



## CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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Shela Tobias-Daniel

March 9, 2022

### **California Pollution Control Financing Authority Tax-Exempt Bond Program Notice of Emergency Regulations**

The California Pollution Control Financing Authority (CPCFA or the Authority), organized and operating pursuant to Sections 44500 through 44563 of the Health and Safety Code, proposes to adopt emergency regulations after considering all comments, including objections and recommendations, regarding the proposed action.

Government Code section 11346.1(a)(2) requires that, at least five (5) working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6. Upon filing, the Office of Administrative Law will have ten (10) calendar days to review and make a decision on the proposed emergency regulations. If approved by the Office of Administrative Law, the emergency regulations will become effective immediately upon filing with the Secretary of State for one hundred and eighty (180) days. Within the 180-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during the regular rulemaking action.

CPCFA proposes to adopt the emergency regulations in accordance with its authority under Health and Safety Code Section 44520(b). The proposed emergency regulations amend Article 4 Section 8043(a) and adopt Section 8043(a)(5) of Title 4 of the California Code of Regulations concerning the CPCFA Tax-Exempt Bond Program and the acceptable uses of the Small Business Assistance Fund subsidies. Attached to this notice are the *Finding of Emergency* and *Proposed Text of Regulations*. You may also review the *Finding of Emergency* and *Proposed Text of Regulations* on CPCFA's website at the following address: <https://www.treasurer.ca.gov/cpcfa/>. If you prefer to receive a hard copy of the *Finding of Emergency* and *Proposed Text of Regulations*, please contact Deanna Hamelin at (916) 657-4337.

The proposed emergency regulations will be heard by the Authority at a public hearing on March 15, 2022, at 10:30 a.m. in Room 587 at 915 Capitol Mall, Sacramento, California 95814.

Sincerely,



Shela Tobias-Daniel  
Executive Director

Attachments:      Finding of Emergency  
                         Proposed Text of Regulations

cc:      Spencer Walker, General Counsel  
         Christina Sarron, CPCFA Deputy Executive Director  
         Deanna Hamelin, CPCFA Program Manager

ST:dh

## **FINDING OF EMERGENCY**

### **CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

Title 4, Division 11

#### **Finding of Emergency**

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the "Authority") as emergency regulations (the "Emergency Regulations") are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

#### **Necessity**

These Emergency Regulations are necessary to implement, interpret, and make specific Article 4 of the California Pollution Control Financing Authority (the "Authority") Act (the "Act").<sup>1</sup> These changes are necessary to expand the allowable uses of the Small Business Assistance Fund (SBAF) subsidies that are available to eligible small business borrowers of the Authority's Tax-Exempt Bond Program.

#### **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 44520, 44525, 44537.5 and 44548, Division 27, Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by amending Section 8043(a) and adopting Section 8043 (a) (5) of Title 4, Division 11, Article 4 of the California Code of Regulations.

#### **Informative Digest**

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

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<sup>1</sup> The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 8 is codified at Health and Safety Code section 44559 through 44559.12.

### 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 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 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 on 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 expenses 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 \$14.4 million available for use of qualified small business borrowers in the SBAF account.

### Need for an amendment to Section 8043 (a) and adoption of Section 8043 (a)(5)

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 California Pollution Control Financing Authority'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 Executive Director's Delegation of Authority via the PIR process. The CPCFA charges the borrower for CPCFA staff's actual costs and the pass-through fees from the Attorney General's office 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 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.

### **Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

### **Mandate on Local Agencies or School Districts**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

### **Fiscal Impact**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

## **PROPOSED TEXT OF REGULATIONS**

### **Title 4. Business Regulations** **Division 11. California Pollution Control Financing Authority** **Article 4. Provisions Relating to Small Business Financings**

#### **§ 8043. Assistance**

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, except with respect to subparagraph (5) below, will most effectively assist the applicant to (i) achieve financing for the project; (ii) obtain a bond rating of "A" from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority's judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the "prime rate" then prevailing):

(1) Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include 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 expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant's fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for other attorney fees, staff time, or other expenses related to the application for financing.

(2) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.

(3) Guarantee to the bond holder, conventional lender or provider of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$2,000,000.

(4) Provide financial assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

(5) Pay for the Authority's costs associated with a post-issuance request to amend bond documents to reflect an index rate change, in instances where small business borrowers are subject to a nationally recognized index rate change unforeseen at the time of bond issuance.

Note: Underlined text is the proposed text