

## 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 Sections 8034 and 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), 44520(b), and 44526(c), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be "necessary for the immediate preservation of the public peace, health and safety, and general welfare." Sections 44520(a) and 44526(c) of the Act authorize the Authority to fix and revise from time to time fees and charges for the loan of moneys to finance pollution control facilities.

Reference: Section 44526 of the Health and Safety Code. These regulations implement, interpret and make specific Sections of the Act by amending Sections 8034 and 8035 of Title 4, Division 11, Article 3 of the California Code of Regulations.

#### 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.

#### **§ 8034. General Fees**

Section 8034 (b). Lowers the administrative fee on qualified small business refundings by 50% to .001.

**Necessity.** This amendment provides enhanced assistance to small businesses in the form of lower fees and allows small businesses additional flexibility when considering financing options and responding to market conditions.

Section 8034 (c). Maintains the administrative fee on all financings not subject to the terms specified in subsections (a) and (b) at .002.

**Necessity.** Formerly subsection (b), this subsection clarifies the administrative fee to be assessed in all transactions not specified in elsewhere in Section 8034.

Section 8034 (d). Repealed.

**Necessity.** In order to ensure that small businesses seeking to finance through the Authority are able to accurately calculate associated costs, it is necessary to repeal subsection (d), which in small business refunding transactions grants the Authority “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**

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 Small Business Assistance 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 (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, 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's 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. In these transactions, 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 similar feedback CPCFA received from several industry professionals who provided their thoughts on why large businesses had sought to finance through CPCFA's competitors.

Section 8035 (a). Lowers the SBAF fee charged to large businesses by 50% from 0.66% of the face value of the bonds issued to 0.33%. Repeals language specifying that SBAF fees are to be reassessed in refunding transactions.

**Necessity.** Analysis of multiple possible financing scenarios shows that lowering the SBAF fee for large businesses by 50% serves the dual purpose of bringing the Authority's fees down to a level that is competitive with other bond issuers while collecting enough revenue to ensure the SBAF will stay fully funded, making assistance available to all qualified small business applicants. In addition, eliminating the reassessment of SBAF fees in refunding transactions is projected to make financing with the Authority more attractive to large businesses that may desire to initiate multiple refunding transactions over the life of a bond sale.

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

The Authority anticipates that the fee reductions and reduced fee rate variability produced by these amendments will entice both large and small businesses to issue bonds through the Authority by significantly reducing a portion of the cost of issuance. The fee reduction may also serve as an incentive for national companies to focus investment in California. The Authority 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 amendments 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 regulations related to this area, the Executive Director has concluded that these are the only regulations concerning administrative and SBAF fees charged by the Authority's bond program. 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 as they do not impose additional restrictions or cost on small business. Small businesses choosing to refund bonds through CPCFA may be positively impacted by reduced administrative fees.

**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 8034 and 8035 will open more financing opportunities and flexibility 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:

Morgan Matz, Staff Services Analyst  
California Pollution Control Financing Authority  
901 P Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 654-6061  
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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 **on June 2, 2025**. All 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 901 P Street, 3<sup>rd</sup> Floor, 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/cpcfa/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

#### Text of Modified Regulations

#### **§ 8034. General Fees.**

The Authority charges the following fees for reasonable and necessary administrative and program expenses connected with the sale of bonds:

- (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) For small business applicants in refunding transactions, the fee shall be one tenth of one percent (.001) of the face value of the bonds issued.
- ~~(c)(b)~~ In all other financings, the fee shall be two tenths of one percent (.002) of the face value of the bonds issued.
- ~~(d)(e)~~ 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.~~

Authority cited: Section 44520, Division 27, Health and Safety Code.

Reference: Sections 44520, 44525, and 44537.5, Division 27, Health and Safety Code.

#### **§ 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)~~ 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.