

## Request for Comment on the Implementation of SB 1029

The California Debt and Investment Advisory Commission (CDIAC) is proposing an approach to collect information required by Chapter 307, Statutes of 2016 (Senate Bill 1029, Hertzberg). This Request for Comment intends to gather information from public agencies that issue debt as well as other members of the municipal finance community on this proposed approach. The comments received pursuant to this Request for Comment will assist CDIAC in developing its final approach to implementing SB 1029, including the nature and form of the information to be requested.

Comments should be submitted to CDIAC no later than November 18, 2016 and may be submitted in electronic or paper form. Comments submitted electronically can be sent to [CDIAC@treasurer.ca.gov](mailto:CDIAC@treasurer.ca.gov). Comments sent in paper form should be sent to the attention of Mark Campbell, California Debt and Investment Advisory Commission, 915 Capitol Mall, Room 400, Sacramento, CA 95814.

### Background

Existing law requires issuers of public debt to provide information to CDIAC both at the time the debt is proposed and at the time it is sold. Specifically, Government Code (GC) section 8855(i) requires issuers to report to CDIAC no later than 30 days prior to the sale of debt their intent to issue debt. GC section 8855(j) requires issuers to report to CDIAC on the final sale no later than 21 days after the sale. In addition to these reporting requirements issuers of Mello-Roos and Marks-Roos debt must report to CDIAC annually on outstanding debt under GC sections 53359.5 and 6599.1(b), respectively. Issuers of Mello-Roos and Marks-Roos bonds must also report defaults and draws on reserves within a specified time period after they occur.

SB 1029, signed by Governor Brown on September 12, 2016, amends GC section 8855 to place additional reporting obligations on issuers of public debt in California. As amended, GC section 8855(h)(3) will require CDIAC to “(C)ollect, maintain, and provide comprehensive information on all state and all local debt authorization and issuance, track and report on all state and local outstanding debt until fully repaid or redeemed, and serve as a statistical clearinghouse for all state and local debt”.

### Overview of CDIAC Data Collection and Reporting Processes

CDIAC currently receives statutorily required reports from issuers on six (6) different reporting forms. These are: the Report of Proposed Debt Issuance (all issuers), Report of Final Sale (all issuers), Yearly Fiscal Status Report (Mello-Roos issuers), Yearly Fiscal Status Report for Authority Issuers (Marks-Roos issuers), Yearly Fiscal Status Report for Local Obligors (Marks-Roos issuers), and Report of Default, Draw on Reserve, and Replenishment (for both Mello-Roos and Mark-Roos issuers).

Statutes assign the responsibility for submitting reports to CDIAC on the issuer, but in fact many issuers delegate this task to members of the financing team or special administrators. Regardless of who files, filers now submit these reports electronically through CDIAC's website. CDIAC reports the data it receives in several different forms. First, it publishes monthly and annual reports in print form. Second, it provides the data as a down-loadable file through its website. Finally, CDIAC presents the data through an online portal called DebtWatch.

CDIAC has provided instructions to filers for all reporting forms, but it is currently engaged in a rulemaking process to adopt regulations that provide specific guidance to filers on the terms, concepts, and procedures to be followed when submitting information under the current reporting process.

### **Proposed Data Collection and Reporting Processes for SB 1029 Reporting**

CDIAC has developed an approach to implement the requirements of SB 1029. This Request for Comment is intended to learn from issuers and other members of the public finance community how that approach will affect them.

CDIAC anticipates using the same reporting process in this approach as used currently to receive Reports of Proposed Debt Issuance and Reports of Final Sale. However, CDIAC may need to create new reports or modify existing reports to allow it to collect the information required under SB 1029. The first type of information reflects amendments to GC section 8855(i) that require the issuer to certify that it has adopted local debt policies concerning the use of debt and that the proposed debt issue complies with these policies. The second, set forth in section 8855(k) requires issuers who have submitted a Report of Final Sale to CDIAC to subsequently submit an annual debt report to CDIAC.

**Section 8855(i)**—With respect to section 8855(i) CDIAC anticipates adding a “check box” to the Report of Proposed Debt Issuance enabling the issuer to certify that it has adopted local debt policies or that it has received certification from another governmental entity that will use proceeds from the sale of debt that it has adopted local debt policies. The local debt policies must address the use of debt and the proposed debt issuance must be consistent with those policies. The issuer’s local debt policies must include (A) through (E), below. If the issuer has received certification from another governmental entity that will use proceeds of the debt issue, then that certification confirms that the other governmental entity has adopted local debt policies and the proposed issue is consistent with the policies. The local debt policies adopted by the governmental entity using the proceeds of the debt issue must include (C), (D), and (E), below.

- A) The purposes for which the debt proceeds may be used.
- B) The types of debt that may be issued.
- C) The relationship of the debt to, and integration with, the issuer’s capital improvement program or budget, if applicable.
- D) Policy goals related to the issuer’s planning goals and objectives.

- E) The internal control procedures that the issuer has implements, or will implement, to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.

CDIAC understands GC section 8855(i) to apply to local agencies only. It does not apply, therefore, to state agencies, instrumentalities of the state, or not-for-profits organizations that may issuer or receive proceeds from a bond sale. As a result, CDIAC understands the term “other governmental entity” in section 8855(i)(2) to mean a local agency.

With respect to paragraph (1) of GC 8855(i) then, issuers will be required to certify on every Report of Proposed Debt Issuance submitted to CDIAC that it has adopted local debt policies and that the local debt policies include items (A) through (E). CDIAC understands the meaning of “certification by the issuer” to be an affirmation made by the issuer that it has complied with section 8855(i)(1). With respect to that affirmation, it will be incumbent upon the issuer to interpret and apply subparts (A) through (E) to their debt policies. CDIAC understands the meaning of “adopted” to be “by act of the governing body”.

With respect to paragraph (2) of GC 8855(i), a local governmental issuer that issues on behalf of another governmental entity will be required to certify on its Report of Proposed Debt Issuance either (1) that it has adopted local debt policies, or (2) that the other governmental entity that will use proceeds of the debt issue has adopted local debt policies. If the issuer is certifying that it has adopted local debt policies, those policies must include items (A) through (E). If the issuer is certifying that the other governmental entity that will use proceeds of the debt issue has adopted local debt policies it is representing in the Report of Proposed Debt Issuance that the other governmental entity has certified to it, the issuer, that it, the other governmental entity, has adopted local debt policies. Furthermore, the other governmental entity in making that certification attests to the fact that its local debt policies include (C) through (E) of paragraph (1). Here again, CDIAC understands adopted to be “by act of the government body”. It will be incumbent upon the other governmental entity in including subparts (C) through (E) to interpret their meaning in the context of their local debt policies.

CDIAC understands the requirement that the issuer may rely on a “certification by that other governmental entity that it has adopted” local debt policies to mean that the issuer has a good faith belief, based upon either direct observation or by the fact that it has received representation from the other governmental entity that it, the other governmental entity, has adopted local debt policies.

**Section 8855(k)**—Effective January 1, 2017, state and local issuers will be required to submit an annual debt report for any issue of debt for which they have submitted a Report of Final Sale during the reporting period. The annual debt report is due to CDIAC within seven (7) months of the close of the reporting period, defined as July 1<sup>st</sup> to June 30<sup>th</sup>. Because of the effective date of SB 1029, issuers who submit a Report of Final Sale after January 21, 2017 will be required to submit an annual debt report no later than seven (7) months after June 30, 2017 or on or before January 31, 2018. Issuers will continue to submit an annual debt report to CDIAC on or

before January 31<sup>st</sup> each year until the later date on which the debt is no longer outstanding or the proceeds have been fully spent.

The annual debt report must include, at a minimum:

- A) Debt authorized during the reporting period, which shall include:
  - a. Debt authorized at the beginning of the reporting period.
  - b. Debt authorized and issued during the reporting period.
  - c. Debt authorized but not issued at the end of the reporting period.
  - d. Debt authority that has lapsed during the reporting period.
- B) Debt outstanding during the reporting period, which shall include the following:
  - a. Principal balance at the beginning of the reporting period.
  - b. Principal paid during the reporting period.
  - c. Principal outstanding at the end of the reporting period.
- C) The use of proceeds of issued debt during the reporting period, which shall include the following”
  - a. Debt proceeds available at the beginning of the reporting period.
  - b. Proceeds spent during the reporting and the purposes for which it was spent.
  - c. Debt proceeds remaining at the end of the reporting period.

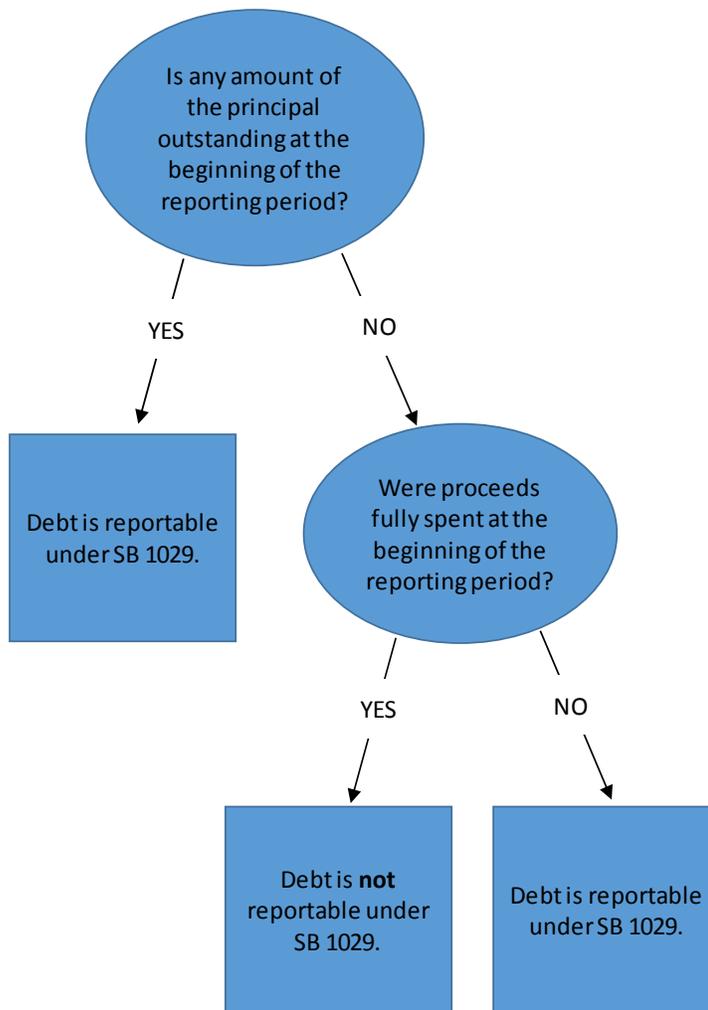
CDIAC uses the term “annual report” to refer to the annual debt report required under section 8855(k). CDIAC expects to develop an online report that will enable issuers to meet this reporting requirement. CDIAC expects that issuers will submit an annual debt report for each Report of Final Sale that it has submitted to CDIAC. This means that the level of reporting in the annual debt report will be the debt issue reported to CDIAC as sold.

Issuers must provide in their annual debt report to CDIAC the debt authorized, the debt outstanding, and the use of proceeds of the issued debt. CDIAC understands the term “authorized” to mean approved by vote of the electorate or taxpayers or by act of the governing body. The term “debt outstanding” means original principal that has not been fully repaid, exclusive of accrued interest and redemption premium, if applicable. In the case of a zero-coupon bond or capital appreciation structure, the original principal will mean the full accreted value of the bonds at the end of the reporting period. “Proceeds” means all funds received from the bond sale inclusive of premium and discount. In concept, the amount of the proceeds should equal the amount commonly reported in the offering document under “Sources and Uses” of bond proceeds. The term “authority that has lapsed” will mean authority that is no longer valid and, therefore, does not provide a legal basis to issue debt, including authority that has expired or that the issuer has taken an action to revoke.

With respect to reporting on the amount of debt authorized, an issuer that has submitted a Report of Final Sale during the reporting period must include in its annual debt report the amount of debt authorized at the beginning of the reporting period, the amount authorized and issued during the reporting period, the amount authorized but not issued at the end of the reporting period, and any authority that has lapsed. An issuer that has received authority during the reporting period, but has not issued debt based upon that authority and has not,

therefore, submitted a Report of Final Sale is not required to submit an annual debt report with respect to that authority. Once it does issue debt and submits a Report of Final Sale it will be obligated to submit an annual debt report within seven (7) months of the close of the reporting period during which it issued the debt. There may be circumstances in which an issuer has available authority based upon an earlier election or act of the governing body even though it has paid off or fully refunded the debt previously issued under that authority. In this case, the issuer would not be required to submit an annual debt report.

#### Scenario 1—Reporting Requirements for Original Issue

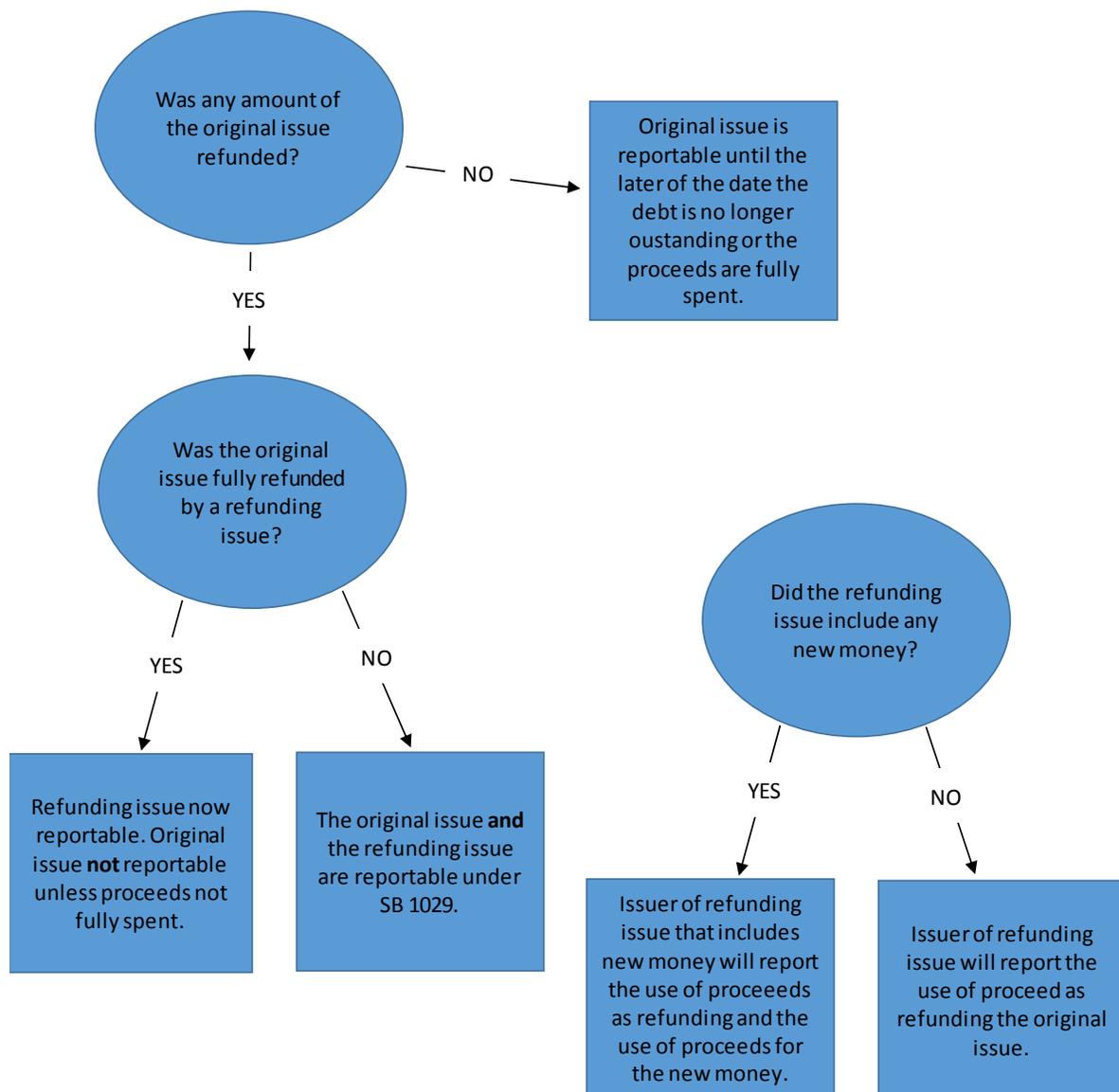


With respect to reporting on debt outstanding, an issuer who has submitted a Report of Final Sale during the reporting period must include in its annual debt report the balance of principal at the beginning of the reporting period, the amount paid during the reporting period, the amount remaining or outstanding at the end of the reporting period. The assumption is that the amount of principal at the beginning of the reporting period, less the amount repaid, will equal the amount outstanding at the end of the period.

With respect to reporting the use of proceeds, an issuer who has submitted a Report of Final Sale during the reporting period must include in its annual debt report an accounting of the use of proceeds, including debt proceeds available at the beginning of the reporting period, amount of proceeds spent during the reporting and purposes for which they were spent, and the amount of proceeds remaining at the end of the reporting period. Again, the assumption is that the amount available at the beginning of the reporting period, less the amount spent will equal the amount remaining at the end of the period. CDIAC does not anticipate defining or categorizing “use of proceeds”. Instead, CDIAC will provide a reporting form that will enable issuers to self-report use of proceeds on their annual debt report.

CDIAC realizes there are special considerations with regard to refunding bonds. CDIAC proposes the following approach to guide issuers in submitting annual debt reports.

### Scenario 2—Reporting Requirements for Refunded Issues



## Questions

CDIAC seeks input from issuers and members of the public finance community on the implementation of SB 1029, specifically in response to the following questions. Generally, CDIAC would like to learn about challenges or impediments to submitting annual debt reports, including who will submit the report and where the data will be sourced. Reference to issuers in the following questions are intended to include both issuers of public debt and other members of the public finance community who may assist public issuers.

1. Are there concerns with how CDIAC will implement the requirement that issuers make a certification that it has adopted local debt policies?
2. In the case of conduit issuers, are there concerns with how CDIAC will implement the requirement that the issuer obtain a certification from a governmental entity that may use the proceeds of the debt issue that it has adopted local debt policies?
3. Are there concerns with CDIAC's understanding of the term "adopted" with respect to local debt policies?
4. For a conduit borrower, are there concerns with CDIAC's understanding of the term "adopted" with respect to their local debt policies?
5. Are there concerns with establishing the level of reporting for the annual debt report as the debt issue previously reported to CDIAC as sold?
6. Are there concerns with regard to how CDIAC intends to interpret the term "authorized" in section 8855(k)?
7. Are there concerns with regard to how CDIAC intends to interpret the term "debt outstanding" in section 8855(k)?
8. Are there concerns with regard to how CDIAC intends to interpret the term "proceeds" in section 8855(k)?
9. Are there concerns with regard to how CDIAC intends to interpret the term "authority" and "authority lapsed" in section 8855(k)?
10. Are there concerns with regard to reporting debt authorized, debt outstanding, or use of proceeds as proposed by CDIAC?
11. Are there concerns with regard to reporting debt authorized, debt outstanding, or use of proceeds for refunding bonds?

October 26, 2016

Attachment: Senate Bill 1029



**Senate Bill No. 1029**

CHAPTER 307

An act to amend Section 8855 of the Government Code, relating to state government.

[ Approved by Governor September 12, 2016. Filed with Secretary of State  
September 12, 2016. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 1029, Hertzberg. California Debt and Investment Advisory Commission: accountability reports.

Existing law establishes the California Debt and Investment Advisory Commission to, among other things, maintain contact with state and municipal bond issuers, underwriters, investors, and credit rating agencies to improve the market for state and local government debt issues and to assist state and local governments to prepare, market, and sell their debt issues. Existing law requires the commission to collect, maintain, and provide comprehensive information on all state and all local debt authorization and issuance and to serve as a statistical clearinghouse for all state and local debt issuance.

This bill would additionally require the commission to track and report on all state and local outstanding debt until fully repaid or redeemed.

Existing law requires the issuer of debt of state or local government to submit reports to the commission, within specified timeframes, of the proposed issuance of debt and of final sale, as provided.

This bill would require that the report of proposed debt include a certification by the issuer that it has adopted local debt policies, which include specified provisions concerning the use of debt and that the contemplated debt issuance is consistent with those local debt policies.

This bill would also require a state or local public agency to submit an annual report for any issue of debt for which it has submitted a report of final sale on or after January 21, 2017. The bill would require the annual report to cover a reporting period of July 1 to June 30, inclusive, and to include specified information about debt issued and outstanding and the use of proceeds from debt during the reporting period. The bill would require that the report be submitted within 7 months after the end of the reporting period by any method approved by the commission. The bill would require the commission to consult with appropriate state and local debt issuers and organizations representing debt issuers prior to approving any annual method of reporting pursuant to these provisions, as provided.

This bill would make various findings and declarations regarding its provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** The Legislature hereby finds and declares all of the following:

(a) California's 4,200 units of local government have issued \$1.5 trillion in debt since 1984. The California Debt and Investment Advisory Commission (CDIAC) was created in 1982 to provide information, education, and technical assistance on debt issuance and investments to local public agencies and other public finance professionals. Over the past three decades, CDIAC has emerged as a national thought leader in public finance.

(b) Nationally, there is approximately \$3.7 trillion of state and local government debt outstanding. Of all outstanding state and local government debt, approximately 75 percent is held by households and mutual funds owned predominantly by households. State governments, local governments, and their stakeholders benefit from better data about public debt. Transparency on public debt promotes better government and market integrity. It is in the interest of the people that state and local agencies utilize technological opportunities to provide transparency to the public.

(c) State and local agencies should adopt comprehensive written debt management policies pursuant to the recommendation of the Government Finance Officers Association, a professional organization of over 18,000 public officials united to enhance and promote the professional management of governmental financial resources. These policies should reflect local, state, and federal laws and regulations.

(d) It is the intent of the Legislature that all debt issuance of state and of local governments be published in a single, transparent online database that allows the citizens of California to analyze, interpret, and understand how debt authorized by the public is utilized to finance facilities and services at the state and local level.

**SEC. 2.** Section 8855 of the Government Code is amended to read:

**8855.** (a) There is created the California Debt and Investment Advisory Commission, consisting of nine members, selected as follows:

(1) The Treasurer, or his or her designee.

(2) The Governor or the Director of Finance.

(3) The Controller, or his or her designee.

(4) Two local government finance officers appointed by the Treasurer, one each from among persons employed by a county and by a city or a city and county of this state, experienced in the issuance and sale of municipal bonds and nominated by associations affiliated with these agencies.

(5) Two Members of the Assembly appointed by the Speaker of the Assembly.

(6) Two Members of the Senate appointed by the Senate Committee on Rules.

(b) (1) The term of office of an appointed member is four years, but appointed members serve at the pleasure of the appointing power. In case of a vacancy for any cause, the appointing power shall make an appointment to become effective immediately for the unexpired term.

(2) Any legislators appointed to the commission shall meet with and participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For purposes of this chapter, the Members of the Legislature shall constitute a joint interim legislative committee on the subject of this chapter.

(c) The Treasurer shall serve as chairperson of the commission and shall preside at meetings of the commission.

(d) Appointed members of the commission shall not receive a salary, but shall be entitled to a per diem allowance of fifty dollars (\$50) for each day's attendance at a meeting of the commission not to exceed three hundred dollars (\$300) in any month, and reimbursement for expenses incurred in the performance of their duties under this chapter, including travel and other necessary expenses.

(e) The commission may adopt bylaws for the regulation of its affairs and the conduct of its business.

(f) The commission shall meet on the call of the chairperson, at the request of a majority of the members, or at the request of the Governor. A majority of all nonlegislative members of the commission constitutes a quorum for the transaction of business.

(g) The office of the Treasurer shall furnish all administrative assistance required by the commission.

(h) The commission shall do all of the following:

(1) Assist all state financing authorities and commissions in carrying out their responsibilities as prescribed by law, including assistance with respect to federal legislation pending in Congress.

(2) Upon request of any state or local government units, to assist them in the planning, preparation, marketing, and sale of debt issues to reduce cost and to assist in protecting the issuer's credit.

(3) Collect, maintain, and provide comprehensive information on all state and all local debt authorization and issuance, track and report on all state and local outstanding debt until fully repaid or redeemed, and serve as a statistical clearinghouse for all state and local debt. This information shall be available to the public.

(4) Maintain contact with state and municipal bond issuers, underwriters, credit rating agencies, investors, and others to improve the market for state and local government debt issues.

(5) Undertake or commission studies on methods to reduce the costs and improve credit ratings of state and local issues.

(6) Recommend changes in state laws and local practices to improve the sale and servicing of state and local debts.

(7) Establish a continuing education program for local officials having direct or supervisory responsibility over municipal investments and debt issuance. The commission shall undertake these and any other activities necessary to disclose investment and debt issuance practices and strategies that may be conducive for oversight purposes.

(8) Collect, maintain, and provide information on local agency investments of public funds for local agency investment.

(9) Publish a monthly newsletter describing and evaluating the operations of the commission during the preceding month.

(i) (1) The issuer of any proposed debt issue of state or local government shall, no later than 30 days prior to the sale of any debt issue, submit a report of the proposed issuance to the commission by any method approved by the commission. This subdivision shall also apply to any nonprofit public benefit corporation incorporated for the purpose of acquiring student loans. The commission may require information to be submitted in the report of proposed debt issuance that it considers appropriate. Failure to submit the report shall not affect the validity of the sale. The report of proposed debt issuance shall include a certification by the issuer that it has adopted local debt policies concerning the use of debt and that the contemplated debt issuance is consistent with those local debt policies. A local debt policy shall include all of the following:

(A) The purposes for which the debt proceeds may be used.

(B) The types of debt that may be issued.

(C) The relationship of the debt to, and integration with, the issuer's capital improvement program or budget, if applicable.

(D) Policy goals related to the issuer's planning goals and objectives.

(E) The internal control procedures that the issuer has implemented, or will implement, to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.

(2) In the case of an issue of bonds the proceeds of which will be used by a governmental entity other than the issuer, the issuer may rely upon a certification by that other governmental entity that it has adopted the policies described in subparagraphs (C), (D), and (E) of paragraph (1), and references to the "issuer" in those subparagraphs shall be deemed to refer instead to the other governmental entity.

(j) The issuer of any debt issue of state or local government, not later than 21 days after the sale of the debt, shall submit a report of final sale to the commission by any method approved by the commission. A copy of the final official statement for the issue shall accompany the report of final sale. If there is no official statement, the issuer shall provide each of the following documents, if they exist, along with the report of final sale:

(1) Other disclosure document.

- (2) Indenture.
- (3) Installment sales agreement.
- (4) Loan agreement.
- (5) Promissory note.
- (6) Bond purchase contract.
- (7) Resolution authorizing the issue.
- (8) Bond specimen.

The commission may require information to be submitted in the report of final sale that it considers appropriate. The issuer may redact confidential information contained in the documents if the redacted information is not information that is otherwise required to be reported to the commission.

(k) (1) A public agency, whether state or local, shall submit an annual report for any issue of debt for which it has submitted a report of final sale pursuant to subdivision (j) on or after January 21, 2017. The annual report shall cover a reporting period from July 1 to June 30, inclusive, and shall be submitted no later than seven months after the end of the reporting period by any method approved by the commission. Before approving any annual method of reporting pursuant to this subdivision, the commission shall consult with appropriate state and local debt issuers and organizations representing debt issuers for purposes that shall include, but not be limited to, making a proposed reporting method more efficient and less burdensome for issuers. The annual report shall consist of the following information:

(A) Debt authorized during the reporting period, which shall include the following:

- (i) Debt authorized at the beginning of the reporting period.
- (ii) Debt authorized and issued during the reporting period.
- (iii) Debt authorized but not issued at the end of the reporting period.
- (iv) Debt authority that has lapsed during the reporting period.

(B) Debt outstanding during the reporting period, which shall include the following:

- (i) Principal balance at the beginning of the reporting period.
- (ii) Principal paid during the reporting period.
- (iii) Principal outstanding at the end of the reporting period.

(C) The use of proceeds of issued debt during the reporting period, which shall include the following:

- (i) Debt proceeds available at the beginning of the reporting period.
- (ii) Proceeds spent during the reporting period and the purposes for which it was spent.
- (iii) Debt proceeds remaining at the end of the reporting period.

(2) Compliance with this subdivision shall be required for each issue of debt with outstanding debt, debt that has been authorized but not issued, or both, during the reporting period.

(3) The commission may, if technology permits, develop an alternate reporting method, provided that any alternate reporting method is in furtherance of the purpose of collecting the data required by this subdivision. Before approving any alternate annual method of reporting pursuant to this subdivision, the commission shall consult with appropriate state and local debt issuers and organizations representing debt issuers for purposes that shall include, but not be limited to, making a proposed reporting method more efficient and less burdensome for issuers.