

**State of California
Office of Administrative Law**

In re:
**California Pollution Control Financing
Authority**

Regulatory Action:

Title 04, California Code of Regulations

Adopt sections: 8140, 8141, 8142, ,8143,
8144, 8145, 8146, 8147,
8148

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

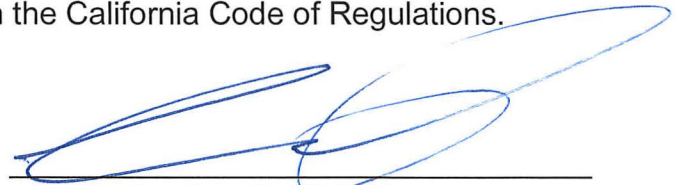
OAL Matter Number: 2024-0116-04

OAL Matter Type: File and Print Only (FP)

This request from the California Pollution Control Financing Authority that the Office of Administrative Law ("OAL") file with the Secretary of State and print in the California Code of Regulations adopts regulations for the administration of the California Investment and Innovation Program, Article 7 (commencing with Section 44558) of Chapter 1 of Division 27 of the Health and Safety Code. Pursuant to Health and Safety Code section 44558.4(a), these regulations are exempt from the rulemaking requirements of the Administrative Procedure Act, provided that the California Pollution Control Financing Authority has complied with HSC section 44558.4(b).

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: February 21, 2024



Stephen P. Mehlert
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Shela Tobias-Daniel, Executive
Director

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CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

TITLE 4. BUSINESS REGULATIONS

DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

ARTICLE 13. CALIFORNIA INVESTMENT AND INNOVATION PROGRAM

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

There have been no changes to the information provided in the Initial Statement of Reasons.

SUMMARY OF COMMENTS AND CPCFA RESPONSES

Written comments received during the 22-day comment period are included in the rulemaking file under Exhibit 8. CPCFA received one public comment from CU Strategic Planning.

Summary: Section 44558.3(b)(1)(B) of the California Health and Safety Code defines “total net assets” as “the amount of total assets minus total liabilities, as disclosed in an audited financial statement prepared according to generally accepted accounting principles.” However, credit unions with less than \$500M in assets are not required to have an audited financial statement. There are currently 36 CDFI certified credit unions headquartered in California. Among these credit unions, 16 are under \$500M in assets (over 44% of California CDFI certified credit unions). While all California credit unions are regulated depository institutions, credit unions with less than \$500M in assets will not be able to present an audited financial statement. However, these credit unions would often be the best candidates for the Cal IIP grant, giving them the additional resources needed to serve low income markets.

It would be helpful if the Authority could use its guidelines to interpret the California Health and Safety Code definition of “total net assets” as total assets minus liabilities, as disclosed in an audited financial statement, or reported by the regulator of a regulated institution. (Comment No. 1.)

Response: No change has been made in response to this comment. CPCFA cannot implement regulations that alter or amend a statute or enlarge or impair its scope. As noted by the commenter, “total net assets” is defined in statute. (Health & Safe. Code, § 44558.3, subd. (b)(1)(B).) Even if credit unions with less than \$500M in assets are not *required* to have an audited financial statement, they can elect to have one prepared.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATIONS

In accordance with Government Code section 11346.9, subdivision (a)(4), CPCFA has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, 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. Members of the public did not present any alternatives.

CPCFA has determined that the proposed regulations are the most effective way to administer Cal IIP. The regulations will benefit the health and welfare of Californians by providing financial assistance to eligible CDFIs to support the goals and objectives set by the Legislature's creation of Cal IIP. The regulations do not create any burden because Cal IIP is a voluntary program intended to supplement an eligible CDFI's existing budget.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

CPCFA finds that no reasonable alternatives were presented to, or considered by, CPCFA that would lessen any adverse impact on small business. Cal IIP benefits small businesses because it provides grants to CDFIs. CDFIs are a critical partner of the state in addressing short-term and long-term needs of low- and moderate-income communities in the areas of affordable housing, health care, small business lending, economic development, and more. (Sen. Bill No. 193 (2021-2022 Reg. Sess.), § 1(a).)

DOCUMENTS INCORPORATED BY REFERENCE

None.

NON-DUPLICATION

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

TITLE 4. BUSINESS REGULATIONS

DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

ARTICLE 13. CALIFORNIA INVESTMENT AND INNOVATION PROGRAM

TEXT OF PROPOSED REGULATIONS

§ 8140. Definitions.

The following definitions shall apply wherever the terms are used throughout this Article.

(a) “CDFI” means community development financial institution, as defined in Health and Safety Code section 44458, subdivision (d).

(b) “Eligible Activities” means activities that serve the purposes of Health and Safety Code section 44558.3, subdivision (b).

(c) “Grant” means an award of funds made by the Authority to the Grantee to support the Project, as authorized by Health and Safety Code section 44558.1 and this Article.

(d) “Grant Agreement” means the written agreement between the Authority and a Grantee, setting forth the terms and conditions of the use of the Grant.

(e) “Grantee” means an Applicant whose Grant has been approved and has executed a Grant Agreement.

(f) “Market” means an investment area (e.g., affordable housing, health care, small business lending, consumer lending, community facilities financing) or population.

(g) “Project” means the activities to be accomplished through Grant funding.

(h) “Small and emerging CDFI” has the same meaning as that in Health and Safety Code section 44558, subdivision (l).

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Sections 44558, 44558.1 and 44558.3, Health & Safety Code.

§ 8141. Eligibility Requirements.

(a) Grants shall only be awarded to Applicants that meet the eligibility requirements in Health and Safety Code section 44558, subdivision (f).

(b) Applicants that are a party to an existing or prior Grant Agreement may only apply in a future funding round if at least 50% of the previously awarded Grant funds have been spent on or committed to the Project. Applicants shall have 12 months starting from when the previously awarded Grant funds are under the control of the Grantee to meet this requirement.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Sections 44558 and 44558.2, Health & Safety Code.

§ 8142. Approved Grant Uses.

Grants shall be awarded for Eligible Activities.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Section 44558.3, Health & Safety Code.

§ 8143. Application Requirements.

(a) When funding is available, the Authority shall post to its website a Notice of Funding Availability at least 30 days in advance of the application deadline. The Notice shall provide a link to the application requirements.

(b) An application shall include the following:

(1) Applicant Information.

(A) The legal name of the CDFI applying for a grant, address of the principal office, phone number, website, Employer Identification Number (EIN) or Taxpayer Identification Number (TIN);

(B) Financial institution type (e.g., bank or thrift-state chartered, loan fund, credit union, bank holding, bank or thrift, venture capitalist), date of incorporation, financial activities start date, and total asset size;

(C) Name, title, and e-mail address for authorized representative(s);

(D) Name, phone number, and e-mail address for primary point of contact;

(E) The grant amount sought, not to exceed the applicable maximum eligible amount in section 8144;

(F) Applicant's fiscal year;

(G) A narrative of previous Grants awarded by the Authority, if applicable, and how previously awarded Grant funds were spent; and

(H) Indicate if Applicant is a small and emerging CDFI.

(2) Project Information.

(A) Detailed narrative that includes a discussion of the Applicant's mission, organization infrastructure and resources to support ongoing activities, management team, and strategic plans;

(B) Explanation of how the Grant will support the Applicant's mission;

(C) Description of the proposed Eligible Activities that will be performed with the Grant;

(D) List of current markets served;

(E) List of targeted regions and client types;

(F) Identification of any proposed new target markets that will be served by the Grant;

(G) Identification of any proposed new financial activities and services that will be undertaken with the Grant; and

(H) Description of the level of distress of the impacted community or new market that is being served. Include indicators to help quantify the level of distress that underserved communities are experiencing, such as geography, unemployment rate, poverty rate, industries impacted, number of businesses licenses issued, and fiscal stress.

(3) Attachments.

(A) Attachment A: Current federal certification as described in Health and Safety Code section 44558, subdivision (f)(1);

(B) Attachment B: Financial statements for the past three years; and

(C) Attachment C: Loan Portfolio.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Section 44558.2, Health & Safety Code.

§ 8144. Grant Awards.

(a) Grants are awarded once per calendar year, provided funding is available. Each eligible Applicant, as defined in Health and Safety Code section 44558, subdivision (f), that submits a timely and complete application shall receive an award in an amount consistent with this section.

(b) The Authority shall set aside 20 percent of any amount made available in a Program funding round for small and emerging CDFIs. This funding will be divided equally among all eligible Applicants that are small and emerging CDFIs.

(c) The size of Grant awards shall be based on the total amount of loans closed by the Applicant in the most recently completed fiscal year. Funding shall be awarded based on the following tier system:

(1) Tier 1: All eligible Applicants will receive up to \$100,000.

(2) Tier 2: Applicants with a minimum of 10 loans in the most recently completed fiscal year or Applicants that have provided financing assistance in the state totaling \$10 million or more over the last three fiscal years will receive up to \$100,000 in additional funding. The maximum Grant award for a Tier 2 Grantee is \$200,000.

(d) The final funding amounts per tier may be less than the maximum Grant award depending on the funding available and the total number of eligible Applicants.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Sections 44558.2, Health & Safety Code.

§ 8145. Authority Approval.

(a) The Executive Director will determine which Projects to recommend to the Authority for Grant funding pursuant to section 8144. The Authority's selections are final and not subject to administrative appeal.

(b) The Authority shall notify each Applicant whether or not its Application has been approved for funding.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Sections 44558.2, Health & Safety Code.

§ 8146. Grant Agreements.

(a) The terms and conditions of a Grant shall be set forth in a Grant Agreement entered into by the Authority and the Grantee. A Grantee has the sole responsibility for the fiscal management of Grant funds, recordkeeping, reporting, performance of the Project, and all other aspects of compliance with this Article and the Grant Agreement.

(b) The Grant Agreement shall include the following:

(1) Grant amount;

(2) Grantee contact information;

(3) Grant duration;

(4) Description of the Project funded by the Grant award;

(5) Agreement that, during the duration of the Grant, the Grant shall only be used to support the Project;

(6) Agreement to comply with the Program statutes and regulations;

(7) Agreement that Grantee is ineligible for future Grants if they violate any Program statute or regulation, or fail to comply with the Grant Agreement;

(8) Agreement that if Grantee loses its federal certification described in Health and Safety Code section 44558, subdivision (f)(1), the Grant shall be forfeited and returned, in total, to the Authority;

(9) Agreement that the Grantee shall comply with Health and Safety Code section 44558.5, subdivision (a)(5), where applicable;

(10) Agreement that the Grantee will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Grant, the Project, or this Program;

(11) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation,

position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;

(12) Agreement that continued compliance with Program requirements is the Grantee's responsibility; and

(13) Any other provision agreed to by the parties.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Sections 44558.3, Health & Safety Code.

§ 8147. Annual Reporting.

No later than 180 days after the end of the fiscal year following the receipt of funds, a Grantee shall provide an annual status report to the Authority that includes:

(a) A description of the activities completed with Grant funds during the reporting period;

(b) The amount of Grant funds spent throughout the reporting period;

(c) An annual financial statement; and

(d) Information provided by businesses to the Grantee pursuant to Health and Safety Code section 44558.5, subdivision (a)(5).

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Section 44558.5, Health & Safety Code.

§ 8148. Record Retention

Grantees shall retain all Program and financial data necessary to substantiate the purposes for which the Grant funds were spent for a period of three years after the end of the Grant term.

Grantees shall provide supporting documentation (e.g. progress reports, project work plan, Program budget, receipts, etc.) upon request to the Authority.

Note: Authority cited: Sections 44520 and 44558.4, Health & Safety Code. Reference: Section 44558.5, Health & Safety Code.