



CDIAC Rulemaking
Regulations Effective April 1, 2017

The Legislature created CDIAC in 1981 to, among other things, “Collect, maintain, and provide comprehensive information on all state and all local debt authorization and issuance, and serve as a statistical clearinghouse for all state and local debt issues.” The statutes, particularly Government Code sections 8855(i) and 8855(j), gave the Commission authority and direction to collect information about debt authorization and issuance, but also significant discretion in regard to the specific debt information required of issuers and the method for collecting it. Over the years, the Legislature added numerous other statutes in the Government, Education, and Water Codes that require the submission of municipal debt related data to the Commission that were equally open to interpretation.

Upon creating CDIAC, the Legislature also installed a funding mechanism in Government Code section 8856. The statute says that “the Commission may charge a fee to the lead underwriter, the purchaser, or the lender in an amount equal to one-fortieth of 1 percent of the principal amount of the issue, but not to exceed \$5,000 for any one issue.” The Legislature used the word “may” to delegate the authority to charge a fee to the Commission, but its use of the phrase “in an amount equal to” is self-executing as to the rate and method to be applied and not subject to the discretion or interpretation by the Commission.

Resolved to meet its statutory mandate and run an effective organization, the Commission and CDIAC management have used forms, guidelines, policies, and procedures to implement the statutes, a common practice in state government. CDIAC has also used resolutions of the Commission to establish a fee schedule and define operative terminology. While effective in operating the organization, these practices were not subject to the Administrative Procedures Act (APA). As a result, the Commission decided in June of 2015 to direct CDIAC management to embark upon a formal rulemaking that has now institutionalized a structured and transparent process for determining how the Commission shall exercise its delegated authority and implement the statutes.

The rulemaking was formally initiated with the Office of Administrative Law (OAL) on July 19, 2016. On February 28, 2017, the rulemaking was approved by the OAL and filed with the Secretary of State. On April 1, 2017, the regulations become effective under the California Code of Regulations (CCR) Title 4, Division 9.6, §6000 – 6062.

In addition to the enormous benefit of formalizing CDIAC’s policies and procedures in a structured and transparent legal process, CDIAC achieves several additional goals from the rulemaking.

- Removes ambiguity as to which state and local financial transactions constitute the creation of *debt* and thus, shall be reported to CDIAC.
- Gives issuers specificity and clarity as to the information that shall be submitted upon the authorization and issuance of debt, and on the annual status of Marks-and Mello-Roos bonds.
- Provides issuers a firm understanding of when and how debt information reporting requirements shall be applied, given the circumstances of their debt transaction, by defining operative terms as they appear in Government Code section 8855 and other statutes.
- Establishes an efficient on-line method for submitting debt information to the Commission that increases information timeliness, validity, and consistency, and conserves resources.
- Clarifies the reporting requirements for several specific debt structures with issuance characteristics that do not strictly conform to certain requirements established in statute.
- Implements a debt issuance fee schedule that is consistent with Government Code section 8856, and equitably employs the permissive elements of the section to achieve a balance between the CDIAC's annual revenues and its annual budget appropriation.

Changes to Expect on April 1, 2017

Issuance Fee Increase

The largest change affecting issuers, and most directly their underwriters, purchasers or lenders, will be a change in the issuance fee. The issuance fee schedule that has been in effect since 2000 will be replaced with a fee schedule based upon the authorized rate and method stipulated in Government Code section 8856 and the exceptions listed in the CCR Title 4, Section 6030. In other words, the issuance fee of 0.025% of principal up to a maximum fee of \$5,000 will apply to all state and local debt issues with the exception of: a) issues with a short term maturity (18 months or less); b) issues where the purchaser or lender is an agency of the state or federal government; or c) issues by a local obligor that are purchased by a joint powers authority (e.g. Marks-Roos obligor issues). Absent a statutory change to the rate, method, or authority, the Commission's statutory authority to make changes to the issuance fee is confined to adding or removing exceptions through a formal rulemaking process.

As the fee is applied to every "issue", what constitutes an issue is important. CCR Title 4, §6000(q) defines "issue" in a manner that represents no material change from how it has been interpreted since 1987. "Debt entered into by an Issuer and sold on a contemporaneous or nearly contemporaneous basis, in one or more series, under the terms of one Debt contract with the same Creditor" constitutes an issue. This roughly translates to an issue being debt sold by one issuer, on the same day, to the same bank or financing team.

Other substantive modification affecting what and how debt information is reported to CDIAC are best reviewed within the context of each of the required reports.

Report of Proposed Debt Issuance (RPDI)

The requirements for the submittal of the RPDI are included in Government Code section 8855(i) and CCR Title 4, §6010 – §6014. The regulations added a few new data elements and some procedural clarifications.

- The report will ask for the amount of the principal, specifically, that will be used to redeem, refund, pay-down, or refinance other debt of the issuer. [Refer to §6010(g)]
- Issuers must indicate if there is an intention to repay the debt with currency other than US dollars. [Refer to §6010(h)]
- If the issue is a voter-approved general obligation debt, issuers must provide information about the authorizing election, the amount authorized, and the amount of the proposed issue charged against the reported authority. [Refer to §6010(i)]
- Of the purposes for the debt issuance indicated, issuers will provide the approximate percentage applied to each purpose. [Refer to §6010(u)]
- A proposed issue of commercial paper notes must be reported to CDIAC as soon as the decision is made to issue the notes. Further, the report is not required to be submitted if the issue is used entirely to repay other commercial paper notes of the issuer. [Refer to §6012]
- A report is required for each draw from a line of credit. The report must be submitted 30 days prior to the settlement date or upon the decision if the decision is made less than 30 days prior to settlement of the draw. [Refer to §6013]

Report of Final Sale (RFS)

The requirements for the submittal of the RFS are included in Government Code section 8855(j) and CCR Title 4, §6020 – §6024. The regulations added a few new data elements and some procedural clarifications to this report as well.

- The information submitted on the report shall be reported as of the settlement date or as projected on the settlement date if the settlement date is more than 21 days after the sale date. [Refer to §6020]
- The report will allow issuers to update information reported on the RPDI that has changed since the RPDI was submitted. The debt policy certification stipulated in Government Code section 8855(i) may not be modified, however. The new RFS will pre-populate data submitted on the RPDI to provide context to the issuer for any edits or updates. [Refer to §6020(a)]
- The report will ask for the amount of the net original issue premium, specifically, that will be used to redeem, refund, pay-down, or refinance other debt of the issuer. [Refer to §6020(e)]
- If any amount of the principal issued was used to refund, redeem, or refinance other debt, or the debt issued was in the form of revenue bonds per Government Code section 54313 and a private sale method was used, the issuer must provide a written statement why the private sale method was used. If the RFS is filed within two weeks of

sale and the section of the RFS that addresses this requirement is completed, the issuer will be compliant with Government Code section 53583(c)(2)(b) or 54418. [Refer to §6020(q)] If the issuer, files the RFS after two weeks of sale they must have already submitted a separate report to CDIAC that provides the reason for using the private sale method in order to be compliant with statute. A downloadable report entitled “Reason for Private Sale” will be provided for the sake of ease and consistency in reporting. [Refer to §6060 - §6061]

- An RFS is not required for an issue of commercial paper notes if the proceeds are used entirely for the purpose of paying off other commercial paper notes of the issuer. [Refer to §6022]
- An RFS is required for the initial and each subsequent draw from a line of credit. [Refer to §6023]

Mello-Roos Yearly Fiscal Status Report (YFSR)

The requirements for the submittal of the Mello-Roos YFSR are included in Government Code section 53359.5 and CCR Title 4, §6040 – §6043. The regulations have not made fundamental changes and primarily provide clarification of terms and reporting procedures.

- The information required under Government Code section 53359.5(b)(10) regarding parcels that are delinquent with respect to their special tax payments shall be provided as of the latest equalized tax roll within the Reporting Year. The online submittal system will be modified to accept an uploaded *.PDF* file containing this information. [Refer to §6041(b)]

Marks-Roos Yearly Fiscal Status Report (YFSR)

The requirements for the submittal of the Marks-Roos YFSR are included in Government Code section 6599.1 and CCR Title 4, §6050 – §6053. The regulations have not made fundamental changes and primarily provide clarification of terms and reporting procedures.

- The only noticeable change relates to the reportable status of an authority issue. If a Marks-Roos authority uses the proceeds from its bond issue to acquire local obligations or transfers funds to a local obligor under a debt agreement, a Marks-Roos YFSR is required. [Refer to §6051]

This rulemaking process was informed by many years of CDIAC staff experience collecting debt authorization and issuance information and interacting with the debt issuance community. The regulations were also made better through the comments submitted during the rulemaking process from members of the public finance community. CDIAC intends to maintain open lines of communication with the California public finance community as it continues to advance its methods and adapts to changes in debt, technology, and statute through future rulemaking actions.