



REVIEW OF LOCAL DEBT POLICY COMPLIANCE FOR 2017-2018

INTRODUCTION

In 2015, the California State Treasurer's Office published the Task Force on Bond Accountability's (Task Force) *Final Report*, containing recommended practices to assist public agencies in ensuring that bond proceeds are used only for legal and intended purposes and that they are properly accounted for, managed, and safeguarded against misuse. A key recommendation of the Task Force was for the adoption of a debt management policy that reflects the relationship between the bond program and policies, procedures and practices of the organization.¹ Adopting best practices such as debt policies should help reduce fraud or mismanagement and improve the fiscal outlooks of public agencies.

In California, public agency issuers have been required to report debt issuance to the California Debt and Investment Advisory Commission (CDIAC) since 1984 providing a basic level of transparency of the initial debt issuance process; however, these reports only reflect a point-in-time filing and do not address how the proposed debt fits into the agency's overall financial planning. SB 1029 (Chapter 307, Statutes of 2016) sought to, in part, address this deficiency. Effective January 1, 2017, issuers must certify on CDIAC's 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.²

This issue brief is focused on the debt policy reporting requirements for public agency issuers resulting from SB 1029. This discussion will begin with an overview of the debt policy reporting requirements to CDIAC, analyze the debt policy certification submissions to CDIAC from January 1, 2017 through December 31, 2018, and assess the impact the debt policy reporting requirement is having on public agencies.

DEBT POLICY REPORTING REQUIREMENTS UNDER SB 1029

Issuers of public agency debt are required to submit reports to CDIAC, within specified timeframes, of the proposed issuance of debt and after the final sale of debt, as provided in statute. Information reported to CDIAC includes, but is not limited to, the authority to issue debt, amount borrowed, costs of issuance, project name, repayment terms, repayment source, interest rate, type of sale and financing participants. On January 1, 2017, SB 1029 added reporting requirements to Government Code Section 8855 designed to advance adoption of effective debt policies by local government issuers.

Certification - SB 1029 requires issuers of public debt in California, when they submit a Report of

¹ Task Force on Bond Accountability, *Task Force Final Report*, December 14, 2015, p. 4, https://www.treasurer.ca.gov/tfba/final_report.pdf

² SB 1029 also added Government Code Section 8855(k) requiring issuers of public debt who submitted a report of final sale after January 21, 2017 to submit an Annual Debt Transparency Report (ADTR) containing information about the debt authorization, the amount of debt outstanding and the use of the debt proceeds for each reporting period, defined July 1st through June 30th, until the debt is no longer outstanding and the proceeds have been fully spent. The ADTR is due to CDIAC within seven (7) months of the close of the reporting period, defined as July 1st to June 30th, making January 31st the effective deadline for this provision.

Proposed Debt Issuance (RPDI) to CDIAC also certify that they have adopted local debt policies concerning the use of debt and that the proposed debt issuance is consistent with those policies. Government Code Section 8855(i)(1) specifies five (5) key components that a local debt policy must have for an issuer to affirmatively certify it has a debt policy, they are as follows:

- (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 implemented, or will implement, to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.

When the proceeds of a bond issue will be used by a governmental entity other than the issuer, the issuer can receive certification from the governmental entity that will use the proceeds of the debt issue that it has adopted local debt policies that include (C), (D) and (E) and rely on its certification.

REPORTING GUIDANCE FOR ISSUERS

On December 28, 2016, CDIAC released guidance on complying with the requirements of SB 1029 ([Guidance](#)). Within the Guidance, CDIAC described the terms “local debt” and “adopted” to clarify for issuers when section 8855(i) would apply.

Issuers are advised that the term “local debt” refers to 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. Therefore, if the debt being issued will be used by a non-governmental entity it is not considered “local debt” and thus section 8855(i) would not apply to the proposed debt issuance.

The term “adopted” refers to an act of the governing body which could include an action to delegate the authority to “adopt” local debt policies to administrative staff, the policies may be contained in a single document or in one or more documents; in any case the policies must be officially adopted by the governing body of the issuer.

With the passage of SB 1029, CDIAC revised the RPDI to include the following statement followed by three acceptable responses in the form of checkboxes.

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

YES – Issuer certifies they have adopted local debt policies in compliance with 8855(i).

For conduit issuers, a YES means that the conduit issuer certifies that is has adopted local debt policies in compliance with 8855(i)(1). Furthermore, the local debt policies include (A) through (E) of section 8855(i)(1) OR the conduit 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 governmental entity includes (C), (D) and (E).

NO - Issuer cannot certify that they have adopted local debt policies in compliance with 8855(i)(1).

If a conduit issuer, 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.

NA - 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.

For conduit issuers, 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 issuer itself is not issuing local debt (e.g. state instrumentality).

Issuers must interpret and apply subparts (A) through (E) to their local debt policies; and, if the issuer is facilitating the debt issuance for the benefit of another governmental entity, that entity must interpret and apply subparts (C) “Capital Improvement Plan/Budget”, (D) “Planning Goals/Objectives” and (E) “Internal Controls” to their local debt policies.

DEBT POLICY COMPLIANCE DATA

Since the effective date of debt policy reporting, January 1, 2017 through December 31, 2018, CDIAC has received over six thousand RPDIs.³ As shown in Figure 1, seventy-three percent (73%) of issues included certification by the issuers that they had adopted local debt policies concerning the use of debt and that the contemplated issuance is consistent with those policies and thereby in compliance with section 8855(i). Of the

FIGURE 1

PROFILE OF ISSUERS, DEBT POLICY COMPLIANCE, 2017-2018

ISSUING AGENCY TYPE	TOTAL RPDI	PERCENT OF RPDI	DEBT POLICY			PERCENT OF COMPLIANCE
			YES	NO	NA	
Joint Powers Agency	2,662	41.1%	2,226	207	229	92.2%
County Government	900	13.9	546	349	5	61.2
K-12 School District	791	12.2	759	26	6	96.7
State	501	7.7			501	100.0
City Government	401	6.2	353	15	33	96.3
State Department / Agency	271	4.2	16		255	100.0
Community Facilities District	257	4.0	247	5	5	98.1
Successor Agency	130	2.0	129	1		99.2
Water / Irrigation District	113	1.7	108	2	3	98.2
City / County Government	88	1.4	76	3	9	96.6
Community College District	85	1.3	77	6	2	92.9
Nonprofit Public Benefit	71	1.1	48	1	22	98.6
Other Special District	62	1.0	61		1	100.0
Housing Authority	45	0.7	28	2	15	95.6
Transit Authority / District	35	0.5	34	1		97.1
Sanitation District	27	0.4	22	5		81.5
Hospital / Healthcare District	20	0.3	17	2	1	90.0
Public Utility District	19	0.3	18	1		94.7
TOTALS	6,478		4,765 (73.5%)	626 (9.7%)	1,087 (16.8%)	

³ The sale status of these reports at the time of this publication included 316 proposed, 6174 sold, and 247 cancelled debt issues for a total of 6,737.

remaining twenty-seven percent (27%), seventeen percent (17%) indicated section 8855(i) did not apply to the debt issuance and ten percent (10%) could not certify compliance.⁴

Joint powers agencies (JPAs) filed the most RPDIs, with 2,662 over the two-year review period. Counties and K-12 school districts were second and third with 900 and 791 reports, respectively. As described above, CDIAC advised in the Guidance that the term “local debt” refers to debt issued for the benefit of a local agency. Issuers that are not proposing to sell local debt may respond NA. As expected, the State of California (including departments and agencies) submitted 100% of its RPDIs with NA for the debt policy certification.

Compliance Rate - Counties and sanitation districts showed the lowest level of compliance collectively over the two-year review period with 61.2 and 81.5 percent, respectively. However, Figure 2, shows compliance data by year reflecting

that in spite of lower overall compliance rate, county and sanitation district compliance increased to 100% and 92.9%, respectively, in 2018. This could indicate the time it may have taken counties and sanitation districts to adopt new, or amend existing, debt policies to comply with 8855(i). Similarly, many issuer types including hospital/healthcare districts, joint powers agencies and community college districts also exhibited an overall increase in compliance in 2018 (Figure 2). These increases in compliance rates suggest that section 8855(i) is having the desired impact with more public agencies adopting or updating their local debt policy. Of the 349 RPDIs filed in 2017 by counties that did not certify local debt policies were in compliance with 8855(i), all but one were for residential energy conservation improvements. This could imply that county issuers (or their financing team member filing the RPDIs) were unaware that CDIAC advises section 8855(i) applies to debt issued for the benefit of a

FIGURE 2

COMPLIANCE DATA BY YEAR, 2017 / 2018

ISSUING AGENCY TYPE	DEBT POLICY NO		DEBT POLICY NA		DEBT POLICY YES		PERCENT OF COMPLIANCE	PERCENT OF COMPLIANCE
	2017	2018	2017	2018	2017	2018	2017	2018
County Government	349			5	145	401	29.4%	100.0%
Joint Powers Agency	192	15	137	92	1080	1146	86.4	98.8
K-12 School District	18	8	5	1	422	337	96.0	97.7
City Government	12	3	11	22	168	185	93.7	98.6
Community College District	5	1	2		48	29	90.9	96.7
Sanitation District	4	1			9	13	69.2	92.9
Community Facilities District	4	1	5		114	133	96.7	99.3
Hospital / Healthcare District	2		1		12	5	86.7	100.0
City / County Government	2	1	9		28	48	94.9	98.0
Transit Authority / District	1				21	13	95.5	100.0
Housing Authority	1	1	8	7	19	9	96.4	94.1
Successor Agency	1				73	56	98.6	100.0
Water / Irrigation District	1	1	2	1	46	62	98.0	98.4
State			264	237			100.0	100.0
Public Utility District		1			13	5	100.0	83.3
State Department / Agency			153	102	3	13	100.0	100.0
Nonprofit Public Benefit		1	6	16	23	25	100.0	97.6
Other Special District			1		31	30	100.0	100.0
TOTALS	592	34	604	483	2,255	2,510		

⁴ The total number of RPDIs filings used for this report do not include 259 filings that were initially filed but subsequently “cancelled” prior to this report or were sold but had an actual sale date prior to 2017.

local governmental entity rather than for a private purpose. CDIAC advises that debt issued for residential energy conservation improvements should be marked as not applicable (NA) to the local debt policy certification contained in section 8855(i) since the debt is for the benefit of a private purpose.

Debt issuance for the purpose of financing residential and commercial energy conservation improvements as well as seismic safety improvements funded by a Property Assessed Clean Energy (PACE) program are the most frequently reported debt issues by joint powers agencies and counties that would not be considered “local debt” (2821 or 44% of total RPDI). JPAs filed most of the RPDIs for these types of uses as YES for compliance with local debt

policies, however since the improvements are located on private property (residential houses or commercial property) and repaid by the private property owner through special assessments on their property tax bill, the term “local debt” would not apply. Thus CDIAC advises that these types of debt issues be marked as not applicable (NA) to the local debt policy certification contained in section 8855(i).

ESTIMATE OF LOCAL DEBT ISSUES

Given the fact that a number of RPDI filed with CDIAC may be for purposes other than local governmental use, CDIAC reviewed the data to better estimate the number of debt issues likely to be subject to section 8855(i) as local debt.⁵ As shown in Figure 3, CDIAC estimates the total number of RPDI filed for a local governmental

FIGURE 3

ESTIMATE OF LOCAL DEBT ISSUES BY YEAR, 2017/ 2018

ISSUING AGENCY TYPE	LOCAL DEBT BY RPDI		NON-LOCAL DEBT BY RPDI		LOCAL DEBT BY AMOUNT (millions)		NON-LOCAL DEBT BY AMOUNT (millions)	
	2017	2018	2017	2018	2017	2018	2017	2018
K-12 School District	445	346			\$10,977	\$8,825	-	-
City Government	174	190	17	20	7,889	10,237	347	1,162
Joint Powers Agency	140	147	1,269	1,106	3,621	5,760	5,966	5,937
Community Facilities District	122	134	1		1,537	1,628	0	-
Successor Agency	74	56			2,302	2,529	-	-
State Department / Agency	69	59	87	56	6,215	4,215	6,597	2,601
Community College District	55	30			3,341	1,606	-	-
Water / Irrigation District	49	64			2,257	1,735	-	-
Other Special District	32	30			1,322	1,130	-	-
City / County Government	31	44	8	5	2,943	5,605	705	199
Nonprofit Public Benefit Corporation	29	40		2	1,220	3,376	-	43
County Government	27	30	467	376	3,147	3,629	461	340
Transit Authority / District	22	13			4,107	944	-	-
Hospital / Healthcare District	15	5			708	35	-	-
Public Utility District	13	6			857	394	-	-
Sanitation District	13	14			154	195	-	-
Housing Authority	5	3	23	14	288	49	611	242
State			264	237	-	-	10,146	7,694
TOTALS	1,315	1,211	2,136	1,816	\$52,887	\$51,894	\$24,831	\$18,218

⁵ The data set was filtered to remove debt issues in the following categories: State, residential & commercial energy improvements, seismic safety (PACE), conduit debt types and private obligor repayment.

purpose to be 1,315 debt issues totaling over \$52 billion in 2017 and 1,211 debt issues in 2018 totaling over \$51 billion with K-12 school districts and cities leading as the highest issuing types of local government by both number of individual debt issues and dollar amount.

CONSISTENCY OF REPORTING FOR MULTIPLE ISSUANCES

As stated earlier there were over six thousand RPDIs filed for the review period, these RPDIs were filed by 1,330 unique issuers. Of these issuers - 1,281 of them proposed to issue only local debt, 33 are non-local debt issuers (2.5%) and 16 governmental entities issued both local and non-local debt (1.2%).

Over one thousand (84.7%) local debt issuers issued twice or less during the two-year review period (Figure 4). Most of these issuers certified compliance with section 8855(i). However, a few of the local debt issuers with 2 or more RPDI filings had different responses to the local debt policy certification. These issuers responded as NO or NA to the debt policy certification in their first RPDI and in subsequent RPDI filings responded YES. A review of the minutes and staff reports relating to debt policy actions by these public agencies revealed a majority of issuers had actually adopted a local debt policy in compliance with section 8855(i) prior to the filing of the first RPDI in the reporting period, therefore the issuer should have responded as YES in both the first and subsequent RPDI filings. This could mean that the RPDI filing contact was unaware of the adoption at the time the first RPDI was filed and thus did not accurately represent the issuer’s compliance with the statute.

FIGURE 4

LOCAL DEBT ISSUER COMPLIANCE

FREQUENCY OF LOCAL DEBT ISSUER	TOTAL	DEBT POLICY				PERCENTAGE OF COMPLIANCE
		NO ONLY	NA ONLY	YES ONLY	NO/NA TO YES	
2x or less	1,085	41	20	1,008	16	96.2%
3x or more	196	0	8	164	24	100%
TOTALS	1,281	41	28	1,172	40	

WHAT HAS BEEN THE IMPACT OF DEBT POLICY CERTIFICATION?

While data is only available for the past two years, this review does seem to indicate that the reporting requirement has had an influence over the adoption of a debt policies by public agencies considering debt issuance. As noted in the analysis, issuers are affirming compliance with 8855(i) in greater numbers in 2018, the second year of the reporting requirements, than when the requirement was first implemented in 2017. It is also clear, based on a review of the YES responses for non-local debt that issuers are still not sure when they are to certify the issue as NA to the local debt policy requirement of 8855(i). The debt policy certification requirement only applies to proposed issues of public agency debt or debt to benefit a public purpose since January 1, 2017.

Insofar as this analysis reflects the debt policy practices of actual issuers of debt, it is not possible to determine how this reporting requirement has influenced debt policy practices by other public agencies that haven’t issued debt in the last two years. Since the new local debt policy certification began, the data collected by CDIAC shows that California debt issuers and their financing teams are cognizant of the requirements of section 8855(i) and are taking action to comply.

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