## SUBJECT: Adding Adoption of an Emergency Regulation and Appointment of a Special Trustee to the July 8-9, 2013 Board of Governors Agenda

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### CATEGORY: Legal

### Recommended By:

Steven Bruckman, Executive Vice Chancellor

### Approved for Consideration:

Brice W. Harris, Chancellor

### ISSUE: Items to be added to the agenda.

### BACKGROUND: The Bagley Keene Act (Gov. Code section 11120 et seq.) requires that the Board of Governors post a notice of its proposed agenda ten days in advance of the meeting. For this July 8-9 Board of Governors meeting, the agenda was posted on June 27, 2013. Government Code section 11125.3 provides limited exceptions to the ten day notice requirement. It provides that a state body may take action on item of business not appearing on the posted agenda if, two-thirds of the members of the state body determine that “there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted...” (Gov. Code section 11125.3(a)(2).)

### RECOMMENDED ACTION: It is recommended that the Board of Governors find there exists a need to take immediate action on an amendment to California Code of Regulations title 5 (title 5) section 58312 and appointment of a special trustee for San Francisco Community College District (SFCCD) and that the need for action came to the attention of the Board subsequent to the agenda being posted and it is further recommended that the amendment to title 5 section 58312 and appointment of a special trustee be added to the July 8-9, 2013 agenda.

### ANALYSIS: On July 3, 2013 City College of San Francisco (CCSF) was notified by the Accrediting Commission for Community and Junior Colleges (ACCJC) that CCSF’s accredited status was being terminated. Because accredited status is a requirement for receipt of state apportionment funds, loss of accreditation would have a devastating fiscal impact on the finances of the SFCCD leading to bankruptcy and closure. It would also create a tremendous hardship for current and prospective students of one of the largest community colleges in the United States.
The requirement that “immediate action is needed” is satisfied in this case because the crisis facing CCSF is very dire and the consequences of inaction could be permanent and far-reaching. As the news of the loss of accreditation spreads, it is likely that current and prospective students will abandon the college. This must be avoided because the loss of students leads directly to the loss of revenue for SFCCD, greatly compounding the problem. Furthermore, although actual closure of the college is not imminent because the college can remain open during the pendency of an appeal, it is critical that immediate steps be taken to address the many issues noted in the ACCJC action. The SFCCD has shown itself to be unable to solve its very serious problems.

As currently written, title 5 section 58312 provides authority for the Board of Governors to appoint a special trustee if the a district has proven itself unable to solve its financial problems or to implement principles of sound fiscal management. Arguably, SFCCD meets these criteria and a trustee could be appointed without the proposed amendment. However, the most immediate crisis facing SFCCD is the possible loss of accreditation, and the Board needs certainty in addressing this problem. Therefore, the Board needs to consider an amendment to title 5 section 58312 specifically identifying loss of accreditation as a basis for appointment of a special trustee. For the same reasons, the Board of Governors needs to consider the appointment of a special trustee to rescue SFCCD immediately.

As noted above, CCSF did not receive notice of the ACCJC decision until July 3, 2013, after the July 8-9, 2013 agenda was posted. Therefore, the second requirement for taking action on an item not on the posted agenda has been met. Government Code section 1125.3 also requires that notice of an additional item be provided to all members of the state body, the media and others who have requested notices of meetings at least 48 hours before the time of the meeting. This notice was provided to the required parties on July 3, 2013 sufficiently in advance of the July 8-9 Board of Governors meeting. Therefore, all of the procedural and substantive state law requirements have been met and the Board of Governors is authorized to add these two items to the agenda.