

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: August 25, 2010

***Consideration and Approval of Proposed Regulation Changes for the Bond Program
Pertaining to General Fees, Small Business Assistance Fund Fees, and Provisions Relating to
Small Business Financings***

Prepared by: *Patricia Tanous*

Summary. Staff requests Board approval to file permanent regulations to modify the General Fees, Small Business Assistance Fund (SBAF) Fees, Eligibility for Assistance, and Assistance sections of the California Pollution Control Financing Authority (CPCFA) regulations. Upon approval, staff will file the permanent regulations with the Office of Administrative Law (OAL). The regulations will become permanent 30-days following the filing with OAL.

Background. The primary driver of these changes is to offer a SBAF fee reduction to encourage companies to accelerate issuance of tax-exempt bonds through CPCFA. Additionally, the changes address an issue with fees for a possible new structure for financings.

On September 23, 2009, the Board granted approval to amend and file emergency regulations to modify General Fees, Small Business Assistance Funds (SBAF) Fees, Eligibility for Assistance, and Assistance sections of the CPCFA regulations.

On March 24, 2010, the Board approved an additional modification to the General Fees and Eligibility for Assistance categories (see Attachment A – items in red were approved in September and the items in blue are the new additions). Staff filed additional modifications with the OAL and entered into the 45-day public comment period on April 16, 2010 ending on June 21, 2010. Staff held a public hearing on June 22, 2010. Staff received written comments from Andrew S. Rose and Robert Feyer, Attorneys at Law; no one from the public appeared for the public hearing. The comments were to clarify when a small business would no longer be eligible to receive assistance by imposing a limit on the total amount of bonds issued on behalf of a small business (and its Affiliates) that may receive a SBAF subsidy to a total of \$25,000,000. Mr. Rose requested that a time limit of two years be placed on this limit. After considering the written comments, staff made additional modifications (see Attachment B – items changed are in green). Staff then entered into the required 15-day public comment period on June 28, 2010 ending on July 12, 2010. Staff received written comments from California Refuse Recycling Council requesting the removal of 8042 (a) (5) in its entirety. After reviewing these comments, staff made additional changes (See Attachment C – items changed are in blue). Please see the Business Model discussion for further details. Staff then entered into an additional 15-day public comment period on July 26, 2010 ending on August 11, 2010. Staff received an acknowledgement from Andrew S. Rose, Attorney at Law.

The emergency regulations were set to expire on July 28, 2010, and as such, staff filed for the final 90-day extension on June 25, 2010.

To accomplish all the needed changes requires modification of the following regulations:

- 1) To revise Section 8034 – General Fees to include one new category of fees;
- 2) To revise Section 8035 – Small Business Assistance Fund Fees to lower the fees;
- 3) To revise Section 8042 – Eligibility for Assistance to define eligibility; and
- 4) To revise Section 8043 – Assistance to clarify who is eligible for assistance.

CPCFA funded projects are subject to two fees: A General Fee of two tenths of one percent (.002) and a SBAF fee of up to one percent (.01) of the face value of the bonds issued.

The General Fee is charged to large businesses and is used to pay salary expenses, benefits, office space rent, supplies, personnel services, etc. for CPCFA. Furthermore, these fees are used to fund the California Recycle Underutilized Sites (CALReUSE) Assessment Program, and the Sustainable Communities Grant and Loan Program (SCGL). These fees also enable CPCFA to provide assistance to the California Industrial Development Financing Advisory Commission (CIDFAC) and the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) in the form of personnel and loans to fund costs of implementing new programs. Additionally, the SBAF fees are used for the California Capital Access Program (CalCAP).

The SBAF fees that are collected from large businesses are also used to help small businesses pay for some of the costs of issuing bonds (i.e., fees charged by issuer's counsel, bond counsel, underwriter, underwriter's counsel, financial advisors, trustee, State Treasurer's Office Agent for Sale, California Debt Limit Allocation Committee, California Debit and Investment Advisory Commission, etc.).

Business Model. Although CPCFA is facing financial challenges, staff was looking to reduce the SBAF fees to encourage large businesses to issue bonds. Staff felt that due to the current economic downturn in the United States, and more importantly the State of California, a reduction would be beneficial to encourage businesses to continue to expand.

In September 2008 the Board approved a restructuring of the SBAF subsidy formula, cutting the program by approximately 50%. During the process of revising the current regulations staff analyzed the SBAF subsidy again. Staff initially proposed to make a further cut to the subsidy by imposing a limit on the total amount of bonds issued on behalf of a small business (and its Affiliates) that may receive SBAF to a total of \$25,000,000. Once a small business had issued more than \$25,000,000 in bonds over a consecutive period of 96 months, the company would then pay an Administrative Fee of one tenth of one percent (.001) of the face value of the bonds issued or could choose to pay an annual fee each year for the life of the bonds in the amount of five one-hundredths of one percent (.0005) of the remaining balance of the bonds, with a minimum annual fee of \$1,000 and a maximum annual fee of \$75,000.

During the initial 15-day comment period Staff received comments requesting to have this section removed and instead provided that all businesses eligible for allocation of volume cap would be subjected to the administrative fee of two tenths of one percent (.002) of the face value of the bonds issued. Staff accepted these changes and went back out for an additional 15-day comment period and received a comment acknowledging the change.

Summary of Changes.

Substantive Regulation Changes

- 1. Section 8034 - General Fees (Administrative Fee).** The first change is the addition of a new annual fee category. Any bond issued that is not eligible for allocation of volume cap will be assessed a fee of one tenth of one percent (.001) of the face value of the bonds issued. Further, an annual fee of five one-hundredths of one percent (.0005) of the outstanding balance will be assessed yearly (minimum annual fee of \$1,000 and a maximum annual fee of \$75,000). The initial fee of one tenth of one percent (.001) would be waived for small businesses not eligible for allocation of volume cap, as defined in Title 4, Division 11, Section 8020.

It is standard practice among the other issuing authorities to charge an annual fee. Typically, issuers charge between five (5) and twenty (20) basis points (or .05% to .2%) per year. Please see Attachment D for a fee comparison chart for further details.

The second change will be that all financings, including small businesses (as defined in Title 4, Division 11, Section 8020), eligible for volume cap allocation will be subject to the administrative fee of two tenths of one percent (.002) of face value of the bonds issued.

- 2. Section 8035 - Small Business Assistance Fund Fees.** Reduce the current maximum SBAF fee from one percent (.01) to sixty-six one-hundredths of one percent (.0066) of the face value of tax exempt bonds issued for applicants eligible for volume cap allocation and who do not qualify as a small business as defined in Title 4, Division 11, Section 8020.
- 3. Section 8043(b) – Assistance.** Remove Section 8043(b) that states that the Authority shall waive the fees it charges small business applicants meeting the conditions contained in Title 4, Division 11, Section 8042(b). All businesses that qualify for volume cap allocation, whether large or small, will now be charged the General/Administrative Fee of two tenths of one percent (.002) of face value of the bonds issued.

Clarifying Regulation Change

- 1. Section 8042 - Eligibility for Assistance.** Addition of one section defining the types of projects that will now be required to pay the annual fee under Title 4, Division 11, Section 8034.

Attachment C is the final recommended version of the proposed regulations that includes consideration of all phases of the public comment process.

Recommendation. Staff recommends adoption of a resolution to amend the CPCFA regulations as presented in Attachment C and authorize staff to complete permanent rulemaking proceedings and other actions related to regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING PERMANENT
RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED THERETO**

August 25, 2010

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) and 44559.5(f) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in 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 Program.

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its Provisions Relating to Small Business Financings set forth in Article 4 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

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

Section 1. The proposed form of regulations presented at the August 25, 2010 meeting is hereby approved in substantially the form submitted. The Chair or Executive Director is 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 these as permanent regulations.

Section 2. The Chair or Executive Director of the Authority are 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

(Original Proposed Text of Regulations prior to 45-day public comment period)

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

The Authority charges ~~a fee~~ 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) In all other financings, ~~The~~ fee shall be two tenths of one percent (.002) 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.

§ 8035. Small Business Assistance Fund Fees.

(a) The Authority shall charge an applicant who is not 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 (~~.01~~ .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 seven-tenths thirty-six one hundredths of one percent (~~.007~~ .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.

§ 8042. Eligibility for Assistance.

(a) An applicant, to be eligible for assistance, shall meet the following criteria:

- (1) It shall be a small business as defined in Section 8020.
- (2) It shall seek financing for a project that complies with the Act (commencing with Health and Safety Code Section 44500).
- (3) In connection with assistance in accordance with Section 8043 of this article, it shall seek financing that is no less than \$500,000.
- (4) It shall demonstrate a financial capability to make debt service payments and shall provide such collateral security (in the form of deeds of trust, security agreements, reserves, third party guarantees or other methods) as may be required by the holders of the bonds, the lender in a conventional loan, and the Authority as guarantor.
- (5) It, or its affiliates, shall not have more than \$25,000,000 in bonds issued by the Authority.

(b) An applicant shall receive assistance, provided sufficient funds are available, when the following conditions are satisfied:

- (1) The Authority has accepted the applicant's request for financing pursuant to Section 8032.
- (2) The Authority has determined that the applicant is eligible pursuant to subdivision (a) of this section.

- (3) The Authority issues bonds to finance the applicant's project or the Authority approves a guarantee of a conventional loan which will finance the applicant's project.

(c) This section shall not apply where the financing requested is not eligible for the allocation of volume cap pursuant to 26 U.S.C. Section 146.

§ 8043. Assistance.

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, will most effectively assist the application to (i) achieve financing for the project; (ii) obtain a bond rating of “A” from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority’s judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the “prime rate” then prevailing):

- (1) Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees to due to other state agencies, accounting fees, consultant’s fees, and other expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant’s fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for attorney fees, staff time, or other expenses related to the application for financing.
- (2) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.
- (3) Guarantee to the bond holder, conventional lender or provide of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$2,000,000.
- (4) Provide financing assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

(b) The Authority shall waive the fees it charges pursuant to Section 8034 for all applicants meeting the conditions contained in Section 8042~~(b)~~.

Agenda Item – 4.B.

(c) The Authority alone is authorized to approve assistance. The commitment to provide assistance shall be valid only when it is included in a written contract executed by both the Authority and applicant or group of applicants.

Attachment B

(Proposed Test of Regulations during first 15-day comment period)

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

The Authority charges ~~a fee~~ *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) In all other financings, ~~The~~ fee shall be two tenths of one percent (.002) 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.

§ 8035. Small Business Assistance Fund Fees.

(a) The Authority shall charge an applicant who is not 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 (~~.01~~ .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 ~~seven-tenths thirty-six one hundredths~~ of one percent (~~.007~~ .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.

§ 8042. Eligibility for Assistance.

(a) An applicant, to be eligible for assistance, shall meet the following criteria:

- (1) It shall be a small business as defined in Section 8020.
- (2) It shall seek financing for a project that complies with the Act (commencing with Health and Safety Code Section 44500).
- (3) In connection with assistance in accordance with Section 8043 of this article, it shall seek financing that is no less than \$500,000.
- (4) It shall demonstrate a financial capability to make debt service payments and shall provide such collateral security (in the form of deeds of trust, security agreements, reserves, third party guarantees or other methods) as may be required by the holders of the bonds, the lender in a conventional loan, and the Authority as guarantor.
- (5) *It, ~~or~~ together with its affiliates, shall not have been the beneficiary of more than \$25,000,000 initial aggregate amount of ~~its~~ bonds issued by the Authority, including the issue for which assistance is being considered, over a consecutive 96 month period.*

(b) An applicant shall receive assistance, provided sufficient funds are available, when the following conditions are satisfied:

- (1) The Authority has accepted the applicant's request for financing pursuant to Section 8032.
- (2) The Authority has determined that the applicant is eligible pursuant to subdivision (a) of this section.
- (3) The Authority issues bonds to finance the applicant's project or the Authority approves a guarantee of a conventional loan which will finance the applicant's project.

(c) This section shall not apply where the financing requested is not eligible for the allocation of volume cap pursuant to 26 U.S.C. Section 146.

§ 8043. Assistance.

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, will most effectively assist the ~~application~~ applicant to (i) achieve financing for the project; (ii) obtain a bond rating of "A" from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority's judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the "prime rate" then prevailing):

- (1) Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include bond counsel fees, underwriter or placement agent ~~fees~~ or discount and related expenses, printing fees, fees to due to other state agencies, accounting fees, consultant's fees, and other expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant's fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for other attorney fees, staff time, or other expenses related to the application for financing.
- (2) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.
- (3) Guarantee to the bond holder, conventional lender or provider of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the

indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$2,000,000.

(4) Provide ~~financing~~ financial assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

(b) The Authority shall waive the fees it charges pursuant to Section 8034 for all applicants meeting the conditions contained in Section 8042~~(b)~~.

(c) The Authority alone is authorized to approve assistance. The commitment to provide assistance shall be valid only when it is included in a written contract executed by both the Authority and applicant or group of applicants.

Attachment C

(Current Proposed Test of Regulations)

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

The Authority charges ~~a fee~~ *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) In all other financings, ~~T~~he fee shall be two tenths of one percent (.002) 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.

§ 8035. Small Business Assistance Fund Fees.

(a) The Authority shall charge an applicant who is not 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 (~~.01~~ .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 *seven-tenths thirty-six one hundredths* of one percent (~~.007~~ .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.

§ 8042. Eligibility for Assistance.

(a) An applicant, to be eligible for assistance, shall meet the following criteria:

- (1) It shall be a small business as defined in Section 8020.
- (2) It shall seek financing for a project that complies with the Act (commencing with Health and Safety Code Section 44500).
- (3) In connection with assistance in accordance with Section 8043 of this article, it shall seek financing that is no less than \$500,000.
- (4) It shall demonstrate a financial capability to make debt service payments and shall provide such collateral security (in the form of deeds of trust, security agreements, reserves, third party guarantees or other methods) as may be required by the holders of the bonds, the lender in a conventional loan, and the Authority as guarantor.

~~(5) It, or together with its affiliates, shall not have been the beneficiary of more than \$25,000,000 initial aggregate amount of in bonds issued by the Authority, including the issue for which assistance is being considered, over a consecutive 96 month period.~~

(b) An applicant shall receive assistance, provided sufficient funds are available, when the following conditions are satisfied:

- (4) The Authority has accepted the applicant's request for financing pursuant to Section 8032.
- (5) The Authority has determined that the applicant is eligible pursuant to subdivision (a) of this section.
- (6) The Authority issues bonds to finance the applicant's project or the Authority approves a guarantee of a conventional loan which will finance the applicant's project.

(c) This section shall not apply where the financing requested is not eligible for the allocation of volume cap pursuant to 26 U.S.C. Section 146.

§ 8043. Assistance.

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, will most effectively assist the ~~application~~ applicant to (i) achieve financing for the project; (ii) obtain a bond rating of "A" from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority's judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the "prime rate" then prevailing):

Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include bond counsel fees, underwriter or placement agent ~~fees~~ or discount and related expenses, printing fees, fees to due to other state agencies, accounting fees, consultant's fees, and other expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant's fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for other attorney fees, staff time, or other expenses related to the application for financing.

- (1) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.
- (2) Guarantee to the bond holder, conventional lender or provider of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$2,000,000.

- (3) Provide ~~financing~~ financial assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

~~(b) The Authority shall waive the fees it charges pursuant to Section 8034 for all applicants meeting the conditions contained in Section 8042(b).~~

~~(e)~~ (b) The Authority alone is authorized to approve assistance. The commitment to provide assistance shall be valid only when it is included in a written contract executed by both the Authority and applicant or group of applicants.

Attachment D

Fee Structure

	Type of Project	Bond Rating	Issuance Fees				Application Fee	Administrative Fee	
			Up to \$10M	\$10-15 M	\$15-20M	\$20-95M			Over \$95M
CPCFA	All Projects		20 bp's (Small Buisness are exempt from these fees) *Application fees are applied to payment of these fees if project is financed				5 bp's (min \$250, max \$5,000)	N/A	
	Private Facility with annual gross revenues \$2.5 M or more		7.5 bp's of aggregate amount of issue, up to a max of \$300,000				\$500	20 bp's of bonds outstanding annually, max \$150,000	
CHFFA	Private Facility with annual gross revenues less than \$2.5 M		\$1,000					The lesser of 20 bp's of bonds outstanding or \$500*	
	Public Facility							The lesser of 20 bp's of bonds outstanding or \$500	
I-Bank	All Projects		25 bp's	\$25,000 + 15 bp's of amount above \$10 M	\$32,500 + 10 bp's of amount above \$15 M	\$37,500 + 5 bp's of amount above \$20 M	\$75,000	\$1,500	
	Solid Waste	"A" or better Less than "A"	25 bp's				\$50,000 + 10 bp's	5 bp's per year	
CVIFA	Non Profit	"A" or better Less than "A"	20 bp's	5 bp's (Max Fee \$75,000 per transaction) 10 bp's (Max Fee \$100,000 per transaction)			\$50,000 + 12.5bp's	10 bp's per year	
	IDB	"A" or better Less than "A"	25 bp's				\$50,000 + 10 bp's	1.5 bp's per year	
							\$50,000 + 12.5bp's	10 bp's per year	
CSCDA	Solid Waste		20 bp's (Min \$15,000)				\$40,000 + 5 bp's over \$20 M	\$5,000 per borrower, per year	Up to first \$100MM: 3 bp's >\$100MM and <\$1B: 2 bp's >\$1B: 1.5 bp's
	IDB		25 bp's (Min \$10,000)				N/A	\$5,000 per borrower, per year	12.5 bp's (Conduit) 40 bp's (CSCDA Program)
CEDA	Non Profit & IDB		25 bp's	\$25,000 + 15 bp's of amount above \$10 M	\$32,500 + 10 bp's of amount above \$15 M	\$37,500 + 5 bp's of amount above \$20 M	\$75,000	\$1,500.00	\$500 Annual Fee