

**PROPOSED TITLE 5 REGULATIONS  
FOR IMPLEMENTATION OF THE  
FIFTY PERCENT LAW**

**5.2**

***FIRST READING***

***Presentation:*** Erik Skinner, Vice Chancellor, College Finance and Facilities Planning

**Issue**

This item proposes revisions to title 5 regulations pertaining to implementation of the Fifty Percent Law. The changes, which would clarify the definition of serious hardship in the context of the state's current fiscal crisis, would be in effect for fiscal years 2009-10 through 2012-13.

**Background**

Education Code section 84362, commonly known as the Fifty Percent Law, requires each community college district to spend at least half of its "current expense of education" each fiscal year for salaries and benefits of classroom instructors.

*Current Expense of Education* (often referred to as "the denominator") generally includes the unrestricted general fund expenditures of a community college district. Excluded from the current expense of education are expenditures for student transportation, food services, community services, lease agreements for plant and equipment, and other costs specified in law and regulations. Amounts expended from State Lottery proceeds are excluded, except for expenditures for instructional salaries.

*Salaries of Classroom Instructors* (often described as "the numerator") are described in the *California Community Colleges Budget and Accounting Manual* as "Expenditures for the full or prorated portions of salaries of all employees in contract or regular faculty positions." This includes the following expenditures:

- Prorated salaries of contract or regular instructors working a reduced load or whose assignment includes both instructional and non-instructional duties.
- Prorated salaries of administrators having a teaching assignment as part of their regular work assignment.

- Salaries of instructors on sabbatical leave.
- Extra duty days or assignments paid as part of an instructor's regular salary.
- Salaries of instructors with a dual-employment relationship, under instructional service agreements.
- Instructional aides employed to assist instructors in classroom instruction tasks during any portion of their duties.
- Applicable staff benefits.

### **Administering the Law**

The responsibility for administering the Fifty Percent Law resides with the Chancellor and the Board of Governors. Every year, exemption application forms and applicable due dates are distributed to all districts, and the annual financial and budget reports of all districts are monitored for compliance with Education Code section 84362. Upon receipt of an application for exemption, Chancellor's Office staff determines whether applicable procedures have been followed, analyze supporting documentation and data, and make recommendations to the Chancellor for presentation to the Board. An independent assessment of each district's computation of compliance is also a requirement of the annual audits conducted by contracted independent audit firms pursuant to Education Code section 84040.

#### *Basis for Exemption*

Under existing regulations, a district may request exemption from the Fifty Percent Law requirement if compliance would have resulted in serious hardship and/or if salaries of classroom instructors are higher than comparable districts. The district declares on the exemption application the basis for its exemption request. Districts may choose either one or both of the categories. Serious hardship includes four criteria, defined in section 59204(c), summarized below:

- Conformance with the Fifty Percent Law requirement would have resulted in the district's inability to discharge financial liabilities. Consideration must be given to the following factors: whether the district's general fund ending balance is less than 3 percent; and whether the district's credit base FTES is less than 3,001.
- The first year of infusion of new moneys would have resulted in the district's inability to comply with the requirements of the Fifty Percent Law. The percentage is recalculated without including these new moneys in order to determine if the district would have been in compliance.
- Unanticipated, unbudgeted, and necessary expenditures resulted in the district's inability to comply with the Fifty Percent Law. Litigation, arbitration, costs of energy, insurance and security are among the items to be considered.

- Districts with an unexempted deficiency from a prior cycle may expend funds for other than salaries of classroom instructors, but count the expenditures as instructional after reaching an agreement with faculty representatives that these expenditures, as itemized in title 5, section 59213(f), are necessary.

Salaries higher than the average of comparable districts are eligible for an exemption under title 5, sections 59204(e) and (f).

Included in the material reviewed is the contract district audit. The audit is reviewed for findings and to confirm the accurate reporting of the amounts eligible for consideration in determining compliance with the Fifty Percent Law.

The Chancellor's Office analysis also includes consideration of any written statements of opposition timely received from faculty. The Chancellor's Office provides for an exchange of written statements and a hearing in order to allow both parties to present facts about the exemption application.

Using the application and supporting documentation, the district audit, written statements of opposition, and hearing findings, the Chancellor's Office must make a recommendation to the Board of Governors.

Title 5, section 59211 specifies that the Board of Governors has the responsibility to deny, grant or grant in part a district's application based entirely upon whether the Chancellor's recommendation establishes that the district exceeds expenditures for salaries of classroom instructors per FTES of the average of comparison districts or would have suffered serious financial hardship from redirecting funds sufficient to meet the Fifty Percent Law to instruction in the year under review (title 5, section 59210(d)).

## **Analysis**

California is in the midst of its worst fiscal crisis since the Great Depression. In response to a significant, sustained drop in state revenues, state leaders adopted major revisions to the *2009-10 State Budget*. These revisions, signed into law on July 28, 2009, made deep funding reductions to all sectors of the budget. For the California Community Colleges, these revisions included cuts of \$522 million, or 7.9 percent, in 2009-10. In addition to these cuts, \$117 million in enrollment growth funding that had been provided for 2009-10 was eliminated in the revised budget.

The cuts to the California Community Colleges, noted above, would have been even deeper, however, the budget package included a total of \$115 million in new revenues to mitigate the cuts. Of this amount \$80 million was the result of an increase in student fees from \$20 to \$26 per unit and \$35 million was provided from federal American Recovery and Reinvestment Act State Stabilization (ARRA) funds.

Currently, community college districts across the state are wrestling with the hard choices that accompany budget cuts of this magnitude. As they do so, many districts are reporting significant difficulties related to the Fifty Percent Law. These difficulties are in part the natural consequence of deep budget reductions. As a district's budget is cut, nondiscretionary fixed costs associated with facility maintenance, utilities, insurance premiums, administration, and other activities become a larger share of a district's spending. Given that such expenses are non-instructional, this has the effect of lowering a district's compliance with the Fifty Percent Law. However, in addition to this general dynamic associated with budget cuts, specific features of the state's recent budget revisions have further exacerbated districts' difficulties with Fifty Percent Law compliance. These features and the resulting difficulties are described below:

- *Categorical Programs Faced Deeper Cuts than General Purpose Funds.* In order to provide community college districts with greater flexibility to manage budget cuts, state leaders reduced funding for categorical programs much more deeply than general purpose funds. Overall state funding for categorical programs was reduced by over 40 percent, with cuts to most categorical programs ranging from 38 to 52 percent. In contrast, funding for general apportionments was reduced by 3.39 percent. While protecting general purpose funds did have the intended effect of providing districts with greater flexibility in budgeting, districts have found this flexibility hampered by the fact that most categorical expenditures, such as the salaries of counselors and tutors, do not count toward compliance with the Fifty Percent Law.
- *ARRA Funds.* As noted earlier, the state budget provided \$35 million in ARRA funds. In enacting the revised budget, the Legislature stated its intent that these funds be provided to community college districts to help them mitigate deep cuts to categorical programs. Due to local needs, and based on legislative intent, many districts have pursued plans to use the ARRA funds to backfill cuts to categorical programs. However, recent clarification provided by the Department of Finance that ARRA funds must be provided to districts as general purpose funds has put districts in a bind. Because the funds are now considered general purpose, they are subject to the Fifty Percent Law. As a result, should a district choose to use the ARRA funds to backfill cuts to categorical programs, they will undermine their compliance with the Fifty Percent Law.

### **Proposed Regulatory Change**

Given the difficulties that many districts are experiencing relative to the Fifty Percent Law, the Chancellor's Office recommends modifying current title 5 regulations to provide some limited relief to districts. The proposed changes would not address the underlying challenges presented by the pressure fixed costs place on a shrinking budget, rather the changes would mitigate the specific difficulties districts face as they attempt to use ARRA funds and unrestricted general fund resources to maintain core levels of support for categorical programs.

The recommended change to regulations (see attachment) would provide an additional definition of “serious hardship” in recognition of the great pressure faced by many districts to maintain core support for categorical programs in the context of deep cuts in state funding. Key features of the proposed regulatory change include:

- The proposed change would not alter the methodology or process for determining a district’s compliance with the Fifty Percent Law. Rather, the change would come into play only if a district was found to be out of compliance with the Fifty Percent Law.
- A district which fails to comply with the Fifty Percent Law would be allowed to submit to the Board of Governors, as part of its application for exemption, evidence that all or part of the district’s noncompliance was attributable to the use of general purpose funds to backfill cuts to categorical programs.
- The Board of Governors could then choose whether to take this circumstance into account when determining the amount of the penalty.
- The proposed regulatory change is narrowly tailored to address only the hardship created due to the deep cuts to categorical programs, not broader challenges in meeting the requirement.
- The relief provided to a district under this provision would be capped at the amount of unrestricted general purpose funds the district uses to backfill cuts to state funding for categorical programs. Two examples are provided to illustrate how the proposed change would be implemented:
  - A district experiences a \$1 million reduction in state funding for categorical programs and, in response, increases its unrestricted general fund support for categorical programs by \$500,000. This district would be eligible to have up to \$500,000 in Fifty Percent Law penalties waived.
  - A district experiences a \$1 million reduction in state funding for categorical programs and, in response, increases its unrestricted general fund support for categorical programs by \$1.5 million. This district would be eligible to have up to \$1 million in Fifty Percent Law penalties waived.
- This additional definition of serious hardship would be in effect through the 2012-13 fiscal year, consistent with the categorical flexibility established in the recent budget package.

The proposed regulatory change was heard by the Consultation Council at its November meeting. There was no consensus as to whether the proposed regulatory change was needed. Strong opinions were aired ranging from strong support to strong opposition. Many parties, however, expressed concern for the deep cuts in state support for categorical programs and the resulting impacts on students.

## **Conclusion**

The proposed regulatory changes are presented to the Board for a first reading. The Board should hold a public hearing and consider any testimony which is offered. It is anticipated that the regulations will be presented to the Board for final action at its January meeting.

# ATTACHMENT

## Proposed Revisions to the Title 5 Regulations Implementation of Fifty Percent Law

1. Section 59204.1 of subchapter 4 of chapter 10 of division 6 of title 5 of the California Code of Regulations is added to read:

**§ 59204.1. Supplemental Definition of “Serious Hardship” for F/Y 2009-10 through 2012-13.**

“Serious hardship” is defined in section 59204. Notwithstanding the provisions of section 59204, “serious hardship” is further defined as follows:

Conformance with the 50 percent requirement during the year of deficiency would have likely resulted in a substantial reduction of funding for categorical programs as compared to the level of funding for categorical programs in 2008-09. Such a reduction would have had a detrimental impact on those programs and a detrimental impact on student success.

In determining the serious hardship under this section, the Board of Governors shall consider the following:

(a) the level of categorical funding provided by the state for categorical programs in 2008-09 compared to the fiscal year for which an exemption is requested; and

(b) the district’s level of unrestricted general fund support for categorical programs in 2008-09 compared to the fiscal year for which an exemption is requested.

It is not the intent of this section to provide an exemption for a district that would have expended less than 50 percent of its CEE on the payment of classroom instructors absent the reduction of categorical funding.

This section shall be in effect for fiscal years 2009-10 through 2012-13.

**Note:** Authority cited: Sections 70901, and 84362, Education Code.

**Reference:** Section 84362, Education Code.