

## **TITLE 4. BUSINESS REGULATIONS**

### **NOTICE OF PROPOSED RULEMAKING**

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (“CPCFA or the “Authority”) are, by legislative mandate, necessary for the implementation of small business financing assistance and the immediate preservation of the public peace, health and safety, and general welfare.

#### **Proposed Regulatory Action**

The Authority proposes to amend Section 8043 (a) of Title 4, Division 11, Article 4 of the California Code of Regulations (the “Amended Regulations”) concerning the administration of the California Pollution Control Financing Authority’s Bond Program. These Adopted Regulations are necessary to implement, interpret and make specific Article 4 of the California Pollution Control Financing Authority Act (the “Act”). The Proposed Regulations have been approved by the Office of Administrative Law (“OAL”) on an emergency basis, and this proposed rulemaking would make these changes permanent.

#### **Authority and Reference**

Authority: Sections 44520(a) and 44520(b), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.” Section 44520(a) of the Act authorizes the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Reference: Section 44519, 44520, 44525, 44537.5, 44537.5 and 44548, of the Health and Safety Code.

#### **Informative Digest/Policy Statement Overview**

Existing law establishes the Authority to implement small business financing assistance programs pursuant to Section 44520(b) of the Health and Safety Code.

#### Background of Section 8043.

During the late 1970’s and early 1980’s, the U.S. Small Business Administration (SBA) administered a special pollution control loan guarantee program for small businesses. The program offered SBA loan guarantees for federally issued tax-exempt bonds. The SBA discontinued the program in 1981, which left small business borrowers with inadequate resources for securing cost-effective tax-exempt financing.

In 1985, the State Legislature established the collection of Small Business Assistance Fund (SBAF) fees from large businesses obtaining conduit bond financing from CPCFA, to fill a void from the discontinuation of the SBA program, and to offset certain costs of issuance and letter of credit fees associated with the issuance of tax-exempt bonds issued on behalf of small businesses. A small business is defined as 500 employees or less. Under this legislation, large businesses began paying into the SBAF to support CPCFA programs that benefit small business borrowers.

Eligible small business borrowers can receive up to \$210,000 towards its eligible costs of bond issuance, based on a sliding scale, which is dependent upon the Par amount of the transaction.

Under the Authority's regulations, the SBAF funds are available for eligible small business borrowers to use at the close of a transaction for purposes of paying certain costs of issuance of the bonds. Acceptable SBAF subsidy uses include, but are not limited to, bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees due to other state agencies, accounting fees, consultant's fees, and other fees directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. Currently, there is approximately \$14.4 million available in the SBAF account available for qualified small business borrowers to use.

#### Need for an amendment to Section 8043 (a)

Due to the recent transition from the London Interbank Offered Rate (LIBOR) interest rate index to the Secured Overnight Financing Rate (SOFR) Index, many older transactions will need to utilize the CPCFA's post-issuance request (PIR) process to amend previously drafted bond documents to reflect the change in the interest rate index. This change from LIBOR to the SOFR interest rate index may be completed under the CPCFA Executive Director's Delegation of Authority via the PIR process. The Executive Director, under Section 44519 of the California Health and Safety Code, has the requisite power to carry out delegation of authority via Resolution number 21-01-001 dated January 22, 2021. The CPCFA charges the borrower for CPCFA staff's actual costs as well as the fees from the Attorney General's office, acting as Issuer's Counsel, on the transaction for the review and processing of these types of PIRs.

For small business borrowers, the fee for this necessary change in bond documents could be cost prohibitive and therefore negatively affect the financial viability of the company. The use of the SBAF to help offset the costs of the index rate change PIRs will be of a great benefit to aid eligible small business borrowers. Accordingly, the Authority Board has approved staff to undertake the emergency and regular rulemaking processes to amend the Authority's regulations to include costs related to a national index rate change as an acceptable use of the SBAF monies.

## **Anticipated Benefits from This Regulatory Action**

The SBAF fund currently has a balance of approximately \$14.4 million. It is important that the SBAF remains a sustainable resource for CPCFA's small business financings into the foreseeable future. Staff has determined that, on balance, the SBAF fund would not be unnecessarily depleted by including this additional use of proceeds. The proposed changes will also assist businesses involved with pollution control projects. These types of projects will benefit the environment, and the public health and safety.

The proposed amendment to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

The Executive Director has made the determination that the proposed regulation is not inconsistent or incompatible with existing state regulations.

## **Disclosure Regarding the Proposed Action**

The Executive Director of the Authority has made the following determinations regarding the effect of the Adopted Regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630:** None.

**Other non–discretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None.

**Cost impact on a representative private person or business:** The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Small Business:** The Amended Regulations will not have an adverse impact on small business in California and will not affect small business since they do not impose additional restrictions or cost on small business.

**Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other**

**states:** The Authority has made an initial determination that the Amended Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Results of the Economic Impact Analysis**

**Assessment regarding effect on jobs/businesses:** The Amended Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

**Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:** The proposed amendments to sections 8034 and 8035 will open more financing opportunities to businesses involved in pollution control projects. These types of projects will benefit the environment and the public health and safety.

### **Consideration of Alternatives**

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Amended Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Adopted Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Adopted Regulations during the written comment period.

### **Agency Contact Person**

Written comments, inquiries and any questions regarding the substance of the Amended Regulations shall be submitted or directed to:

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### **Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Adopted Regulations to the Authority. The written comment period on the Adopted Regulations ends at **5:00 p.m. on August 9, 2022**. All the comments must be submitted in writing to the Agency Contact Person identified in the Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

### **Availability of Initial Statement of Reasons And Text of Proposed Regulations**

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Room 266, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the Initial Statement of Reasons and the proposed text of the Adopted Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

### **Public Hearing**

CPCFA does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

### **Availability of Changed or Modified Text**

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

### **Availability of Final Statement of Reasons**

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.