

## **TITLE 4. BUSINESS REGULATIONS**

### **NOTICE OF PROPOSED RULEMAKING**

Pursuant to Section 44520 of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) are, by legislative mandate, necessary to carry out its powers and duties.

#### **Proposed Regulatory Action**

The Authority proposes to amend Section 8035 of Title 4, Division 11, Article 4 of the California Code of Regulations (the “Amended Regulations”) concerning the administration of the California Pollution Control Financing Authority’s Bond Program. These Amended Regulations are necessary to implement, interpret and make specific Article 4 of the California Pollution Control Financing Authority Act (the “Act”).

#### **Authority and Reference**

Authority: Sections 44520(a) and 44548(a)(3) Health and Safety Code. Section 44520(a) authorizes the Authority to adopt these proposed regulations to carry out its powers and duties. Section 44548(a)(3) allows the Authority to adopt regulations which provide for differential fees from participating parties based upon factors determined to be relevant by the Authority.

Reference: Section 44519, 44520, 44525, 44537.5, 44537.5 and 44548, of the Health and Safety Code.

#### **Informative Digest/Policy Statement Overview**

Existing law establishes the Authority to adopt all necessary rules and regulations to carry out its powers and duties under this division pursuant to Section 44520 of the Health and Safety Code.

#### Background of Section 8035.

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 order to fill the void created by the discontinuation of the SBA program and offset certain costs of issuance and letter of credit fees associated with tax-exempt bond issuance, the State Legislature established the collection of the Small Business Assistant Fund (SBAF) fees from large businesses obtaining conduit bond financing from the

Authority in 1985. Under this legislation, large businesses began paying into SBAF to support the Authority's programs that benefit small business borrowers.

Eligible small business (A small business is defined as 500 employees or less.) borrowers can receive up to \$210,000 towards its eligible costs of issuance, based on a sliding scale dependent on the Par amount of the transaction.

Currently, the Authority awards SBAF funds to eligible small business borrowers at the close of a transaction. SBAF funds may be used to pay certain transaction costs of issuance and certain post issuance requests. 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, other expenses directly related to the issuance of bonds that are normally paid from bond proceeds at the time of closing, and post issuance requests related to a change in a national interest rate index (eg. LIBOR to SOFR). Currently, the Authority maintains approximately \$14.95 million, available for use to qualified small business borrowers, in the SBAF account.

#### Need for an amendment to Section 8035

In early 2013, the Authority waived the SBAF fee for large businesses and between 2013 and 2015, there were 5 large businesses that successfully issued tax-exempt bonds with the Authority. Then, the Authority extended the waiver for an additional six months until December 31, 2016, and waived half of the fee from January 1, 2017, to June 30, 2017. Between June 30, 2016, and June 30, 2017, one large business issued bonds with the Authority. In the last four years, only two large businesses have issued bonds with the Authority.

Staff anticipates that the temporary fee suspension will entice large businesses to once again finance with the Authority. Suspension of the SBAF fee noticeably reduces a portion of the cost of issuance. The fee waiver could also make the Authority competitive in an increasingly high borrowing cost environment and incentivize national companies to focus investment in California.

With the current SBAF balance of approximately \$14.95 million, the temporary SBAF fee suspension will not affect the availability of SBAF assistance to small businesses. During the previous four years, the SBAF received fees from two large businesses and all eligible small businesses received SBAF assistance. See table on page 2 of the Initial Statement of Reasons which outlines the number of companies and amounts paid into and out of the SBAF over the past four years.

#### **Anticipated Benefits from This Regulatory Action**

CPCFA anticipates that the temporary fee waiver will entice large businesses to issue bonds by noticeably reducing a portion of the cost of issuance. The fee reduction could also serve as an incentive for national companies to focus investment in California

while their fees are lowered. CPCFA will also continue to utilize the current balance of the SBAF fund to help small businesses pay for the costs of issuance of tax-exempt bonds.

The proposed amendment to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

After conducting a review for any related regulations in this area, the Executive Director has determined that these are the only regulations concerning the SBAF fee paid by large businesses. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

### **Disclosure Regarding the Proposed Action**

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630:** None.

**Other non–discretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None.

**Cost impact on a representative private person or business:** The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Small Business:** The Amended Regulations will not have an adverse impact on small business in California and will not affect small business since they do not impose additional restrictions or cost on small business.

**Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:** The Authority has made an initial determination that the Amended Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## **Results of the Economic Impact Analysis**

**Assessment regarding effect on jobs/businesses:** The Amended Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

**Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:** The proposed amendments to sections 8035 will open more financing opportunities to businesses involved in pollution control projects. These types of projects will benefit the environment and the public health and safety.

## **Consideration of Alternatives**

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Amended Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Amended Regulations during the written comment period.

## **Agency Contact Person**

Written comments, inquiries and any questions regarding the substance of the Amended Regulations shall be submitted or directed to:

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### **Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Regulations to the Authority. The written comment period on the Amended Regulations ends at **5:00 p.m. on January 4, 2023**. All the comments must be submitted in writing to the Agency Contact Person identified in the Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

### **Availability of Initial Statement of Reasons And Text of Proposed Regulations**

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Room 266, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the Initial Statement of Reasons and the proposed text of the Adopted Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

### **Public Hearing**

CPCFA does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

### **Availability of Changed or Modified Text**

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public

for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

### **Availability of Final Statement of Reasons**

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

## PROPOSED TEXT OF REGULATIONS

### Title 4. Business Regulations Division 11. California Pollution Control Financing Authority Article 3. General Provisions Relating to Authority Actions

#### § 8035. Small Business Assistance Fund Fees.

- (a) The Authority shall charge an applicant who is not a public agency, or a small business as defined in Section 8020 a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance Fund (SBAF). The amount of the fee shall be sixty-six one-hundredths of one percent (.0066) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided, that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are refinanced with or converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of thirty-six one-hundredths of one percent (.0036) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged.
- (b) The Authority shall refund a portion of the fee charged pursuant to subdivision (a) of this section if the occurrence of a subsequent event causes the original fee to exceed the amount allowed by federal tax law provisions, causing the bonds to lose their tax-exempt status. The refund shall be the difference between the original fee charged and the maximum fee subsequently determined to be chargeable by bond counsel approved by the Authority.
- (c) The Authority shall refund a portion of the fee charged if, in the judgment of the Authority, the amount in the Small Business Assistance Fund account exceeds the amount needed to operate the Small Business Assistance Fund program and to assist small businesses obtain financing. If the Authority makes a refund pursuant to this subdivision, the amount of the refund payable to each applicant shall be computed by multiplying the total amount to be refunded by the percentage each applicant contributed in fees to the total fees collected pursuant to this section.
- (d) If an applicant refinances existing bonds with the issuance of new bonds, it shall receive a credit against the fee charged pursuant to this section in an amount equal to the net Small Business Assistance Fund fees paid on the earlier bonds.
- (e) The assessment of the fee provided for in subsection (a) is waived on all ~~new~~ financing transactions closing on or before December 31, 2016~~2026~~. ~~In the case of refunding bonds and conversion bonds, there will be no SBAF fee charged if the original bonds were issued after the effective date of this subsection and before December 31, 2016.~~

- (f) ~~The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions closing on or after January 1, 2017 and closing on or before June 30, 2017.~~

Authority cited: Section 44520 and 44548, Health and Safety Code.

Reference: Section 44548, Health and Safety Code.