

**TITLE 4 DIVISION 9.6 CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION
NOTICE OF PROPOSED ACTION**

The California Debt and Investment Advisory Commission (the “Commission”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Commission will hold a public hearing beginning at 1:00 p.m. on Thursday, September 15, 2016 at the State Treasurer’s Office, 915 Capitol Mall, Room 587, Sacramento, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. Comments may be submitted by fax, e-mail, postal service, or delivery service to the Commission contact below. The written comment period closes at 5:00 p.m. on September 16, 2016. The Commission will only consider written comments received at the Commission office by that time.

Submit written comments to:

Robert Berry, Deputy Executive Director
California Debt and Investment Advisory Commission
915 Capitol Mall, Room 400
Sacramento, CA 95814
Fax: (916) 654-7440
E-mail: CDIAC@treasurer.ca.gov

AUTHORITY AND REFERENCE

Authority

Government Code section 8855(e) authorizes the Commission to adopt bylaws for the regulation of its affairs and the conduct of its business.

Reference

These proposed regulations implement, interpret, and make specific Government Code sections 8855(h)(3), 8855(i), 8855(j), 8856, 5922(b), 6548.5, 6588.7(e)(2), 6599.1, 6599.1(a), 6599.1(b), 6599.1(c), 53359.5, 53359.5(a), 53359.5(b), 53359.5(c), 53509.5(b), 53583(c)(2)(b), 54418; Education Code sections 15146(d)(2), 15146(e); and Water Code section 20560.2.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action interprets, clarifies, and makes specific the requirements of state and local government entities to submit information to the Commission related to their authorization and issuance of debt and the annual fiscal status and specific events related to bonds issued pursuant to the Mello-Roos Community Facilities Act of 1982 and Marks-Roos Local Bond Pooling Act of 1985. This rulemaking action also makes specific the characteristics of a debt issue that would qualify for an exception to the statutorily authorized issuance fee.

Existing Law

Government Code section 8855 generally establishes the governance structure and responsibilities of the Commission. It requires the Commission, among other obligations, to collect, maintain, and provide comprehensive information on all state and all local debt authorization and issuance. It establishes the means by which the Commission collects this information from state and local government entities by requiring submittal of a report of proposed debt issuance (“RPDI”) and a report of final sale (“RFS”) [Government Code sections 8855(i) and (j)]. In the case of both reports, one required upon authorization and the other required upon issuance, existing law establishes the requirements for submittal timeliness based on the debt sale date and gives discretion to the Commission with regard to the information contained in the reports and the method of submittal.

Under numerous sections of Government, Education, and Water Code, state and local government entities are required to submit a variety of debt authorization and issuance related information to the Commission either by specific reference to the Commission, as the recipient, or Government Code section 8855. Existing laws related to this proposed action are summarized below.

Existing law requires:

- State or local government issuers to provide notice to the Commission of their intent to issue bonds payable in non-US currency [Government Code section 5922(b)].
- Issuers of revenue bonds to disclose to the Commission the level of fees and charges imposed for issuance [Government Code section 6548.5].
- Issuing authorities to notify the Commission of their intent to issue rate reduction bonds and to report to the Commission the amount of savings achieved from the issuance versus bonds repaid from their public utility revenues [Government Code section 6588.7(e)(2)].
- Legislative bodies authorizing the issuance of bonds pursuant to the Marks-Roos Bond Pooling Act of 1985 to notify the Commission of the proposed sale [Government Code section 6599.1(a)].
- Legislative bodies authorizing the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 to notify the Commission of the proposed sale [Government Code section 53359.5(a)].
- Governing bodies of issuers of bonds to be repaid with ad valorem property taxes to submit an itemized summary of the costs of the bond sale to the Commission [Government Code section 53509.5(b)].
- Local agencies that have sold refunding bonds on a private or negotiated basis to send a written statement to the Commission within two weeks of sale explaining why this sale method was used versus a public sale method [Government Code section 553583(c)(2)(b)].
- Legislative bodies of a local agencies that have sold revenue bonds on a private sale basis to send a written statement to the Commission within two weeks of sale explaining why this sale method was used versus a public sale method [Government Code section 54418].

- Governing boards of school and community college districts that have issued bonds to be repaid with ad valorem property taxes to submit an itemized summary of the costs of the bond sale to the Commission [Education Code section 15146(d)(2)].
- Governing boards of school and community college districts to ensure compliance with Government Code 8855 regarding the sale or planned sale of bonds repaid with ad valorem property taxes [Education Code section 15146(e)].
- Irrigation districts owning or operating facilities for the generation, transmission, distribution, or retail sale of electricity to provide notice to the Commission of a proposed sale of debt used to finance works of the district [Water Code section 20560.2].

Existing law requires legislative bodies that have sold bonds pursuant to the Marks-Roos Bond Pooling Act of 1985 (“Marks-Roos bonds”) to annually submit to the Commission specific information regarding the status of bonds that have not reached final maturity [Government Code section 6599.1(b)]. Additionally, legislative bodies that have sold bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (“Mello-Roos bonds”) have a comparable annual reporting requirement under existing law [Government Code section 53359.5(b)]. Existing law also requires issuers of Marks-Roos and Mello-Roos bonds to report to the Commission, within ten days of occurrence, if a scheduled payment of principal and interest is missed or if reserve funds have been drawn to pay a scheduled payment of principal and interest. In the case of Mello-Roos bonds, the reserve draw must take the reserve fund below a minimum balance [Government Code sections 6599.1(c) and 53359.5(c)].

Government Code section 8856 establishes the mechanism to provide funding for the Commission to carry out its responsibilities under Government Code Title 2, Division 1, Chapter 11.5. Existing law states that the Commission *may* charge fees to the lead underwriter, the purchaser, or the lender in an amount equal to one-fortieth of one percent of the principal amount of the debt issue, but not to exceed five thousand dollars for any one issue.

Policy Objectives

The regulations proposed in this rulemaking action will allow for the implementation of Government Code sections 8855(h)(3), (i), and (j) by defining numerous procedurally operative terms in existing law, clearly and specifically identifying the information required in the RPD and RFS, establishing the method of submission of the RPD and RFS to the Commission, and providing a practical method for reporting irregular debt structures and features in a manner consistent with statutory intention. The proposed regulations will also provide an efficient means for issuers to comply with the additional statutes summarized above by incorporating and consolidating their specific information requirements into the RPD and RFS and harmonizing these laws with Government Code section 8855 through the definition of operative terms. In the case that affected state and local agencies are not able to meet the timeliness requirements of statute when using the RFS to communicate the reasons for selling refunding or revenue bonds through a non-public method, the proposed regulations specify the content of the written notification and the method of submission.

The regulations proposed in this rulemaking action will provide clarity and the additional specificity necessary for the Commission to implement the statutes covering the submission of annual status reports on Marks- and Mello-Roos bonds by defining key terminology, establishing the reporting period, providing the basis (annual or cumulative) of the data specified in statute, and specifying the types and condition of the indebtedness that is subject to the annual reporting under Government Code section 6599.1(b). The proposed regulations will establish the contents of the notification required when Marks- and Mello-Roos bond payments are missed or reserves are drawn upon and the method of submittal to the Commission of all the reports referenced here under existing law.

The regulations proposed in this rulemaking action will define operative terms to allow the Commission to implement Government Code section 8856. The proposed regulations also aim to achieve balance between fee revenues received by the Commission and its annual appropriation from the Legislature by utilizing the permissive authority in Government Code 8856 to establish exceptions to the fee.

Anticipated Benefits of the Proposed Regulations

The regulations will considerably enhance the clarity of the statutory requirements of state and local agencies to submit information to the Commission upon the authorization and issuance of debt. Well-defined requirements and procedures will make the submittal process less burdensome on issuers, increase the efficiency of the Commission's data collection and reporting operations, help to insure enduring data integrity and consistency, and enhance the transparency of public agency debt transactions to the public, policy makers, debt issuers, and other market participants.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

After conducting a review for any regulations that relate to or affect the subject matter of this rulemaking action, the Commission has determined that these proposed regulations are not inconsistent or incompatible with existing regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on Local Agencies and School Districts

None.

Cost or Savings to Any State Agency

The Commission anticipates that the proposed regulations regarding the method of submission of reports will enhance the efficiency of the Commission's capacity to collect, maintain, and provide comprehensive information on state and local debt authorization and issuance. While the efficiency gains do represent a savings, the gains realized from the method of submission will be redeployed to improve and enhance other data collection processes and absorb future workload with existing resources.

A state agency that acts as a lender or a purchaser of a debt issue would benefit from the proposed issuance fee exceptions. Based on debt issuance over the last five-year and last ten-year periods, the Commission estimates cost savings to state agencies from the fee exceptions to be less than \$10,000, annually.

Cost to Any Local Agency or School District which Must Be Reimbursed in Accordance with Government Code sections 17500 through 17630

None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies

Entities of local government organized as authorities and acting as purchasers or lenders of public debt would benefit from the proposed issuance fee exceptions. Based on debt issuance over the last five-year and last ten-year periods, the Commission estimates the savings to these specific local entities from the fee exceptions to be in a range of approximately \$150,000 to \$160,000, annually.

Cost or Savings in Federal Funding to the State

None.

Cost Impacts on a Representative Private Person or Business

The Commission concludes that the regulations regarding issuance fee exceptions will result in a positive cost impact to representative private persons or businesses. The positive impact would be in a range of approximately \$710,000 to \$770,000, annually and will be distributed among dozens of different firms engaged as underwriters, purchasers, or lenders in California public debt issuance transactions.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals

The regulations proposed will directly affect businesses engaged as underwriters, purchasers, or lenders in California public debt issuance transactions. However, the Commission concludes that the economic impact is positive, not adverse. Further, the positive impact of the proposed regulations is not significant and is distributed among a large number of inter- and intra-state businesses engaged in public debt issuance. Due to these facts, the Commission concludes that the proposed regulations will not materially advantage an out-of-state business to the detriment of a California business or affect the ability of California business to compete with out-of-state firms.

Significant Effect on Housing Costs

None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Commission concludes that the rulemaking will create a positive economic impact to California public agencies derived from process efficiencies and the proposed fee exceptions on specific types of issues. Businesses engaged as underwriters, purchasers, or lenders in California public debt issuance transactions will also derive benefit from the proposed fee exceptions. However, the Commission concludes that the impact is unlikely to affect (1) the creation or elimination of jobs in either the public or private sectors, (2) the creation of new businesses or elimination of existing businesses within California, and (3) the expansion of businesses currently doing business in the state.

Benefits of the Proposed Action

The Commission concludes that proposed regulations will help to insure long-lasting integrity and consistency of the debt data submitted by public agencies and allow the Commission to provide a high-level of information transparency to Californians about the authorization and issuance of debt by their state and local governments.

Small Business Determination

The proposed regulations affect businesses engaged as underwriters, purchasers, or lenders in California public debt issuance transactions. Predominately, the businesses engaged in these fields are large banks or financial institutions, but the possibility of engaging a business in these roles that would be considered small is possible. Because an effect on small business cannot be completely excluded, the Commission has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, 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 provisions of law.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled public hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Robert Berry, Deputy Executive Director
California Debt and Investment Advisory Commission
915 Capitol Mall, Room 400
Sacramento, CA 95814
(916) 653-5167

Designated back-up contact person for these inquiries:

Joyce Ward, Manager, Technical Assistance Section
California Debt and Investment Advisory Commission
915 Capitol Mall, Room 400
Sacramento, CA 95814
(916) 651-7377

Please direct all requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which this rulemaking is based to Joyce Ward at the address above.

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATIONS, AND RULEMAKING FILE

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, and the economic impact analysis. Copies may be obtained by contacting Joyce Ward at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with changes indicated, available to the public for at least fifteen days before the Commission adopts the regulations as revised. The Commission will accept written comments on the modified regulations for 15 days after the date they are made publically available. Please send requests for copies of any modified regulations to the attention of Joyce Ward at the address indicated above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Joyce Ward at the address above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Commission website at <http://www.treasurer.ca.gov/cdiac/>.