

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: October 18, 2022**

**Request for 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 regular rulemaking process and to file regulations to amend sub-section (e) and delete sub-section (f) to section 8035 of the California Pollution Control Financing Authority (the "Authority") regulations pertaining to a temporary suspension of the Small Business Assistance Fund (SBAF) fees charged to large businesses. The amended section (e) will suspend collection of SBAF fees until December 31, 2026. 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 business borrowers with inadequate resources for securing cost-effective tax-exempt financing.

In order to fill the void created by the discontinuation of the SBA program and offset certain costs of issuance and letter of credit fees associated with tax-exempt bond issuance, the State Legislature established the collection of SBAF fees from large businesses obtaining conduit bond financing from the Authority in 1985. Under this legislation, large businesses began paying into SBAF to support the Authority's programs that benefit small business borrowers.

Eligible small business (A small business is defined as 500 employees or less.) borrowers can receive up to \$210,000 towards its eligible costs of issuance, based on a sliding scale dependent on the Par amount of the transaction.

Currently, the Authority awards SBAF funds to eligible small business borrowers at the close of a transaction. SBAF funds may be used to pay certain transaction costs of issuance and certain post issuance requests. Acceptable SBAF subsidy uses include, but are not limited to, bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees due to other state agencies, accounting fees, consultant's fees, other expenses directly related to the issuance of bonds that are normally paid from bond proceeds at the time of closing, and post issuance requests related to a change in a national interest rate index (eg. LIBOR to SOFR). Currently, the Authority maintains approximately \$14.95 million, available for use to qualified small business borrowers, in the SBAF account.

Need for Temporary Suspension. In early 2013, the Authority waived the SBAF fee for large businesses and between 2013 and 2015, there were 5 large businesses that successfully issued tax-exempt bonds with the Authority. Then, the Authority extended the waiver for an additional six months until December 31, 2016, and waived half of the fee from January 1, 2017, to June 30, 2017. Between June 30, 2016, and June 30, 2017, one large business issued bonds with the Authority. In the last four years, only two large businesses have issued bonds with the Authority.

Staff anticipates that the temporary fee suspension will entice large businesses to once again finance with the Authority. Suspension of the SBAF fee noticeably reduces a portion of the cost of issuance. The fee waiver could also make the Authority competitive in an increasingly high borrowing cost environment and incentivize national companies to focus investment in California.

With the current SBAF balance of approximately \$14.95 million, the temporary SBAF fee suspension will not affect the availability of SBAF assistance to small businesses.

During the previous four years, the SBAF received fees from two large businesses and all eligible small businesses received SBAF assistance. The table below outlines the number of companies and amounts paid into and out of the SBAF over the past four years:

	2019	2020	2021	2022 (as of 10/1/22)	Total
Number of Small Businesses Receiving SBAF assistance	0	1	2	0	3
Total Dollars Awarded	\$0	\$138,000	\$132,000	\$0	\$270,000
Number of Small Businesses Not Eligible for SBAF Assistance	5	4	3	0	12
Number of Large Businesses Paying into SBAF	0	1	0	1	2
Total Dollars Awarded	\$0	\$75,000	\$0	\$660,000	\$735,000

Proposed Regulation Change. Amend sub-section 8035(e) and delete sub-section 8035(f) of the regulations which will read as follows (amendments are underlined and deletions are shown in strikethrough):

§ 8035(e). The assessment of the fee provided for in subsection (a) is waived on all new financing transactions closing on or before December 31, ~~2016~~2026. ~~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 December 31, 2016.~~

**Agenda Item 4.A.
Resolution No. 22-01-003**

~~§ 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.~~

See Attachment A for a clean copy of the proposed regulation changes.

Regulatory Process. 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 CPCFA Board 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 CPCFA Board approval. After CPCFA Board 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.

Permanent Regulations

October 18, 2022	CPCFA Board approves the proposed regulation changes.
November 8, 2022	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.
November 17, 2022	Authority staff will post the text of regulations, notice of proposed rulemaking and initial statement of reasons to the Authority webpage and send an email to notify all interested parties on the Authority listserv.
November 18, 2022	OAL publishes Notice and 45-day public comment period begins.
January 2, 2023	Public comment period regarding proposed regulations ends.
January 17, 2023	Deliver permanent regulation package to OAL for 30-day review*

**Agenda Item 4.A.
Resolution No. 22-01-003**

February 16, 2023 OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective. Authority staff will post receipt of approval on the Authority website.

*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:

January 12, 2023 Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.

January 27, 2023 15-day comment period ends.

February 14, 2023 Deliver permanent regulation package to OAL for 30-day review.

March 16, 2023 OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective. Authority staff will post receipt of approval on the Authority website.

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

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

October 18, 2022

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 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 October 18, 2022, 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 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.

Attachment A

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) is waived on all financing transactions closing on or before December 31, 2026.

Authority cited: Section 44520 and 44548, Health and Safety Code.

Attachment A

Reference: Section 44548, Health and Safety Code.