is located in an overcrowded attendance area, whether the school has previously received a Program award, the school's academic performance and its academic performance in comparison to nearby schools as measured by its Smarter Balanced Assessment data as reported by the California Department of Education (CDE).

The amendments to the Regulations are briefly summarized below and are intended to address the following: (1) non-substantive language and/or punctuation changes throughout to improve readability; (2) replacing erroneous references with the correct ones; (3) clarifying language throughout to reflect a more accurate representation of how award amounts are determined; (4) reorganization of text to improve flow and readability; (5) deletion of language prohibiting the Authority from increasing awards should additional funding become available; (6) addition of a six month timeline at time of application to ensure project readiness is feasible; (7) expansion on Davis-Bacon and Related Acts to ensure federal guidelines are met; (8) deletion of obsolete language; (9) increasing six month drawdown requirement to one year so the deadline is consistent throughout the regulations; (9) addition of clear penalties for failing to drawdown funds in accordance with

grant agreement requirements; and (10) addition of language that allows, in rare instances and on a case-by-case basis, approval of extensions to the annual drawdown requirement.

The Authority has conducted an evaluation as to whether there are any related regulations on this matter and has found that these are the only regulations dealing with this type of program. Therefore the proposed Regulations do not present any inconsistencies or incompatibilities with existing state regulations.

Anticipated Benefits of the Proposed Regulation

These proposed amendments to the Regulations will establish consistency with Program policy and practice, reference correct Program references, and set forth clarifying language. As such, the proposed Regulations are expected to enhance efficiency and uniformity in the Program's administration. The Authority is proposing permanent regulations through OAL's permanent rulemaking process and through the submission of a Certificate of Compliance.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After conducting an evaluation for other regulations on this matter, the Authority has found that these are the only regulations concerning the Program. Therefore, the proposed Regulations are neither inconsistent nor incompatible with any existing state regulations.

The Regulations are briefly summarized below:

Section 10176 Definitions

- Clean-up change that is considered non-substantive.

Section 10177 Eligible Applicant

- Clean-up changes that are considered non-substantive.

Section 10178 Eligible Costs

- Clean-up changes that are considered non-substantive.
- Correcting an erroneous reference of CSFP to CSFGP.

Section 10179 Maximum Grant

- Clean-up change that is considered non-substantive.
- Replacing the word "annual" with "total" and adding the word "project" to more accurately represent how awards are calculated.
- Reorganization and rewording of supplement/supplant language for improved flow, readability, and to more accurately reflect how supplement/supplant is calculated.
- Deletion of language which prohibits the Authority from increasing grant agreements beyond initial award amounts.

Section 10180 Application Submission

- Clean-up change that is considered non-substantive.
- Addition of the word "determinations" to clearly delineate the action awardees should expect in the timeframe referenced.

Section 10181 Content of Application

- Deletion of the term “attachments” and replacing with “supporting documentation” to more accurately reflect what should be included with the application.
- Clean-up changes that are considered non-substantive.
- Addition of a six-month timeline to demonstrate project readiness at time of application to ensure grant funding is awarded to projects who can expend funds within the required regulatory timeframes.
- Additional language included under Davis-Bacon and Related Acts to clearly explain this federal requirement.

Section 10182 Evaluation Criteria

- Deletion of the reference to Academic Performance Index as the term is no longer relevant.
- Clean-up changes that are considered non-substantive.
- Addition of the word “standard” and deletion of the word “assessment” to mirror the citations from the California Department of Education.

Section 10183 Award Methodology

- Rewording of current language relating to deficiencies to improve readability and clearly identify the Authority’s actions.

Section 10184 Approval of Grant and Notification of Subgrantees

- Duplicative language has been removed.

Section 10185 Obligation and Expenditure of Funds

- Updated to reflect current federal grant status.
- The six month requirement has been increased to one year for consistency throughout regulations.
- Language was added which imposes a clear penalty for failure to draw down the annual one-third requirement. No previous penalty had been delineated.
- Addition of language allowing the Authority to extend the drawdown requirement on a case-by-case basis.
- A new subdivision has been added that provides the Authority with the ability to increase individual grant awards for lease and Proposition 39 schools if additional funding becomes available.

Section 10186 Approval of Grant Use Change

- Duplicative language has been removed.

Section 10187 Grant Agreements

- Clean-up changes that are considered non-substantive.

Section 10188 Release of Funds

- Clean-up changes that are considered non-substantive.

- The six month requirement has been increased to one year for consistency throughout regulations.
- Language was added which imposes a clear penalty for failure to draw down the annual one-third requirement. No previous penalty had been delineated.

Section 10190 Audits and Conflicts of Interest

- Clean-up changes that are considered non-substantive.

**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.

**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 with 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.

Results of the Economic Impact Assessment

The Authority has determined, pursuant to Government Code Section 11346.3(b)(1)(A)-(D), that the Regulations will not have an effect on jobs and business expansion, elimination or creation. As such, to the extent that the awards benefit the long-term viability of charter schools and the expansion of charter schools, the Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

Cost Impact on Housing

The Regulations will not have any effect on housing costs.

Consideration of 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) 620-4467

or

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

Or by email to katrina.johantegen@treasurer.ca.gov or csfa@treasurer.ca.gov

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

Mark Paxson, General Counsel
State Treasurer's Office
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 at 5:00 p.m. on Monday, June 11, 2018. 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 website 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 website described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.