

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: February 19, 2013
Amended Post-Issuance Tax Compliance Procedures

Prepared by: *John Weir*

Summary. At its July 26, 2011 board meeting, the Authority formally adopted Post-Issuance Tax Compliance Procedures. Since that time, the IRS released an updated publication regarding tax compliance procedures for conduit issuers. The purpose of this action is to align our existing published procedures with these IRS procedures. Staff amended CPCFA's Post-Issuance Compliance Procedures accordingly and requests board approval of the amended procedures.

Background. In 2011, CPCFA adopted Post-Issuance Tax Compliance Procedures to comply with the IRS revisions to Form 8038. In 2012, the IRS released a publication entitled "Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds" <http://www.irs.gov/pub/irs-pdf/p5005.pdf>, which provides an overview of a conduit issuer's responsibilities with respect to tax compliance for tax-exempt bonds. The publication serves to assist conduit issuers in developing tax compliance policies and procedures to ensure that tax-exempt bonds remain in compliance with all post-issuance related federal tax requirements and maintain the tax-exempt status of the bonds.

State Treasurer's Office legal counsel reviewed the IRS publication and, based on that review and input from bond and tax counsels, now recommends additional changes to CPCFA's published Post-Issuance Tax Compliance Procedures.

The most prominent addition to the procedures is language incorporating CPCFA's existing practice of designating an "Issuer Compliance Officer" who shall perform the following:

- Review, at least annually, the Borrower's statements regarding the investments and transactions involving Bond proceeds,
- Review, at least annually, certification of compliance and summary of information collected from the Borrower,
- Elevate resolution of a violation to the Executive Director of the Authority if the Issuer Compliance Officer is aware that a violation has occurred or is expected to occur, and
- Perform any other action as the Authority may deem necessary or appropriate.

Other changes to the procedures outline additional responsibilities of the Borrower and CPCFA, including the following:

- The Borrower and CPCFA shall be aware of the availability of the United States Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program ("TEB VCAP") and other remedial actions to resolve violations, and shall cooperate with one another to take such corrective action when necessary or appropriate, and
- Education and training shall be provided to relevant staff of the Borrower and CPCFA.

These procedures may need to be amended from time to time due to any changes or further guidance from the IRS.

Recommendation. Staff recommends the Authority approve a resolution to adopt the amended Post-Issuance Tax Compliance Procedures.

**RESOLUTION OF THE
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
APPROVING REVISED POST-ISSUANCE TAX COMPLIANCE PROCEDURES
FOR TAX-EXEMPT BONDS**

February 19, 2013

WHEREAS, the California Pollution Control Financing Authority (the “Authority”), a public instrumentality of the State of California, is authorized and empowered by the provisions of the California Pollution Control Financing Authority Act (Division 27 (commencing with Section 44500) of the California Health and Safety Code) (the “Act”) to issue bonds to finance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of any Project as that term is defined in Section 44508 of the Act;

WHEREAS, federal income tax law requires that issuers of tax-exempt bonds (the “Bonds”) comply with certain post-issuance requirements set forth in the Internal Revenue Code;

WHEREAS, for the purpose of maximizing the likelihood that certain applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met, the Authority desires to adopt the amended Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds, attached hereto as **Exhibit A**;

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

Section 1. The amended California Pollution Control Financing Authority Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds attached hereto as Exhibit A are hereby approved.

Section 2. This resolution shall take effect from and after its adoption.

Section 3. The provisions of the resolution of the Authority entitled “Resolution of the California Pollution Control Financing Authority Delegating Certain Powers and Authorizing Certain Actions Related to Bond Financings” adopted by the Authority on December 15, 2010, apply to the documents and actions approved in this Resolution, and the provisions of such resolution are incorporated herein by reference.

Section 4. The Authority hereby delegates to the Executive Director, in consultation with bond counsel, the power to amend the Post-Issuance Tax Compliance Procedure for Tax-Exempt Bonds (Exhibit A), on a case by case basis, as deemed necessary.

Exhibit A

**California Pollution Control Financing Authority
Post-Issuance Tax Compliance Procedures
For Tax-Exempt Bonds**

February 13, 2013

The purpose of these Post-Issuance Tax Compliance Procedures is to establish written policies and procedures in connection with tax-exempt bonds or other obligations (“Bonds”) issued by the California Pollution Control Financing Authority (the “Authority”) so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Authority also reserves the right to change these policies and procedures from time to time.

General

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for borrowers that own and/or operate certain “exempt facilities” (e.g., solid waste disposal facilities, sewage facilities, water furnishing facilities, etc.), the Authority now identifies post-issuance tax compliance procedures for all Bonds issued by the Authority, as well as the Authority’s expectations of and requirements for all Bond borrowers concerning these procedures.

The Authority will designate an “Issuer Compliance Officer” who shall monitor compliance with post-issuance federal tax requirements for the Bonds for and on behalf of the Authority. The Issuer Compliance Officer shall review these post-issuance tax compliance procedures and conduct compliance reviews at least annually by reviewing the Borrower’s statements regarding the investments and transactions involving Bond proceeds, certification of compliance and summary of information collected by the Borrower, and by performing any other action as the Authority may deem necessary or appropriate. The Issuer Compliance Officer will elevate resolution of a violation to the Executive Director of the Authority if the Issuer Compliance Officer is aware that a violation has occurred or is expected to occur.

If the Authority is contacted by the Internal Revenue Service (“IRS”) regarding post-issuance tax compliance on the Bonds, including an examination or audit, the Borrower will cooperate with the Authority in responding to the IRS.

The Authority and Borrower shall be aware of the availability of the United States Treasury’s Tax-Exempt Bonds Voluntary Closing Agreement Program (“TEB VCAP”) and other remedial actions to resolve violations, and shall cooperate with one another to take such corrective action when necessary or appropriate.

The Borrower shall be responsible for any and all costs, including but not limited to attorney’s fees, associated with or related to post-issuance tax compliance, including but not limited to costs to respond to an IRS examination or for TEB VCAP.

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Authority and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate and agreement (“Tax Certificate”) and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds. The Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in the use of Bond-financed or refinanced assets. This requirement shall be documented in the Tax Certificate and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds.

The Authority shall encourage or require the Borrower to engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Model Borrower Post-Issuance Tax Compliance Procedures for Tax- Exempt Bonds (Attachment A). Unless otherwise provided by the indenture (or similar document) relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the Authority if it so requests. The statements shall include a certification of compliance and a summary of information collected by the Borrower. The Authority shall, as necessary and appropriate, address concerns raised or actions requested by the Borrower, and may request additional information from the Borrower.

Arbitrage Rebate and Yield

The Borrower shall be responsible for compliance with all requirements under Federal arbitrage regulations. As more fully set forth in the Authority’s Model Borrower Post-Issuance Tax Compliance Procedures for Tax- Exempt Bonds (Attachment A), the Borrower is responsible for:

- determining the likelihood of satisfying an exception to the arbitrage rebate requirement for all or a portion of the proceeds of the Bonds;
- if necessary, engaging the services of a Rebate Service Provider and, prior to each rebate calculation date, causing the trustee or other financial institution investing Bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;

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- providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- monitoring the efforts of the Rebate Service Provider;
- assuring the payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
- during the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements, including during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds;
- retaining copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the Authority; and
- establishing procedures to ensure investments acquired with Bond proceeds are acquired at their fair market value.

The Borrower, in the Tax Certificate and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets

The Borrower shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting with bond counsel and other legal counsel and advisers in the review of any change in use, or potential change in use, of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records for any contracts or arrangements involving the use of Bond-financed or refinanced assets as described below under “Record Keeping Requirements”;

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- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-financed or refinanced assets and to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds or take other remedial action, if such counsel advises that a remedial action is necessary;
- to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- confirming that less than 25% of Bond proceeds were used to acquire land;
- with respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65 percent, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid waste disposal facilities; and
- with respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

The Borrower, in the Tax Certificate and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

All relevant records and contracts shall be maintained as described below.

Record Keeping Requirement

The Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that

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are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement; and

- a copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and
- a copy of all records of investments, investment agreements, credit enhancement, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate and/or other documents pertaining to the Bonds that are finalized in connection with the issuance of the Bonds, shall designate an officer or employee responsible for retaining the records listed above.

Education and Training

The Issuer Compliance Officer and relevant staff of each the Authority and Borrower shall be provided with education and training on federal tax requirements for post-issuance compliance applicable to the Bonds. The Authority and Borrower, respectively, will enable and encourage relevant personnel to attend and participate in educational and training programs offered by professional organizations and other entities with regard to monitoring compliance with federal tax requirements for the Bonds.

Attachment A

MODEL PROCEDURES

**California Pollution Control Financing Authority
Borrower Post-Issuance Tax Compliance Procedures
For Tax-Exempt Bonds**

The purpose of these Post-Issuance Tax Compliance Procedures, established by _____ (“Borrower”), is to maximize the likelihood that post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Borrower reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Borrower also reserves the right to change these policies and procedures from time to time.

General

The Borrower now identifies post-issuance tax compliance procedures for all Bonds issued on its behalf by the Authority.

The Borrower will cooperate with the Authority in responding to the Internal Revenue Service (“IRS”) regarding post-issuance tax compliance on the Bonds, including IRS examinations and audits. The Borrower shall be aware of the availability of the United States Treasury’s Tax-Exempt Bonds Voluntary Closing Agreement Program (“TEB VCAP”) and other remedial actions to resolve violations, and shall cooperate with the Authority to take such corrective action when necessary or appropriate. The Borrower is responsible for any and all costs, including but not limited to attorney’s fees, associated with or related to post-issuance tax compliance, including but not limited to costs to respond to an IRS examination or for TEB VCAP.

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. The Borrower also shall consult with bond counsel and/or other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in the use of Bond-financed or refinanced assets.

The Borrower shall determine (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are, or are likely to be required, the Borrower shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of

Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations. The Borrower shall make any rebate payments required on a timely basis, and shall involve the Authority as necessary and appropriate, including the signing and filing of appropriate IRS forms (e.g., Form 8038-T).

Unless otherwise provided by the indenture (or similar document) relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the Authority upon request and at least annually. The statements shall include a certification of compliance and a summary of information collected by the Borrower. The Borrower will cooperate with the Authority to address any concerns.

Arbitrage Rebate and Yield

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for overseeing compliance with arbitrage rebate requirements under federal tax law:

- (1) If at the time of Bond issuance, based on reasonable expectations set forth in the Tax Certificate and Agreement, it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Borrower may defer taking any of the actions set forth in subsection (2) below. Not later than the time of completion of construction or acquisition of the Project, and depletion of all funds from the project fund, the Borrower shall make, determine, or cause its Rebate Service Provider to determine, whether any of the Bond proceeds qualified for a spending exception or other exception from the rebate requirements. If a rebate exception is determined to be applicable, for all of the proceeds of the Bonds, the Borrower shall prepare and keep in the permanent records of the Bond issue a memorandum evidencing this conclusion together with records of expenditure (or other records) to support such conclusion. If the transaction does not qualify for an exception to the rebate requirement, for all of the proceeds of the Bonds, the Borrower shall initiate the steps set forth in subsection (2) below.
- (2) If, at the time of Bond issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to subsection (1) above, Borrower shall:
 - engage the services of a Rebate Service Provider and, prior to each rebate calculation date, cause the trustee or other financial institution investing Bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
 - provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
 - monitor the efforts of the Rebate Service Provider;

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- assure the payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
- during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements, including during each 6-month spending period up to 6 months, 18 months or 24 months, as and if applicable, following the issue date of the Bonds;
- retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, provide such copies to the Authority;
- in lieu of engaging an outside Rebate Service Provider, the Borrower may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the bond transaction; and
- establish procedures to ensure that investments that are acquired with Bond proceeds are so acquired at their fair market value.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before Bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before Bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting with bond counsel and other legal counsel and advisers in the review of any change in use, or potential change in use, of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

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- maintaining records for any contracts or arrangements involving the use of Bond-financed or refinanced assets as described below under “Record Keeping Requirements”;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-financed or refinanced assets, and to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds or take other remedial action, if such counsel advises that a remedial action is necessary
- to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- confirming that less than 25% of Bond proceeds were used to acquire land; and
- [with respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65 percent, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid waste disposal facilities;]

All relevant records and contracts shall be maintained as described below.

Record Keeping Requirement

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement;

- a copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets; and
- a copy of all records of investments, investment agreements, credit enhancement, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

Education and Training

The Borrower shall provide relevant staff with education and training on federal tax requirements for post-issuance compliance applicable to the Bonds. The Borrower will enable and encourage relevant staff to attend and participate in educational and training programs offered by professional organizations and other entities with regard to monitoring compliance with federal tax requirements for the Bonds.

[DATED]_____

[BORROWER]

By:_____

[Title]