

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: January 21, 2025**

**Request for Consideration and Approval of Amendment to Regulations for the
Bond Program
Pertaining to Small Business Assistance Fund (SBAF) Fees**

Prepared by: Morgan Matz

Summary. Staff requests Board approval to begin emergency and regular rulemaking to make the following changes to the California Pollution Control Financing Authority (the “Authority”) regulations pertaining to the Bond Program administrative fees and the Small Business Assistance Fund (SBAF) fees charged to large businesses: amend subsection (b) and remove subsection (d) of section 8034, and amend subsection (a) of section 8035.

The amended section 8034 will lower the administrative fee on qualified small business bond refundings by 50% to .001 and remove language stating that the Authority shall have the discretion to charge small businesses a different fee for certain refunding transactions. The amended section 8035 will lower the SBAF fee for large businesses, which is currently suspended until December 31, 2026, by 50% to 33 basis points, and eliminate the recalculation and/or collection of the SBAF fee for large businesses in certain refunding transactions.

Background. 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 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 (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 issuance and post issuance costs. Acceptable SBAF subsidy uses include, but are not limited to, bond counsel fees, underwriter or placement agent fees or discount and related expenses,

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printing fees, fees charged by 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 costs related to a change in a national interest rate index (eg. LIBOR to SOFR). Currently, the Authority maintains approximately \$16.96 million, available for use to qualified small business borrowers, in the SBAF account.

Need for SBAF Reforms. Bond Program staff compared the Bond Program fees schedule to competing and similarly structured financing authorities including: California Infrastructure and Economic Development Bank (IBank), California Enterprise Development Authority (CEDA), California Municipal Finance Authority (CMFA), California Public Finance Authority (CalPFA), California School Financing Authority (CSFA), and California Statewide Communities Development Authority (CSCDA). This comparison showed that for small businesses issuing less than \$13.75 million dollars, CPCFA provides an extremely competitive, if not the least expensive, option for issuing exempt facility bonds/notes. CPCFA's fees are the lowest in all instances; additionally, the SBAF subsidy makes our program the most financially sensible option for a small business.

However, in some instances CPCFA's fees charged to large business borrowers far exceed fees charged by other issuers. CPCFA's base fees are competitive; unfortunately, the SBAF fee for large business borrowers pushes CPCFA's total fees to the highest amount charged for exempt facility projects by roughly \$200,000 for par amounts in the \$100 million or more range.

This comparison and analysis supports the similar feedback CPCFA received from several industry professionals who provided their thoughts on why large businesses had sought to finance through CPCFA's competitors.

Based on this analysis and feedback received from industry professionals, CPCFA proposes several changes to its fee structure. For small businesses, the changes to the fee structure will extend more assistance in the form of smaller fees. Fees will also be reduced for large businesses, making CPCFA more competitive with other conduit issuers, to increase its volume of large business transactions. The table below provides a list of the proposed changes to CPCFA Bond Program Fees, the steps needed to implement the changes, and the benefits:

Changes	Steps to Implement Changes	Benefits
Lower the Administrative Fee on Qualified Small Business Refundings by 50% to .001.	Regulation Update: Amend § 8034. General Fees. Subsection (b).	<ul style="list-style-type: none"> • Provides more assistance to small businesses. • Allows small businesses additional flexibility when considering financing options and responding to market conditions.

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Changes	Steps to Implement Changes	Benefits
Update language to remove the term "...Authority shall have the discretion to charge..." language.	Regulation Update: Remove § 8034. General Fees. Subsection (d).	<ul style="list-style-type: none"> • Eliminates ambiguous language and potential for confusion related to CPCFA's ability to adjust fees at its discretion.
Lower the SBAF fee for LBs to 33 bps.	Regulation Update: Amend § 8035. Small Business Assistance Fund Fees. Subsection (a).	<ul style="list-style-type: none"> • Increases CPCFA's competitiveness with larger businesses. • Promotes the LB purchase of cleaner equipment and manufacturing goods and services.
Eliminate the collection or recalculation of SBAF Fee for LBs on a refunding transaction.	Regulation Update: Amend § 8035. Small Business Assistance Fund Fees. Subsection (a).	<ul style="list-style-type: none"> • Addresses a concern we received as feedback, that large businesses did not want to risk additional costs when working with CPCFA.

Proposed Regulation Change. Remove subsection 8034(d) and amend subsection 8034(b) which will read as follows (amendments are underlined and deletions are shown in strikethrough):

§ 8034(b). In all other financings, the fee shall be ~~two tenths of one percent (.002)~~ one tenth of one percent (.001) of the face value of the bonds issued.

~~§ 8034(d). Notwithstanding subsection (a) and (b), for applications received after July 1, 2016, where the financing requested by a small business applicant is a refunding of a prior sale of bonds previously issued by the Authority and the refunding is included as part of an application which also requests new financing that is greater than the amount refunded by the small business applicant for a new proposed project, the Authority shall have the discretion to charge the small business applicant the Authority's reasonable and necessary expenses allocable to the refunding request in lieu of the fee described in subsection (b) normally applicable to refundings.~~

Amend subsection 8035(a) which will read as follows (amendments are underlined and deletions are shown in strikethrough):

§ 8035(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)~~ thirty-three one-hundredths of one percent (.0033) of the face value of any tax exempt bonds issued and three tenths of one

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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.

See Attachment A for a full copy of the proposed regulation changes.

Regulatory Process. To begin emergency rulemaking, the Authority will post the emergency notice and text on our website, mail the emergency notice to interested parties, and submit the proposed regulation changes to OAL for review. Submission of the regulations starts a 5-day public comment period and a 10-day OAL review period. If the regulations are approved, they will be filed with the Secretary of State and take immediate effect for a period of 180 days.

To begin regular rulemaking, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website.

The Notice starts a 45-day public comment period. After that time, staff will review, consider and/or respond to any public comments, and present the final form of the regulations to the CPCFA Board for approval.

If staff makes substantial modifications to the regulations in response to public comment, the revised regulations must be posted and mailed to interested parties starting a 15-day public comment period before CPCFA Board approval. After CPCFA Board approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

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January 21, 2025	CPCFA Board meeting – Resolution for proposed regulations. If approved, 5-day notice posted on CPCFA website and sent to interested parties.
January 28, 2025	Emergency regulations filed with OAL.
February 2, 2025	5-day public comment period ends
February 7, 2025	10-day OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
August 6, 2025	Emergency regulations expire.
<u>Permanent Regulations</u>	
February 11, 2025	CPCFA submits a Notice of Proposed Rulemaking to OAL for review.
February 21, 2025	Notice of proposed rulemaking is published by OAL in the California Regulatory Notice Register, posted on CPCFA's website, and distributed to all interested parties. 45-day public comment period begins. If requested, public hearing on proposed regulations will be held.
April 8, 2025	Public comment period regarding proposed regulations ends.
April 15, 2025	CPCFA Board considers approval of final regulations*
April 16, 2025	If approved, deliver permanent regulation package to OAL for 30-day review
May 16, 2025	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective. Authority staff will post receipt of approval on the Authority website.

*If substantial modifications are made to the proposed regulations in response to public comment, then the process will be lengthened to accommodate a 15-day public comment period as follows:

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April 14, 2025	If proposed regulation amendments are substantially modified, Notice of Proposed Changes is posted and mailed to initiate a 15-day comment period.
April 29, 2025	15-day public comment period ends.
May 20, 2025	CPCFA Board considers approval of final regulations.
May 21, 2025	If approved, deliver permanent regulation package to OAL for 30-day review.
June 20, 2025	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective. Authority staff will post receipt of approval on the Authority website.

Recommendation. Staff recommends the adoption of a resolution to amend regulations relating to administrative fees and SBAF fees for the Bond Program and to authorize staff to undertake the emergency rulemaking proceedings followed by regular rulemaking proceedings and other actions related to the Authority bond program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING
EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER
ACTIONS RELATED TO THE BOND PROGRAM AND SMALL BUSINESS
ASSISTANCE FUND (SBAF) FEES**

January 21, 2025

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its bond program administrative fees and the Small Business Assistance Fund fees under Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the bond program and the Small Business Assistance Fund.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the January 21, 2025 meeting is hereby approved in substantially the form submitted by staff. The Chair, Executive Director, and Deputy Executive Director are each hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting as regular regulations.

Section 2. The Chair, Executive Director, and Deputy Executive Director of the Authority are each hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

Attachment A

PROPOSED TEXT OF REGULATIONS

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

§ 8034. General Fees.

- (a) Where the financing requested is not eligible for allocation of volume cap pursuant to 26 U.S.C. Section 146, the Authority charges a fee for reasonable and necessary administrative and program expenses connected with the sale of the bonds. For an applicant who is not a small business as defined in Section 8020, the fee shall be one tenth of one percent (.001) of the face value of the bonds issued. In addition, the Authority will charge an annual fee each year for the life of the financial assistance in the amount of five one-hundredths of one percent (.0005) of the remaining balance of the financial assistance, with a minimum annual fee of \$1,000 and a maximum annual fee of \$75,000.
- (b) In all other financings, the fee shall be ~~two tenths of one percent (.002)~~ one tenth of one percent (.001) of the face value of the bonds issued.
- (c) The applicant shall also reimburse the Authority for all reasonable and necessary out of pocket expenses which the Authority may incur at the applicant's request and all other expenses direct or indirect, properly allocable to the proposed financing. Unless paid out of the proceeds of the bonds issued, all fees for a particular proposed financing shall be paid by the applicant and deposited in the Authority Fund. The Authority shall be authorized to use general fees deposited in the Authority Fund to support Authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 7 of this Division 11.
- ~~(d) Notwithstanding subsection (a) and (b), for applications received after July 1, 2016, where the financing requested by a small business applicant is a refunding of a prior sale of bonds previously issued by the Authority and the refunding is included as part of an application which also requests new financing that is greater than the amount refunded by the small business applicant for a new proposed project, the Authority shall have the discretion to charge the small business applicant the Authority's reasonable and necessary expenses allocable to the refunding request in lieu of the fee described in subsection (b) normally applicable to refundings.~~

§ 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~~

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~~one percent (.0066)~~ thirty-three one-hundredths of one percent (.0033) 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 financing transactions closing on or before December 31, 2026.

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

Reference: Section 44548, Health and Safety Code.