



**NOTICE OF PROPOSED RULEMAKING
AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5
REGARDING
AUXILIARY ORGANIZATIONS**

45-Day Notice published January 7, 2020

NOTICE IS HEREBY GIVEN that, pursuant to Standing Order 200, the Board of Governors of the California Community Colleges proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing will be held during the next regularly scheduled Board of Governors meeting on January 13, 2020, at 1102 Q Street, Sacramento, California. The Board meeting will commence at the hour of 1:00 p.m., or as soon thereafter as the business of the Agency will permit. The room is wheelchair accessible. Other disability-related accommodations such as materials in alternate media, sign language interpreters, or real time transcription will be provided to persons with disabilities upon request. Parking accessible for persons with disabilities is available near the facility. Persons requesting such accommodations should notify Christina Castro, 1102 Q Street, Suite 4500 Sacramento, CA 95811-6549, ccastro@cccco.edu, 916-323-5889, no less than five working days prior to the meeting. The Chancellor's Office will make efforts to meet requests made after such date, if possible.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed regulatory action described in the Informative Digest. The Board of Governors requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their comments. No oral comments will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. To help ensure comments are understood as they are intended, we suggest that they clearly identify the proposed regulation that each comment addresses, with reference to specific section and subparagraph numbers where appropriate. Please arrange comments in the same order as in the proposed regulatory action. Comments should be addressed to:

Regulations Coordinator
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 4550
Sacramento, CA 95811-6549
regcomments@cccco.edu

Comments must be received by the Regulations Coordinator prior to 4:00 p.m. on February 24, 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 regulatory action substantially as described in this Notice or may modify the proposed regulatory action if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposed regulatory action 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, Division 7, Title 3, 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 NCCCCF, 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 (NCCCCF), 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, provided that all “intangible” reimbursements are given a good-faith valuation and tangible benefits are assigned their actual value, and that all benefits provided to auxiliaries by districts, and all reimbursements provided to districts by auxiliaries are publicly disclosed, on an annual basis.

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 the Regulations Coordinator, at regcomments@cccco.edu.

TEXT OF PROPOSED REGULATIONS AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulatory action, and all of the information upon which the proposal is based, may be obtained online at:

[Office of General Counsel - Pending Regulatory Action](#)

Those who receive the Board of Governors Agenda package for the January 13, 2020, meeting can find a further description of the proposal and the full text of the regulatory action. You may also request a copy of the proposal from the Regulations Coordinator using the contact information provided above.