

## **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 17199.5 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 Tuesday, February 20, 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 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 (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).

The Authority adopted a fourth emergency regulation packet through the Office of Administrative Law's (OAL's) Emergency Rulemaking procedures, and such emergency regulations were approved by OAL on November 2, 2017 (OAL Regulatory Action # 2017-10230-02E). 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”:**

This section amended the definition for Applicant and Invoice Expenditure Report. This section also added a definition for Average Daily Attendance Gap (ADA Gap) and Cost of Living Adjustment Index (COLA).

**Section 10170.3 – “Eligible Applicant”:**

This section removes (d)(4) the outdated 2015-16 additional funding round. In section (f)(1) there was a wrong letter sequence as the letters “a, b, and c” were replaced with the letters A, B and C.

**Section 10170.4 – “Eligible Costs”:**

This section amendments to (1)(A) and (B) provide further clarification on rent and lease costs beginning with the 2018-19 funding round. In subdivision (A) reimbursable facility rent or lease costs may not exceed prior year’s costs, adjusted to be consistent with the current year COLA Index, as defined in Section 10170.2. In subdivision (1)(B) applicants submitting new facility agreements shall submit an appraisal to validate rent or lease costs are at or below market rate. In subdivision (d) the amendment increases the current program award amount to \$1,117 per unit of “the ADA Cap as defined in Section 10170.2 (f).”

**Section 10170.5: “Application Submission”**

In subdivision (a) – This section has been amended in order to be consistent with the State Charter School Facilities Incentive Grants Program (Incentives) Section 10180 Application Submission language approved by OAL on November 29, 2017.

In subdivision (c) – The amendment removes entire section (c) as the information is outdated and only applied to the additional 2015-16 funding round pursuant to Section 10170.3(d)(4) which is being removed.

**Section 10170.6: “Content of the Application”**

The amended opening paragraph added “via the online application form (CSFA Form 740-01)” to promote the use of the new online application. The Authority has fully developed and implemented the use of the online application for applicants. This replaces the outdated application submission language.

**Section 10170.9: “Apportionment of Grant Funds”**

Amendments to clarify Apportionments of Grant Funds (Amendments to Sections 10170.9). The amendments provide further clarification on the pro rata calculation to be used to determine disbursement amounts when the Program is oversubscribed.

In subdivision (f) - In accordance with Education Code Section 47614.5 (b), the Authority will have to disburse available funds on a pro-rata basis. Amendments to this section are necessary to provide a comprehensive methodology for pro rata share disbursements. The pro rata share methodology is outlined in (f) subsections (1) – (6).

In subdivision (h) this amendment removed “2016-17 Facility” and “updated March 2017” as this document is updated annually as defined in Section 10170.2 Definitions (p).

**Section 10170.10. Notification of Grantee; Appeal Process.**

Section 10170.10 (f) - This amendment is necessary as it provides Grantees with extraordinary circumstances to receive a single extension.

Section 10170.10 (g) - This amendment is necessary as it provides clarification on how the eligibility or award notification is determined when the applicant does not meet the deadlines.

**CSFA Form 740-01(Application)**

Amendments were made to transition the paper application to an online application form. Question 2 was removed as the Authority is able to confirm because the Authority confirms the Free or Reduced-Price Meal Eligibility (FRPM) with California Department of Education (CDE). Question 4 was added to determine the applicant’s eligibility status.

**Incorporated by Reference Forms**

Charter School Facility Grant Program Application, CSFA Form 740-01 was updated (Revised December 2017) with the Facility Invoice Expenditure Report (CSFA Form 740-02; October 2017).

The Notice of Eligible Facility Costs (CSFA Form 740-03; October 2017) generated to provide a summary of the Grantee’s eligible facility costs and offer them the opportunity to appeal staff’s determination.

**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 516  
Sacramento, CA 95814  
(916) 651-7710

or

[kjohantgen@treasurer.ca.gov](mailto:kjohantgen@treasurer.ca.gov)

or

[csfa@treasurer.ca.gov](mailto: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 Tuesday, February 20, 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 Web site at [www.treasurer.ca.gov/csfa](http://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.