

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK
(IBank)**

STAFF REPORT

Introduction: Staff requests approval of amendments to IBank’s Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities¹ (“Policies”). In general, these revisions update the Policies to allow IBank to both reach a broader spectrum of potential borrowers and connect them with a broader pool of investors, and streamline IBank’s administration of conduit bond financings. In addition, staff requests that the Board of Directors (the “Board”) delegate to the Executive Director the authority to make certain non-substantive amendments to the Policies; provided that, whenever the Executive Director exercises such authority, he or she will report such exercise to the Board at its next meeting. The proposed amendments to the existing Policies are reflected in the redline version of the “Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities” attached hereto as **Attachment 1**. Attachment 1 compares the current version of the Policies, last updated in 2010, to the proposed revised version prepared recently by IBank staff

Background: The Bergeson-Peace Infrastructure and Economic Development Bank Act (“Act”) calls for the Board to adopt procedures for the expeditious review of applications for the issuance or approval of bonds to finance economic development facilities (Government Code section 63044). Over time the Board has adopted various versions of the Policies. The most recent version was the one adopted pursuant to Resolution 10-28.

Discussion of Amendments: As noted, the most material proposed revisions are intended to expand the pipeline of prospective borrowers, by slightly lowering the minimum rating requirement, while also expanding the pool of potential investors who are able to purchase these bonds. Other proposed updates are more stylistic, such as replacing “The Infrastructure Bank” with “IBank” throughout. Taken as a whole the proposed amendments (“Amendment”) aim to enhance the Policies and provide IBank with significantly greater flexibility and capacity to serve California’s ever evolving economy. Key proposed revisions are summarized below, and a redline showing the full proposed revisions is attached.

Minimum Rating Policy: The Amendment expands IBank’s standard issuance policy for publicly-offered bonds. Under the current Policies IBank will issue publicly-offered bonds only if a rating of A-/A3 or better is achieved. The amendments would allow public offerings for any investment grade rated bonds. Investment grade ratings are those that bear a long-term rating of at least “Baa3” from Moody’s Investors Service (“Moody’s”) and/or “BBB-” from Standard & Poor’s (“S&P”) or Fitch Ratings, IC. (“Fitch”), and/or a short-term rating of at least a “VMIC 3” or “P-3” from Moody’s, or “SP-2” or “A-3” from S&P, or “F3” from Fitch, based either on the

¹ By their terms, these Policies apply only to the financing of economic development facilities. In general, “economic development facilities” are facilities sponsored primarily by non-governmental entities for industrial, recreational, research, commercial, utility service enterprise, community, educational, cultural or social welfare facilities or any combination thereof.

credit of the applicant or on a credit enhancement from a bank, insurance company, or other guarantor acceptable to IBank (the “Minimum Rating Policy”).

IBank staff believes lowering the Minimum Rating Policy carries little risk and will help finance a broader spectrum of projects. The current Policies require an A-/A3 or better rating for publicly-offered bonds and the Amendment would lower this to the bottom-tier of investment grade ratings to BBB-/Baa3. Lower rated borrowers do carry an incrementally higher risk of default. However, the default risk for any investment grade rated borrower is still low, and the detriment of any such risk should be more than offset by increasing IBank’s ability to offer conduit borrowers access to low-cost capital markets financing. Opening-up the full range of capital markets to a wider array of conduit borrowers should result in lower-cost financings for more projects across the State. Further, as a conduit issuer IBank should not be held liable for any theoretical default. A conduit bond default may pose a certain degree of reputational risk to IBank, however, the risk associated with any potential default is offset by the previously-mentioned benefits.

Sophisticated Investor: The Amendment also broadens the scope of purchasers for Bond offerings that do not meet the minimum rating guidelines. Under the current policies, IBank allows private sale transactions to “Qualified Institutional Buyers²” (a “QIB”) where the threshold for public offerings is not met. However, the Amendments would allow sales to QIBs and “Institutional” “Accredited Investors³” (“AI”) (within the meanings of the Code of Federal Regulations, Section 230.501 (a)(1), (2), (3), (7), (8), (9), or (12)). Further, the amendments clarify that there is no minimum or maximum number of investors for bonds that are not publicly-offered.

AIs are generally smaller entities than are QIBs. Nonetheless, IBank staff supports the expansion of eligible purchasers to Institutional AIs, which are entities with at least \$5 Million in assets. So while they may not be as wealthy as QIBs, they still have substantial assets to draw from and are able to bear substantial risk. Opening unrated transactions to Institutional AIs will broaden the potential pool of purchasers and thereby should lower the cost of borrowing for IBank’s conduit borrowers.

² The QIB definition is found in SEC Rule 144A and is quite lengthy. But, reduced to its essentials, SEC Rule 144A defines QIBs to include the following entities (either acting for their own account or for other QIBs) that own and invest on a discretionary basis at least \$100,000,000 in securities of unaffiliated issuers: insurance companies, investment companies, small business investment companies, certain employee benefit plans, business development companies, investment companies, and banks. QIBs also include securities dealers that own and invest on a discretionary basis at least \$10 Million of securities from unaffiliated issuers.

³ In general, AIs include the following entities: banks, securities brokers/dealers, insurance companies, investment companies, business development companies, small business investment companies, and certain pension plans with assets over \$5,000,000, 501(c)(3) corporations with total assets exceeding \$5,000,000, an entity where all the equity owners are accredited investors, natural persons or married couples with a net worth exceeding \$1,000,000, natural persons with income over \$200,000 (or married couples with incomes over \$300,000) in the most recent two years and who expect to make that much in the current year, individuals with a certain level of investment knowledge or training, “family offices” with over \$5,000,000 assets under management, an officer or director of the securities issuer, and trusts with assets in excess of \$5,000,000 and directed by certain “sophisticated persons.” The Amendments would limit the purchase of bonds that do not achieve the public offering threshold to AIs that are not natural persons.

Streamlined Application Process: The Amendment eliminates the pre-application submission requirements and deletes the detailed application contents. Instead of listing the constituent parts of the application, the Amendment simply refers potential applicants to the IBank website, where the application form can be found.

The elimination of the pre-application requirement is expected to improve efficiency of the application process. The inclusion of the application details in the Policies limits IBank staff's ability to carry out timely updates to the application form and its contents as needed to meet market demands. The Amendment also eliminates the requirement for the applicants to submit financial statements in connection with conduit bond transactions.

Improved Inducement and Resolution Procedures: The Amendment also eliminates certain unnecessary deadlines for the submission of applications. The Amendment requires that applicants for transactions that require California Debt Limit Allocation Committee ("CDLAC") approval submit a copy of the executed CDLAC resolution before their financing can be considered for Board approval. In addition, the Amendment requires the applicants to submit their governing body's resolution authorizing the proposed financing prior to the Board meeting.

The Amendment allows the applicant whose transaction is not completed by the time indicated in IBank's approving resolution to request an extension from IBank of the time period to issue bonds ("Extension Request"). The Extension Request process is simpler for the applicant than is submitting an entirely new application. The Amendment provides that submission of Extension Request constitutes a renewed application and will require payment of an application fee.

Public Hearing: The Amendment requires completion of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") hearing for certain tax-exempt bonds prior to the Board meeting. This requirement allows IBank staff to advise the Board of any public comment made at the TEFRA hearing prior to the Board's vote on the proposed Resolution.

Streamlined Relocation Guidelines: The Amendment removes certain vague legacy language that requires an applicant to notify ill-defined governmental entities when the IBank financing would result in the relocation of a facility from one California jurisdiction to another. Instead, the Amendment would require the applicant to describe community outreach efforts associated with any relocation.

Other Proposed Revisions: The Amendment also makes minor clarifications and adjustments throughout the Policies. For instance, the Amendment clarifies that the prior contractor certification requirement applies to all general contractors.

The Amendment clarifies that IBank shall have final approval of all finance team members except for the underwriter for publicly-offered bonds. It also explains that the State Treasurer's Office has the ultimate say in the selection of underwriters.

The Amendment also clarifies that an applicant may request waiver of any Policy provision that is not required by law. The Amendments establish that the Executive Director may waive

requirements related to application deadlines and that the Board may waive any other Policy requirement.

Finally, as detailed in the Resolution No. 21-06, IBank staff requests that the Board delegate to the Executive Director the authority to make non-substantive amendments to the Policies; provided that, whenever the Executive Director exercises such authority, he or she will report such exercise to the Board at its next meeting. This will allow IBank to correct immediately formatting errors and ambiguities in the Policies instead of having to wait for the next Board meeting.

Conclusion: The Amendment improves and streamlines IBank's conduit bond policies. The relaxed rating requirements will open low-cost public capital markets to a wider range of potential borrowers, and for those borrowers that still are not able to meet the minimum rating threshold for a public offering, the inclusion of AIs in the potential pool of purchasers should help lower the cost of borrowing. The Amendment also makes the application process simpler and improves the conduit bond administration practices.

Recommendation: IBank staff recommends approval of Resolution 21-06 approving the Amended and Restated Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities attached thereto. In addition, staff requests approval that the Board delegates to the Executive Director the authority to make non-substantive amendments to the Policies; provided, however, that, whenever the Executive Director exercises such authority, he or she is directed to report such actions to the Board, at its next Board meeting.

February 24, 2021

Attachment 1

**Policies and Procedures for Conduit Revenue Bond Financing for Economic Development
Facilities**

(Redline Version)