

Guidance on Complying with SB 1029
Release Date: December 28, 2016

On October 26, 2016, the California Debt and Investment Advisory Commission (CDIAC) issued a Request for Comment on the implementation of Chapter 307, Statutes of 2016 (Senate Bill 1029, Hertzberg). The comments received have helped CDIAC develop guidance for issuers of public debt seeking to comply with the requirements of SB 1029.

The guidance offered in this letter dated December 28, 2016 is based upon CDIAC's current understanding of the information required and its ability to receive that information from issuers. It is likely that CDIAC will offer additional guidance and ultimately adopt regulations in the future as both it and issuers adapt to the requirements of SB 1029.

CDIAC is making every effort to provide intuitive, on-line processes that will minimize the efforts of issuers while maximizing compliance and the quality of the information provided. It is committed to working with issuers and members of the public finance community to achieve these outcomes.

Guidance on Government Code section 8855(i)

Government Code section 8855(i) requires any issuer of public debt to provide to CDIAC no later than 30 days prior to the sale of any debt issue a report of the proposed issuance. CDIAC provides issuers the ability to submit this Report of Proposed Debt Issuance electronically. Effective January 1, 2017, issuers must certify on the Report of Proposed Debt Issuance that they have adopted local debt policies concerning the use of debt and that the proposed debt issuance is 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 the proceeds of the debt issue, then the issuer may rely on a certification by that other governmental entity that it has adopted local debt policies that 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.

Section 8855(i) reads “The report of proposed debt issuance shall include a certification by the issuer that it has adopted local debt policies...” For the purposes of applying this section issuers should understand the term “local debt” as being debt issued for the benefit of a local agency. As a result, section 8855(i), as it specifically relates to debt policies, does not apply to state agencies, instrumentalities of the state, or to non-governmental entities such as for-profit or not-for-profit organizations that may issue or receive proceeds from a debt issuance. Similarly, the term “other governmental entity” in section 8855(i)(2) means an entity of local government.

Issuers should interpret the meaning of the term “adopted” in section 8855(i) to mean by act of the governing body. If the issuer’s governing body has taken an action to delegate the authority to “adopt” local debt policies to administrative staff, the actions of these staff may meet the requirements of section 8855(i)(1). An issuer’s local debt policies may be contained within a single document or be the composite of more than one documents. Irrespective of the form, the local debt policies must be adopted by the issuer.

In order to comply with section 8855(i)(1), then, the issuer must certify on the Report of Proposed Debt Issuance 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. Issuers will be able to make this certification after January 1, 2017 using the Report of Proposed Debt Issuance. The new form will include the following statement followed by three acceptable responses in the form checkboxes.

“The issuer certifies that it has complied with GC section 8855(i) with respect to local debt policies. YES NO NA ”

For issuers that issue debt for their own purposes that respond to this statement with a YES response are confirming that they certify that they have adopted local debt policies in compliance with section 8855(i). A response of NO indicates that they cannot certify that they have adopted local debt policies in compliance with section 8855(i)(1). Issuers that are not issuing local debt, such as the state or instrumentality of the state, may respond NA because they do not issue local debt.

If the issuer is a conduit issuer, a YES response means that the issuer certifies that it has adopted local debt policies in compliance with section 8855(i)(1). Furthermore, the local debt policies include (A) through (E) of section 8855(i)(1) OR the issuer is certifying that it has adopted local debt policies in compliance with section 8855(i)(1) and the policies include (A) and (B) AND they have relied upon a certification from the other governmental entity that it has adopted local debt policies in compliance with section 8855(i)(1) and the local debt policies of the other government entity includes (C), (D) and (E). A NO response means that it does not certify that it has adopted local debt policies in compliance with section 8855(i) or it has not received a certification from the other governmental entity that it has. An NA response indicates that the entity that will use the proceeds of the sale of debt is a non-governmental entity (e.g., a private non-profit) or the conduit is not itself an issuer of local debt (e.g. state instrumentality).

It is incumbent upon the issuer to interpret and apply subparts (A) through (E) to their local debt policies as it is for the governmental entity that may use proceeds from the sale of debt to interpret and apply subparts (C), (D) and (E) to their local debt policies.

Guidance on Government Code section 8855(k)

Effective January 1, 2017, state and local issuers will be required to submit an annual debt transparency report for any issue of debt for which they have submitted a Report of Final Sale during the reporting period. The annual debt transparency report is due to CDIAC within seven (7) months of the close of the reporting period, defined as July 1st to June 30th. This provision makes January 31st the effective deadline for submittal of the annual debt transparency report. Issuers will continue to submit an annual debt transparency report to CDIAC on or before January 31st each year until the later date on which the debt is no longer outstanding or the proceeds have been fully spent. Debt issued between January 1, 2017 and June 30, 2017, and reported to CDIAC on or after January 21, 2017 will be required to submit an annual debt transparency report no later than January 31, 2018.

CDIAC will provide an online form to enable issuers to submit information to CDIAC in compliance with section 8855(k). CDIAC is in the process of both creating the form and developing the underlying functional applications to support data submission and reporting. It is very likely that the form and the process for complying with SB 1029 using the form will evolve over time as CDIAC and issuers adapt to this new reporting requirement.

At a minimum, the annual debt transparency report will require issuers to include:

- 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.

In compliance with section 8855(k)(1)(A), issuers must provide in their annual debt transparency report to CDIAC the “debt authorized during the reporting period”. Issuers should understand the term “authorized” to mean a formal action of the governing body or a vote of the electorate or taxpayers establishing a maximum amount to be borrowed. In the case of certain loans, commercial paper programs, and some refunding programs, this action may be a

resolution of the governing body establishing a maximum limit that the issuer may borrow. For debt issued in more than one sale or transaction that will generate more than one Report of Final Sale, the “debt authorized” should be understood to mean to total amount approved by the voters or taxpayers or by act of the governing body. For debt issued in a single sale or transactions, the “debt authorized” is expected to equal the amount of the debt reported on the Report of Final Sale.

Issuers submitting a Report of Final Sale between January 21, 2017 and June 30, 2017, must include in their annual debt transparency report, due on or before January 31, 2018, the following information:

- 1) The total amount of debt authorized as of January 1, 2017;
- 2a) The amount of additional debt authorized during the reporting period;
- 2b) The amount issued between January 1, 2017 and June 30, 2017 from the authority available in 1) and 2a), combined;
- 3) The amount of debt authorized that was not issued between January 1, 2017 and June 30, 2017 (logically, the result of (1 plus 2a) minus 2b); and,
- 4) The amount of debt authority (represented by (1 plus 2a)) that has lapsed between January 1, 2017 and June 30, 2017.

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.

In subsequent years, the amount of debt authorized at the beginning of the period will be equivalent to the amount of debt authorized but not issued at the end of the prior reporting period less 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 transparency 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 transparency 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 a ballot measure 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 transparency report.

Issuers must provide on the annual debt transparency report the debt outstanding during the reporting period. Issuers should understand the term “debt outstanding” to mean the original principal received from the sale of debt that has not been fully repaid to debtholders.

In the case of a zero-coupon bond or capital appreciation structure, issuers should consider the original principal to be the full accreted value of the bonds at the end of the reporting period. Because of the nature of capital appreciation structure an issuer’s annual debt transparency report is likely to report an increase in the “debt outstanding” year over year.

Issuers submitting a Report of Final Sale between January 1, 2017 and June 30, 2017, must include in their annual debt transparency report, due on or before January 31, 2018, the following information:

- 1) The original principal received on the date of sale.
- 2) The amount of the principal paid off between January 1, 2017 and June 30, 2017.
- 3) The amount of principal remaining as of June 30, 2017.

Issuers must provide on the annual debt transparency report the use of debt proceeds during the reporting period. Issuers should understand the term “proceeds” to mean all funds received from the sale of debt inclusive of premium and discount.

Issuers submitting a Report of Final Sale between January 21, 2017 and June 30, 2017, must include in their annual debt transparency report, due on or before January 31, 2018, the following information:

- 1) Debt proceeds available upon the date of settlement.
- 2) The amount of proceeds spent between the date of settlement and June 30, 2017 and the purposes for which these proceeds were spent.
- 3) The amount of proceeds remaining as of June 30, 2017.

CDIAC does not anticipate defining or categorizing “purposes” for which the proceeds were spent. Instead, CDIAC will provide a reporting form that will enable issuers to self-identify categories of “purpose” on their annual debt transparency report.

Issuers must continue to submit annual debt transparency reports until the debt has been paid off or the bond proceeds have fully spent.

There are special considerations issuers of refunding debt must take into account. If the issuer fully refunds a debt with a refunding debt, the issuer must submit an annual debt transparency report on both the refunding debt and a final annual report on the refunded debt. If there are any proceeds left in the refunded debt, the issuer must continue to report on the refunded debt until the proceeds have been spent. If the issuer partially refunds a debt with a refunding debt, the issuer must report on the refunded debt and the refunding debt until either the debtholders are full repaid or the proceeds have been fully spent, whichever is later. In other words, even though the proceeds of the refunding debt were used to pay off the refunded debt, the issuer must take the approach that the purpose of the annual debt transparency report is to account for the use of proceeds received from the original debt issuance.

If the refunding debt includes new money, the issuer must report the use of proceeds of the portion of refunding debt used to refund the refunded debt as “refunding <debt identifier>” AND the use of new money proceeds for their intended uses. If the refunding debt includes no new money, the issuer must report the use of proceeds of the refunding debt as “refunding <debt identifier>”. The debt identifier is currently the CDIAC Issue Number.

In reporting on the use of proceeds that are received from the sale of debt but are comingled with other funds not received from the sale of debt, the issuer should report on the proceeds from the sale of debt only.

Issuers of conduit bonds must report on the use of proceeds as used by the borrower. Conduit issuers should not report that the proceeds were “lent to a borrower”, but for the purposes to which the borrower used the proceeds. The issuer may wish to assign responsibility to the borrower to report on the use of proceeds. Conduit issuers issuing lease revenue bonds must also comply with section 8855(k).