

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: April 21, 2015
*Consideration and Approval of Amendment to Regulations for the Bond Program
Pertaining to Small Business Assistance Fund (SBAF) Fees*

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Summary. Staff requests Board approval to begin the emergency rulemaking process and file regulations to amend section (e) and adopt section (f) to § 8035 of the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations pertaining to a temporary suspension of the Small Business Assistance Fund (SBAF) fees for large businesses that pay into SBAF. Currently, the fee waiver expires on June 30, 2015. Staff recommends extending the SBAF fee waiver to June 30, 2016, and then waiving half of the fee from July 1, 2016 to December 31, 2016. Upon approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. During the late 1970’s and early 1980’s, the U.S. Small Business Administration (SBA) administered a special pollution control loan guarantee program for small businesses. The program offered SBA loan guarantees for federally issued tax-exempt bonds. The SBA discontinued the program in 1981, which left small businesses inadequate resources for securing cost-effective tax-exempt financing.

In 1985, the State Legislature established the collection of SBAF fees from large businesses obtaining conduit bond financing from CPCFA, to fill a void from the discontinuation of the SBA program, and to offset certain costs of issuance and letter of credit fees associated with the issuance of tax-exempt bonds issued on behalf of small businesses. A small business is defined as 500 employees or less. Under this legislation, large businesses began paying into SBAF to support CPCFA programs that benefit small businesses.

The fee to large businesses is up to .0066 of the face value of the bonds issued. Small businesses can receive up to \$205,000 towards their costs of bond issuance, depending on the size of the transaction.

SBAF funds have helped small businesses through other CPCFA programs. From 1994 to 2010 about \$35 million of the SBAF funds were used as the exclusive funding source for the CalCAP program that benefits small businesses. CalCAP no longer uses SBAF funds because in 2011 the program received its first State General Fund allocation of \$6 million, plus \$84 million in federal funds under the State Small Business Credit Initiative (SSBCI).

Need for Temporary Extension. CPCFA staff recommended that the SBAF fee be waived in early 2013 when staff noted that business investment in California using tax-exempt bonds had declined noticeably and as a result, Private Activity Bond (PAB) allocation had gone unused and CPCFA received unused allocation as Carryforward Allocation. Business investment in using tax-exempt bonds had declined because interest rates for conventional lending had lowered and therefore there was no longer an advantage in using tax-exempt bonds to obtain a lower interest

Agenda Item 4.B.

rate. CPCFA staff anticipated that temporarily waiving the SBAF fee was a way to incentivize large businesses to issue tax-exempt bonds by lowering the cost of issuance.

CPCFA currently has approximately \$3.5 billion in Carryforward Allocation available and in order to utilize the allocation before it expires, CPCFA continues to need both small and large businesses to issue PABs. Available allocation is listed in the table below.

Total 2012 – 2014 Available Carryforward Allocation Available	<u>\$3,491,810,388</u>
Solid Waste Disposal	\$1,738,055,000
Sewage Facilities	\$ 303,755,388
Water Furnishing	\$1,450,000,000

The SBAF fund currently has a balance of approximately \$15,268,334. The temporary fee waiver for large businesses will not affect the SBAF assistance given to small businesses. During the last 2 years since the SBAF fee waiver became effective, five large businesses have benefited from the waiver and all small businesses requesting SBAF assistance have received it. The table below outlines the number of companies and amounts paid into and out of the SBAF account over the past two years.

	2013	2014	2015 (as of March 31st)	Total
Small businesses that received SBAF assistance	0	3 companies received \$430,440	1 company received \$45,840	4 companies received \$476,280
Small businesses that did not receive SBAF	0	1 company	0	1 company
Large businesses that did not pay into SBAF	1 company	4 companies	0	5 companies

CPCFA staff anticipates that the temporary fee waiver will continue to entice large businesses to issue PABs because the waiver noticeably reduces a portion of the cost of issuance. The fee reduction could also serve as an incentive for national companies to focus investment in California while these fees are lower.

Regulation Change. Amend Section 8035(e) and add Section 8035(f) of the regulations which will read as follows (change is underlined):

§ Section 8035(e).The assessment of the fee provided for in subsection (a) on all new financing transactions is waived until June 30, 2016. In the case of refunding bonds and conversion bonds, there will be no SBAF fee charged if the original bonds were issued after the effective date of this subsection and before June 30, 2016.

Agenda Item 4.B.

§ Section 8035(f).The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions from July 1, 2016 to December 31, 2016.

Regulatory Process. After Authority approval to amend and extend the existing regulations, emergency and regular rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the regular rulemaking process. The regular rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the regular rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

April 21, 2015	The Board approves the emergency regulations.
April 13, 2015	5-day Notice posted on CPCFA website and sent to Interested Parties.
April 22, 2015	Emergency regulations filed with OAL.
April 27, 2015	Public comment period ends.
May 2, 2015	OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect.
October 29, 2015	Emergency regulations expire.

Permanent Regulations

June 2, 2015	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
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Agenda Item 4.B.

June 12, 2015	OAL publishes Notice and 45-day public comment period begins.
July 27, 2015	Public comment period regarding proposed regulations ends.
August 18, 2015	Deliver permanent regulation package to OAL for 30-day review*
September 17, 2015	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

August 3, 2015	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
August 18, 2015	15-day comment period ends.
August 25, 2015	Deliver permanent regulation package to OAL for 30-day review.
September 24, 2015	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations concerning a temporary waiver of SBAF fees for the Bond Program and to authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to CPCFA bond program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING
EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER
ACTIONS RELATED THERETO PERTAINING TO THE SMALL BUSINESS
ASSISTANCE FUND (SBAF) FEES FOR THE BOND PROGRAM**

April 21, 2015

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) 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.

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

Section 1. The proposed form of regulations presented at the April 21, 2015 meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy 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 emergency regulations and later as regular regulations.

Section 2. The Chair, Executive Director or Deputy 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.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 8035. Small Business Assistance Fund Fees.

- (a) The Authority shall charge an applicant who is not a public agency or 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 (.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 thirty-six one-hundredths of one percent (.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.
- (e) The assessment of the fee provided for in subsection (a) on all new financing transactions is waived until June 30, 2016 In the case of refunding bonds and conversion

Agenda Item 4.B.

bonds, there will be no SBAF fee charged if the original bonds were issued after the effective date of this subsection and before June 30, 2016.

- (f) The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions from July 1, 2016 to December 31, 2016.

Note: Proposed changes are underlined.