

Item 6

(Action Item)

Consideration to approve the proposed regulations for the Middle Class Scholarship (MCS) Program (Education Code section 70020 et seq.)

SUMMARY:

This item provides a description of the proposed emergency regulations for the Middle Class Scholarship (MCS) Program including the proposed emergency regulation text and additional regulatory documents, and a description of the rulemaking process for these emergency regulations.

RECOMMENDATION:

Staff recommends the Commission approve the proposed emergency regulations and authorize staff to complete the emergency regulatory process, including initiating a five-day public comment period, preparing, and submitting all required documents to the Office of Administrative Law (OAL), and making any non-substantive changes to the regulations and supporting documentation as requested by the OAL.

BACKGROUND:

Last year, Senate Bill 117 (SB 117) (*Stats. 2023, Ch. 50, Sec. 9.*) and Senate Bill 142 (SB 142) (*Stats. 2023, Ch. 195, Sec. 6.*) amended Education Code Sections 70022 and 70023, two of the statutes of the MCS Program. The Commission's rulemaking workgroup comprised of Program Administration and Services Division (PASD) and the Legal Unit developed the proposed regulations to address the statutory changes in SB 117 and SB 142. In addition, PASD hosts a workgroup, comprised of representatives from public institutions, to develop and implement the program, including receiving stakeholder feedback on the proposed regulations.

SB 117 expressly authorizes the Commission to adopt emergency regulations for the MCS Program and finds that the Commission's adoption of such regulations constitutes an emergency as defined under the Administrative Procedures Act (APA).

As amended, Education Code Section 70023 (c) provides:

(c) The commission may adopt regulations necessary to carry out the purposes of this article under subdivision (b) as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of the Administrative Procedure Act,

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including Section 11349.6 of the Government Code, the adoption of those regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the commission complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

As amended, Education Code Section 70023 (g) provides:

(g) The commission may adopt regulations it deems necessary for the implementation of this article. If the commission adopts regulations pursuant to this subdivision, the regulations may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code.

Staff has determined that emergency regulations are necessary to establish the MCS Program and incorporate and implement the statutory amendments prescribed by SB 117 and SB 142. As noted above, the proposed emergency regulations will establish application requirements and procedures, applicant eligibility determinations, participating institution responsibilities, funding management provisions, and compliance requirements for program participants. Emergency regulations are needed at this time to ensure that the regulatory provisions provide clarity and definitions regarding the program elements are in place.

Commission approval is required for staff to process the regulatory changes under SB 117 and SB 142 and to complete the rulemaking process. Upon Commission approval, staff will post a notice regarding the proposed emergency regulations to the MCS Program on the Commission's website. Interested members of the public will have five days to provide comments regarding the proposed rulemaking.

At the conclusion of that five-day period, staff will submit the regulatory text, a Notice of Proposed Regulatory Action, and additional supporting documentation to the OAL.

Once the documents are filed with OAL, that agency has ten days in which to act on the submission. Included in that 10-day period is another five-day comment period in which interested members of the public may provide comments directly to OAL. If any

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comments are received, Commission staff would be provided an opportunity to respond before OAL's final action.

Assuming that all statutory and procedural requirements are met, emergency regulations typically become effective upon OAL approval. Thus, staff anticipates the emergency regulations will become effective on March 21, 2024. The proposed emergency regulations would remain in effect until September 17, 2024. Before September 17, 2024, staff will seek Commission's approval for extension for the emergency regulations to remain in effect until March 2025 while seeking permanent regulations for the Program.

Staff recommends the Commission approve the proposed emergency regulations and authorize staff to complete the emergency regulatory process, including initiating a five-day public comment period, preparing, and submitting all required documents to the Office of Administrative Law (OAL), and making any non-substantive changes to the regulations and supporting documentation as requested by the OAL.

RESPONSIBLE PERSON(S):

Tae Kang, Deputy Director
Program Administration and Services Division

Edmundo Aguilar, Acting General Counsel
Executive Office

ATTACHMENT(S):

Education Code Section 70020 et seq, as amended by SB 117 and SB 142
OAL Emergency Rulemaking Process
Draft of Resolution
Notice of Proposed Emergency Action
Text of Proposed Emergency Regulations