

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Meeting Date: August 15, 2022**

**Request for Consideration and Approval to Adopt Emergency Regulations
Implementing the California Investment & Innovation Program Pursuant to SB 193**

Prepared by: Andrea Gonzalez

Summary: Staff requests approval of an emergency rulemaking to establish program regulations for the California Investment and Innovation Program (Cal IIP). Staff proposes to file emergency regulations adopting §8140-8148 into the California Pollution Control Financing Authority (CPCFA) regulations (Title 4, Division 11). Upon the Board's approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background: The Legislature established Cal IIP with Senate Bill 193 to provide grants to enhance the capacity of community development financial institutions (CDFIs) providing technical assistance and capital access to economically disadvantaged communities in the state [Health & Safety Code § 44558.1(a)(1)]. CPCFA must develop an application process and criteria to adjust the award size, adopt guidelines for annual reporting, and develop any other rule necessary to implement the program.

Program Details: The 2022-2023 California State budget included \$50 million to establish the Cal IIP grant program, \$5 million of which is for administrative costs. The remaining \$45 million will be annually deployed in \$15 million increments. Grants shall be awarded to applicants that hold the following eligibility characteristics required in Health & Safety Code § 44558(f):

- Current federal CDFI Fund certification
- Five or more loans in the 12 months prior to application
- A minimum net worth of \$25,000
- Already serving California
 - Principal office AND officers domiciled in CA or
 - 25% of the CDFI's loan portfolio provides financial assistance to persons or projects in CA or
 - Provided financial assistance in CA totaling >=\$10M in the three years prior to application

The eligible uses of Cal IIP grant funds are working capital and increasing total net assets. CDFIs can use the grants to fund services and operations that contribute to the CDFIs overall community development mission and to supplement their net assets thereby increasing their capacity to attract additional financing for funding loans and loss reserves for any of the following:

Agenda Item 4.B.
Resolution No. 23-05-001

- Commercial facilities that promote revitalization, community stability, or job creation or retention.
- Businesses that provide jobs for low-income persons, are owned by low-income persons, or increase the availability of products and services to low-income persons.
- Facilities providing health care, childcare, educational, cultural, or social services.
- The provision of checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.
- Development, preservation, or renovation of affordable housing.
- Credit building consumer loans with charges that do not exceed the amounts allowed by Sections 22304.5 and Section 22370 of the Financial Code.

When funding is available, CPCFA staff will post to its website a Notice of Funding Availability at least 30 days in advance of the application deadline. Applications for the first year of the Cal IIP grants will be available Fall 2023 and the first grant awards will be announced by February 1, 2024. Subsequent grant awards announcements will be available on February 1 of each year.

Anticipated Benefits of the Proposed Regulations: Cal IIP creates an ongoing partnership with CDFIs to assist the state in efficiently deploying resources to communities in need and establishing an equitable economic recovery that benefits low-income communities and communities of color that have been disproportionately impacted by the economic fallout of the COVID–19 pandemic and by historical and ongoing disinvestment. [SB 193, § 1(c)] In addition to providing an economic jumpstart for those communities through immediate investment, Cal IIP will serve as a potential repository for current and future emergency or stimulus funding streams that would otherwise require the state to start up new programs, thereby slowing the delivery of these funds to those most in need. [SB 193, § 1(d)]

Preliminary Comment Period: CPCFA invited the public to submit comments related to the Cal IIP proposed regulations between July 5, 2023 and July 28, 2023. In addition, CPCFA staff held a virtual public forum on July 15, 2023, to answer questions on the proposed regulations and allow stakeholders to submit verbal comments. CPCFA staff encouraged stakeholders to review the proposed regulations and propose specific edits and/or additional language.

Regulatory Process: On August 10, 2023, staff posted a Notice of Emergency Regulations to provide the required opportunity for the public, including stakeholders, to comment on the proposed text of the regulations and finding of emergency for five (5) business days.

Upon the Board's adoption of these amendments to the existing regulations as proposed, emergency and regular rulemaking packages will be filed with OAL according to the established rulemaking process. The public may comment on the proposed emergency regulations within five (5) calendar days after CPCFA files the regulations

**Agenda Item 4.B.
Resolution No. 23-05-001**

with OAL for review. OAL has up to ten (10) calendar days to review emergency regulations. Assuming the OAL approves the emergency regulations, the emergency regulations are effective for one hundred and eighty (180) days during which time CPCFA staff will begin the regular rulemaking process to conform the emergency regulations as permanent.

To begin the regular rulemaking process, CPCFA staff will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a forty-five (45)-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the CPCFA Board for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a fifteen (15)-day public comment period before CPCFA Board approval. After CPCFA Board approval, a regular rulemaking file is submitted to OAL, and OAL has thirty (30) working days to review the regulations for compliance with the Administrative Procedure Act and CPCFA's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective thirty (30) days later.

Timeline: Outlined below is the estimated schedule.

Emergency Regulations

August 10, 2023	Five (5)-day Notice posted on CPCFA website and sent to Interested Parties
August 15, 2023	CPCFA Board Meeting – Resolution for Proposed Regulations
August 18, 2023	Emergency regulations filed with OAL.
August 25, 2023	Public comment period ends.
September 1, 2023	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
February 28, 2024	Emergency regulations expire.

Permanent Regulations

September 26, 2023	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
--------------------	---

**Agenda Item 4.B.
Resolution No. 23-05-001**

- | | |
|-------------------|---|
| October 5, 2023 | CPCFA staff will post the text of regulations, notice of proposed rulemaking and initial statement of reasons to the CPCFA website and send an email to notify all interested parties on CPCFA's listserv. |
| October 6, 2023 | OAL publishes Notice and forty-five (45)-day public comment period begins. |
| November 20, 2023 | Public comment period regarding proposed regulations ends. |
| December 5, 2024 | Deliver permanent regulation package to OAL for thirty (30)-day review. |
| January 17, 2024 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective. Authority staff will post receipt of approval on the Authority website. |

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a fifteen (15)-day comment period as follows:

- | | |
|-------------------|---|
| December 14, 2024 | Proposed regulation amendments are modified, and Notice of Proposed Changes is issued to initiate a fifteen (15)-day comment period. |
| December 29, 2024 | Fifteen (15)-day comment period ends. |
| January 10, 2024 | Deliver permanent regulation package to OAL for thirty (30)-working day review. |
| February 23, 2024 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective. Authority staff will post receipt of approval on CPCFA's website. |

Recommendation. Staff recommends approval of the proposed resolution to adopt regulations implementing Cal IIP, as established in Senate Bill 193, and to authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to implementing the California Investment & Innovation Program.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY AUTHORIZING EMERGENCY RULEMAKING PERTAINING TO
ESTABLISH THE CALIFORNIA INVESTMENT & INNOVATION PROGRAM
PURSUANT TO SENATE BILL 193**

August 15, 2023

WHEREAS, the California Pollution Control Financing Authority (the “Authority”) is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority’s regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted as emergency regulations at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the August 15, 2023, meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as regular regulations.

Section 2. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

Attachment A

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) "Project" means the activities to be accomplished through Grant funding.

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

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.

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. An application shall include the following:

(a) Applicant Information.

- (1) 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);
- (2) 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;
- (3) Name of authorized representative(s), title and e-mail address for authorized representative(s), name, phone number, and e-mail address for primary point of contact;
- (4) Applicant's geographic markets and target areas;
- (5) The grant amount sought, not to exceed the applicable maximum eligible amount in section 8144;
- (6) Applicant's fiscal year;
- (7) A narrative of previous Grants awarded by the Authority, if applicable, and how previously awarded Grant funds were spent; and
- (8) Indicate if Applicant is a small and emerging CDFI.

(b) Project Information.

**Agenda Item 4.B.
Resolution No. 23-05-001**

- (1) Detailed narrative that includes a discussion of the Applicants mission, organization infrastructure and resources to support ongoing activities, management team, and strategic plans;
- (2) Explanation of how the Grant will support the Applicant's mission;
- (3) Description of the proposed Eligible Activities that will be performed with the Grant;
- (4) List of current markets served;
- (5) List of targeted regions and client types;
- (6) Identification of any proposed new target markets and target populations that will be served by the Grant;
- (7) Identification of any proposed new financial activities and services that will be undertaken with the Grant; and
- (8) 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.

(c) Attachments.

- (1) Attachment A: Current federal certification as described in Health and Safety Code section 44558, subdivision (f)(1);
- (2) Attachment B: Financial statements for the past three years; and
- (3) 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 that submits a timely and complete application shall receive an award in an amount consistent with this section.

**Agenda Item 4.B.
Resolution No. 23-05-001**

(b) Authority shall set aside 20 percent of any amount made available in a Program funding round for small and emerging CDFIs, as defined in Health and Safety Code section 44558, subdivision (I). 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 in 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.

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.

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

Agenda Item 4.B.
Resolution No. 23-05-001

management of Grant funds, recordkeeping, reporting, performance of the Project, and all other aspects of compliance with this Article and the Grant Agreement. The Grant Agreement shall include the following:

(a) Grant amount.

(b) Grantee contact information.

(c) Grant duration.

(d) Description of the Project funded by the Grant award.

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

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

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

(h) 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;

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

(j) 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;

(k) 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;

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

(m) 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.