

801 CMR: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

801 CMR 56.00: NONPROFIT COMMUNITY HOSPITALS AND NONPROFIT COMMUNITY HEALTH CENTERS MORAL OBLIGATION BOND FINANCING

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56.01: Purpose and Application

801 CMR 56.00 clarifies the process and requirements for approval by the Secretary of Administration and Finance (A&F Secretary) of financing for nonprofit community hospitals and nonprofit community health centers pursuant to St.1968, c. 614, § 10, as amended by St. 2011, c. 9, § 21. Notwithstanding any other provision in 801 CMR 56.00, the A&F Secretary shall have the right, in his or her sole discretion, to reject in whole or in part, a project proposal.

56.02: Definitions

For the purposes of 801 CMR 56.00, the following terms shall have the meanings prescribed unless otherwise noted.

Agency shall mean the Massachusetts Development Finance Agency established by M.G.L. c. 23G.

A&F Secretary shall mean the Secretary of Administration and Finance.

Borrower shall mean a nonprofit community hospital or nonprofit community health center that seeks financing under St. 1968, c. 614, § 10, as amended by St. 2011, c. 9, § 21.

Community Hospital and Community Health Center Capital Reserve Fund or Fund shall mean a fund established by St. 1968, c. 614, § 10, subsection (g)(1), as amended by St. 2011, c. 9, § 21.

HHS Secretary shall mean the Secretary of Health and Human Services.

Intercept Agreement shall mean written agreement between the borrower and the Commonwealth which sets forth the terms and conditions of the withholding by the state comptroller (Comptroller) of a payment due by the Commonwealth to the borrower under St. 1968, c. 614, § 10, subsection (g)(8).

Moral Obligation Bond shall mean a bond issued by the Agency for the benefit of a nonprofit community hospital or nonprofit community health center and which is secured by a Community Hospital and Community Health Center Capital Reserve Fund.

Moral Obligation Bond Issuance Fee shall mean a fee payable by the borrower to the Agency upon the issuance of a moral obligation bond for the Agency's role as the issuer of the moral obligation bond. The amount of this fee shall be determined by the Agency in accordance with the fee schedule it customarily uses in connection with the issuance of bonds.

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Nonprofit Community Health Center and Nonprofit Community Hospital shall mean a community health center as defined in 101 CMR 613.02: *Community Health Center*, which operates as either a community health center or a hospital licensed health center, but shall not include a hospital where the ratio of the number of physician residents-in-training to the number of inpatient beds exceeds 0.25.

Preliminary Project Proposal shall mean a proposal submitted in accordance with 801 CMR 56.05.

Project shall mean:

- (a) the maintenance, repair or renovation of existing buildings, structures, or other infrastructure owned by a nonprofit community health center or nonprofit community hospital;
- (b) the construction of new buildings, structures or other infrastructure to be owned by a nonprofit community health center or nonprofit community health center; or
- (c) the acquisition of equipment. A project may also include the costs associated with the purchase and preparation of land in connection with 801 CMR 56.02: Project(a) and (b).

Project Proposal shall mean a proposal submitted in accordance with 801 CMR 56.07 and 56.08.

56.03: Criteria for Approval of a Moral Obligation Bond Issuance by the A&F Secretary

In order for a moral obligation bond issuance to receive the A&F Secretary's approval, the following criteria must be met:

- (1) The aggregate principal amount of all moral obligation bonds outstanding issued under St. 1968, c. 614, § 10, as amended by St. 2011, c. 9, § 21, shall not exceed \$250 million;
- (2) The moral obligation bonds must be structured within the following parameters:
 - (a) No derivative financial products as defined by 976 CMR 2.03: *Definitions* except for periodic resets of interest rates at a predetermined spread over an index at intervals no shorter than five years;
 - (b) Clearly defined principal amortization with no balloon payment, *i.e.* principal must amortize throughout the term of the bond issue without substantial increase from year to year;
 - (c) Annual debt service on the bonds may not exceed the amount annually payable by the Commonwealth to the borrower and available to be withheld by the Comptroller under St. 1968, c. 614, § 10, subsection(g)(8) in the event of default;
 - (d) Bond term may not exceed the useful life of assets to be financed;
 - (e) The Commonwealth shall have the right, but not the obligation, to pay off the bond issue in full if any payment default by the borrower remains uncured for a period of six months, as confirmed by the Agency.
 - (f) Each bond issue must provide the Agency with a security interest in the assets financed, which shall give the Agency all of the rights and remedies of a secured party.
 - (g) The borrower shall deposit to the Community Hospital and Community Health Center Capital Reserve Fund an amount equal to the maximum principal and interest due on the bonds in any one calendar year.
- (3) The borrower is not currently in default under a prior issuance of a moral obligation bond;
- (4) The borrower is not seeking to utilize the moral obligation bond issuance to refinance existing debt;
- (5) The terms and conditions of the bond issuance shall include provisions for an intercept agreement between the Commonwealth and the borrower;
- (6) The moral obligation bonds outstanding at any one time shall not exceed \$5 million in the aggregate per borrower;

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- (7) The project has been approved by the HHS Secretary under 801 CMR 56.07;
- (8) The borrower must provide to the A&F Secretary's satisfaction, under 801 CMR 56.00, evidence that:
 - (a) The project borrower would be unable to obtain financing but for borrower's participation in the moral obligation bond program. Part of the documentation of this determination shall require the borrower to consent to its application for financing, and any supporting documentation, to be provided by the Agency to any third party lender(s); and,
 - (b) The agency has determined, in its sole discretion, that the project meets its *Underwriting Guidelines*; and
- (9) As a condition of closing, borrower must obtain the written consent of any other lenders which have outstanding credit to the borrower.

56.04: A&F Secretary's Discretion

Notwithstanding 801 CMR 51.03: *Criteria for Approval of an Economic Development Proposal by the Secretary*, the A&F Secretary, in the A&F Secretary's sole discretion, reserves the right to waive any of the criteria identified in 801 CMR 56.00 that are not statutorily required by St. 1968, c. 614, § 10, subsection (g)(1), if the A&F Secretary determines that there are compelling reasons to do so.

56.05: Preliminary Project Proposal

- (1) Prior to filing a project proposal with the A&F Secretary, the borrower shall file a preliminary project proposal with the HHS Secretary, who shall review and evaluate the preliminary project proposal under the criteria listed in 801 CMR 56.05(2) and (3).
- (2) The Preliminary Project Proposal should support one or more of the following policy goals:
 - (a) Promote integration and coordination of care;
 - (b) Promote care that is patient-centered;
 - (c) Develop capabilities necessary to implement alternative payment models;
 - (d) Improve the quality of care and health outcomes; and
 - (e) Relocate care to high quality, cost-efficient settings.
- (3) Additionally, the preliminary project proposal should describe, in narrative format, how:
 - (a) The proposed project would support one or more of the policy goals of 801 CMR 56.05(2),
 - (b) The proposed project would create change that will be sustainable over time, and
 - (c) The borrower will measure and assess the project's success in meeting the policy goals of 801 CMR 56.05(2).

Trade secrets and commercial or financial information of the borrower submitted by the borrower in connection with the submission of a preliminary project proposal shall be kept confidential by all parties receiving such information to the extent required or permitted by law. Notwithstanding the foregoing, as a condition of participation in the program, the borrower shall consent to its application for financing, and any supporting documentation, to be provided to any third party lender as determined by the agency.

56.06: Evaluation of Preliminary Project Proposal

The evaluation of a preliminary project proposal shall occur under the evaluation process outlined as follows:

- (1) Within 30 days after receipt of the preliminary project proposal, the HHS Secretary or the HHS Secretary's designee shall review the preliminary proposal. If the borrower fails to submit full information required under 801 CMR 56.05 or should the HHS Secretary determine that additional or clarifying information is needed from the borrower, the HHS Secretary shall afford the borrower 30 days to submit such additional or clarifying information. Once all information has been submitted by the borrower, the HHS Secretary or the HHS Secretary's designee shall proceed to a final evaluation of the preliminary project proposal.

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(2) Within 30 days after commencing the final evaluation of the preliminary project proposal, the HHS Secretary shall inform the borrower of the outcome of the final evaluation. The HHS Secretary shall inform the borrower in writing of the approval or rejection. In the case of a rejection, the HHS Secretary shall notify the borrower of the reasons for the rejection. The HHS Secretary shall notify the Agency and the A&F Secretary of the rejection or approval of the preliminary project proposal.

56.07: Process of Evaluation of a Project Proposal by the Agency

(1) Upon approval of the preliminary project proposal by the HHS Secretary, the borrower shall submit the project proposal, accompanied by an application for bond financing in the form established by the Agency, to the agency for the review required by 801 CMR 56.03(8)(a) and (b).

Within 60 days after the later of the approval of the preliminary project proposal by the HHS Secretary or the receipt of the completed project proposal and application for bond financing, the Agency shall undertake and complete the review required by 801 CMR 56.03(8)(a) and (b). Upon completing its review of the preliminary project proposal, the Agency shall determine whether:

- (a) the project would not happen but for participation in the moral obligation bond program; and
- (b) in the agency's the project meets the agency's *Underwriting Guidelines*.

The Agency shall provide its written determination to the borrower and to the A&F Secretary.

(2) The Agency may establish and collect such fees and charges as the Agency shall determine is reasonable, including an application fee for its review of the project proposal and an issuance fee to be paid from the bond proceeds.

56.08: Content of Application to A&F Secretary for Approval of Project Proposal

The application for final approval of a project proposal to be submitted to the A&F Secretary shall include:

- (1) The project proposal, the content of which shall consist of the substance of the preliminary project proposal approved by the HHS Secretary; and
- (2) A written assessment of the findings of the review performed by the Agency under 801 CMR 56.03(8)(a) and (b).

56.09: Evaluation of Project Proposal by the A&F Secretary

Within 30 days after receipt of the Project Proposal from the borrower in the form and with the information and documentation required by 801 CMR 56.08, the A&F Secretary shall take action on the Project Proposal by approving it, disapproving it, requesting its amendment or requesting further information.

56.10: Additional Information

The A&F Secretary may request any additional information or documentation that the A&F Secretary considers relevant to the evaluation of the Project Proposal. The borrower shall promptly provide any such information or documentation requested to the extent it is available.

56.11: Final Approval

If the criteria and requirements for a project proposal as set forth in 801 CMR 56.00 are satisfied, and provided that the loan and the issuance and terms of the related bonds are satisfactory, the A&F Secretary may approve the project proposal and the Agency shall issue the bonds subject to the availability of a committed bond purchaser. Approval may be subject to any conditions which are consistent with St.1968, c. 614, §10, as amended by St. 2011, c. 9, §21, including but not limited to a requirement that the borrower:

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- (a) provide financial statements or other information relevant to the financial condition of the borrower and the borrower's compliance with the terms of the loan; and
- (b) reimburse the Commonwealth for any amounts the Commonwealth transfers to the capital reserve fund under 801 CMR 56.13 to replenish the capital reserve fund as a result of a loan payment default by the borrower.

The A&F Secretary shall send a copy of the final approval and an executed copy of the intercept agreement to the Treasurer's Office and to the Comptroller.

56.12: Protocol in the Event of Borrower Default

(1) Agency Action. When a borrower defaults on the payment of principal or interest on a moral obligation bond secured by a Community Hospital and Community Health Center Capital Reserve Fund, the Agency, upon written notification by the trustee for the bond holders, shall notify the A&F Secretary in writing of the borrower default and shall identify whether the default relates to the payment of principal or interest or both on such loan.

(2) A&F Secretary Action. Upon written notification of a borrower default under 801 CMR 56.12(1), the A&F Secretary, pursuant to St. 1968, c. 614, § 10, as amended by St. 2011, c. 9, § 21, shall direct the Comptroller to withhold any funds that are due and payable by the Commonwealth to the borrower until the amount of principal or interest or both due or anticipated to be due has been paid to the Agency or the trustee for the bondholders. Funds subject to be withheld pursuant to 801 CMR 56.12 shall include, but not be limited to, federal and state grants, to the extent permissible under the applicable federal grant authority, contracts, allocations and appropriations.

(3) The Agency shall provide, in writing, further notification to the A&F Secretary in the event of a borrower payment default that remains uncured by the borrower for a period of 30 days. Upon written notification, the A&F Secretary shall:

- (a) direct the Comptroller to make available to the Agency, without further appropriation, any funds withheld from the borrower under 801 CMR 56.12(2); and
- (b) direct the agency to exercise any or all of such remedies against the borrower as provided in the relevant bond documents.

The Agency, pursuant to the St.1968, c. 614, § 10, as amended by St. 2011, c. 9, § 21, shall apply any such funds to the amounts due from the borrower. If the Comptroller fails to transfer sufficient funds to the Agency to pay amounts then due to the bondholders, the Agency shall direct the trustee to apply funds available in the Community Hospital and Community Health Center Capital Reserve Fund to the amount due to bondholders.

(4) When the A&F Secretary directs the Comptroller to release funds under 801 CMR 56.12(3), the A&F Secretary shall notify or cause to be notified any other agency, department or authority of state government that exercises regulatory, supervisory or statutory control over the operations of the borrower. Upon such notification, the agency, department or authority shall immediately undertake its own review to determine what action, if any, the agency, department or authority should take to assist in the payment by the borrower of the money due. Additionally, any agency, department or authority of state government exercising regulatory, supervisory or statutory control over the operations of the borrower should undertake a review to identify the steps the agency, department or authority, other than the Comptroller or the Agency, should take to assure the continued prudent operation of the borrower or provision of services to the persons served by the borrower.

56.13: Payments to Replenish the Fund

(1) To assure the continued operation and solvency of the Agency for carrying out the public purposes of the St.1968, c. 614, §10, as amended by St. 2011, c. 9, § 21, the executive director of the Agency shall annually, on or before December 1st, make and deliver to the A&F Secretary a certificate stating the amount of funds required to restore a Community Hospital and Community Health Center Capital Reserve Fund to an amount equal to the maximum amount of principal and interest maturing or becoming due in any succeeding calendar year on the outstanding moral obligation bonds which are secured by any such fund.

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(2) Upon receipt of a certificate under 801 CMR 56.13(1), the A&F Secretary shall take all necessary steps to seek an appropriation equal to the amount indicated by the certificate, and upon approval of this appropriation, shall pay the amount so approved to the agency for deposit to the Fund.

56.14: Actions to Ensure Repayment of Funds to the Commonwealth

(1) When a borrower fails to reimburse the Commonwealth for any transfers made by the Commonwealth to the Agency to replenish the Community Hospital and Community Health Center Capital Reserve Fund under 801 CMR 56.12 within six months after any such transfer and as otherwise provided under the terms of the approval under 801 CMR 56.11 pursuant to the intercept agreement, the A&F Secretary may, in the A&F Secretary's sole discretion, direct the Comptroller to withhold any funds in the Comptroller's custody that are due or payable to the borrower to cover all or a portion of the amount the borrower has failed to pay to the Commonwealth to reimburse the Commonwealth for any such transfers.

(2) To the extent permitted by federal law, in contracts between the Group Insurance Commission and a third party for the purposes of providing health care insurance or health care services paid for by the Commonwealth, the Group Insurance Commission shall make a good faith effort to secure an obligation on the part of the third party to provide that, at the direction of the A&F Secretary, the third party shall withhold payments to a borrower that fails to reimburse the Commonwealth under the terms of the approval granted under 801 CMR 56.11 and shall transfer the withheld amount to the Commonwealth pursuant to the intercept agreement. Any such withheld and transferred amounts shall be considered to have been paid to the borrower for all other purposes of law, and the borrower shall be considered to have reimbursed the Commonwealth in an amount equal to such withheld and transferred funds for purposes of the approval granted under 801 CMR 56.11.

(3) To the extent permitted by federal law, MassHealth and the Commonwealth Health Insurance Connector Authority shall make a good faith effort to secure an obligation on the part of its contracted managed care entities to provide that, at the direction of the A&F Secretary, they will withhold payments to a contracted provider who is also a borrower that fails to reimburse the Commonwealth under the terms of the approval granted under 801 CMR 56.11 and shall transfer the withheld amount to the Commonwealth pursuant to the intercept agreement. Any such withheld and transferred amounts shall be considered to have been paid to the borrower for all other purposes of law, and the borrower shall be considered to have reimbursed the Commonwealth in an amount equal to such withheld and transferred funds for purposes of the approval granted under 801 CMR 56.11.

(4) In addition, to the extent permitted by federal law, at the direction of the A&F Secretary, MassHealth shall withhold payments to a MassHealth contracted provider who is also a borrower that fails to reimburse the Commonwealth under the terms of the approval granted under 801 CMR 56.11 and shall transfer the withheld amount to the Commonwealth pursuant to the intercept agreement. Any such withheld and transferred amounts shall be considered to have been paid to the borrower for all other purposes of law, and the borrower shall be considered to have reimbursed the Commonwealth in an amount equal to such withheld and transferred funds for purposes of the approval granted under 801 CMR 56.11.

(5) In the event that funds are withheld from a borrower pursuant to 801 CMR 56.14(5) and the intercept agreement, the borrower shall deem the withheld amounts to have been paid in full, and shall not seek to recover withheld funds from insured individuals, health plans, MassHealth, the Commonwealth or any other entity insured through the Group Insurance Commission or the Commonwealth Health Insurance Connector Authority.

REGULATORY AUTHORITY

801 CMR 56.00: St.1968, c. 614, §10, as amended by St. 2011, c. 9, § 21.