



**15-DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED
AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 5
REGARDING
AUXILIARY ORGANIZATION**

15-Day Notice published February 27, 2020

The Board of Governors of the California Community Colleges hereby provides notice of changes to the above-referenced proposed regulatory action that was the subject of a public hearing on January 13, 2020. Section 206, subdivision (c), of the Procedures and Standing Orders of the Board of Governors requires the Board to re-notice a proposed regulatory action where the proposed regulations have been previously considered, are being modified, and the modifications are “sufficiently related” to the text of the previously-proposed regulations.

CHANGES TO THE TEXT

Following the 45-day comment period that ended on February 24, 2020, and following the January 13, 2020 Board meeting, changes were made to this regulatory action in proposed section 59257. The California Community College Chancellor's Office will present the regulatory action to the Board of Governors at its March 16, 2020 meeting. The changes are submitted for an additional 15-day comment period effective today, February 27, 2020. Comments must be received prior to 4:00 p.m. on March 13, 2020.

The Chancellor's Office proposes additional changes to the proposed regulatory action. The changes from the original noticed regulations are denoted by double bold underline and/or double bold strikeout, as indicated below.

Title 5, section 59257, subdivision (j):

(6) ~~The district fully reimbursed to the district may provide for services performed by district employees to perform services under the direction of the auxiliary organization as part of a documented exchange of value. No more than 50% of the form and manner of district reimbursement by an auxiliary organization must be agreed to~~

by the district and auxiliary, and may be made in the form of non-monetary include tangible or intangible benefits. ~~that the auxiliary organization provides to a community college district, such as increased community awareness or other such benefits that are agreed upon by district officials and the auxiliary organization. Such non-monetary intangible benefits shall be assigned a good faith reimbursement value by the district. The balance of the reimbursement may be provided through contributions that are agreed upon by district officials and the auxiliary organization including, but not limited to: scholarship awards; fundraising activities, marketing, and promotional events; contributions to student, athletic, and instructional programs; grants for tuition waiver programs; and cash payments.~~ Such contributions shall be measured by their actual value. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable.

(a) Tangible benefits are financially quantifiable and may include: financial support to the college, student scholarships and tuition waiver programs, contributions to student, athletic, and instructional programs, unrecovered costs, use of auxiliary services, products, or facilities, marketing or promotional events, cash payments, or similar benefits.

(b) Intangible benefits are non-monetary and qualitative in nature, and may include: promotion of the college's brand, maintenance and growth of donor data and protection of donor privacy, growth of college endowments and assets, social media engagement, enrollment growth due to funding support, in-kind services of auxiliary board members and executive staff, the performance of functions assigned to the auxiliary, improved relations with college constituencies and other forms of good will, or similar benefits. Intangible benefits must be assigned a good faith reimbursement.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the changes to the proposed regulatory action subject to this 15-day notice. Comments must be limited to title 5, California Code of Regulations, section 59257. We will accept comments concerning the changes outlined above in this 15-day notice until March 13, 2020. Comments should be addressed to:

Regulations Coordinator
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 636
Sacramento, CA 95811-6549
Email: regcomments@cccco.edu

Comments must be received by the Regulation Coordinator prior to 4:00 p.m. on March 13, 2020. All written comments received by CCCCO staff during the public comment period are subject to disclosure under the Public Records Act.

CHANGES OR MODIFICATIONS TO PROPOSED TITLE 5 AMENDMENTS

Following the public hearing and considering all timely and relevant comments received, the Board of Governors may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption, and will be provided to those persons who have requested or are required to receive notification of regulatory actions, or who have provided written or oral comments relevant to the proposed regulatory action.

AUTHORITY AND REFERENCE

Authority: Education Code sections 66700, 70901 and 72672.

Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

INFORMATIVE DIGEST

In 1998, the California Attorney General issued an opinion regarding the rules governing auxiliary organization reimbursement to community college districts. (81 Ops. Atty. Gen. 111 (Cal. A.G. 1998).) At the outset, the Attorney General recognized that “the benefits and services conferred annually upon a community college district by an auxiliary organization ordinarily far exceed whatever value district employee services to the organization might total.” Indeed, the purpose of auxiliary organizations is to benefit their districts by promoting their educational missions. (Educ. Code, § 72670; Cal. Code

Regs., tit. 5, § 59259.) The Attorney General noted that auxiliary organizations save public funds that might otherwise be expended by districts to perform services. (See e.g., Educ. Code, § 70902, subd. (b)(11).) Finally, the Attorney General stated that in the previous year, “auxiliary organizations and related foundations raised approximately \$60 million for community college districts” in the state and that the corresponding value of district employee services the organizations was “minuscule in comparison.”

Against this backdrop, the Attorney General construed title 5, section 59257, as properly requiring full reimbursement by an auxiliary organization for services community college district employees perform on behalf of the organization. (81 Ops. Atty. Gen. 111 (Cal. A.G. 1998).) However, the Opinion also clarified that reimbursement may be made “in the form of non-monetary benefits...such as increased community awareness or other such benefits that are agreed upon...” (*Id.*) Prior to 1998, there had apparently been some question about the permissibility of non-monetary reimbursements.

Following the Attorney General’s Opinion, the Board of Governors amended section 59257 in 2006 to limit non-monetary reimbursements to a maximum of 50% of the value of the services provided to the auxiliary organization by the community college district. The Boards’ regulatory files do not explain why 50% was chosen as a threshold in 2006. According to the NCCCF, this cash reimbursement requirement is proving to be unworkable—particularly for auxiliary organizations of small districts.

The Education Code authorizes the governing boards of community college districts to establish auxiliary organizations to provide “supportive services and specialized programs for the general benefit of its college or colleges.” (Ed. Code, § 72670.) It is common practice for districts to provide services to auxiliary organizations. However, the Board of Governors’ (Board) regulations require “[f]ull reimbursement to the district for services performed by district employees under the direction of the auxiliary organization.” (Cal. Code Regs., tit. 5, § 59257, subd. (j)(6).) In addition, the regulation requires that no more than 50% of this reimbursement may be in the form of “non-

monetary benefits" such as increased community awareness, good will, or similar benefits. In other words, at least 50% of an auxiliary's reimbursement must be in cash. This requirement exists only in regulation, and is not required by the Education Code.

According to the Foundation for California Community Colleges (FCCC) and the Network of California Community College Foundations (NCCCF), the 50% cash reimbursement requirement is proving difficult for local foundations to meet. Further and perhaps more importantly, this cash requirement is putting a strain on what should be a synergistic relationship between districts and their foundations, one that is necessary to move the system forward to meet the goals contained in the *Vision for Success*. (Foundation-Network Memo, January 30, 2019)

The Chancellor's Office proposes to eliminate the 50% cash reimbursement requirement, and require reimbursement to occur through an agreed-upon exchange of value between the district and the auxiliary, that may include reimbursement through both tangible and intangible value. The exchange of value must be publically disclosed annually by the auxiliary.

ESTIMATED COST OR SAVINGS OF PROPOSED AMENDMENTS

The estimated cost or savings of the proposed amendments are anticipated to be as follows:

Mandate on local agencies or community college districts: *None*.

Cost or savings to state agencies: *None*

Costs to local agencies or community college districts for which reimbursement would be required pursuant to part 7 (commencing with section 17500) of division 4 title 2 of the Government Code: *None*

Other non-discretionary cost or savings imposed on community college districts: *None*

Cost or savings in federal funding to state agencies: *None*

The proposed amendments to title 5 would result in no fiscal impact to local or state governments. Nor will it have any fiscal impact on any federal funding.

CONTACT PERSON

Inquiries concerning the content of these regulations may be directed to:

Marc LeForestier, General Counsel
California Community Colleges
Chancellor's Office
regcomments@cccco.edu

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator, at regcomments@cccco.edu.

TEXT OF PROPOSED REGULATIONS AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulatory action subject to this 15-day notice is set forth above. All of the information upon which the proposal is based, may be obtained online at:

[Pending Regulatory Action - OGC webpage](#)

[Board of Governors Agenda](#)

Those who receive the Board of Governors Agenda package for the March 16, 2020, meeting can find a further description of the proposal and the full text of the regulations. You may also request a copy of the proposal from the Regulations Coordinator using the contact information provided above.