

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations **Division 11. California Pollution Control Financing Authority** **Article 12. Rate Reduction Bonds**

All sections are newly adopted sections:

§ 8130. Applicability.

This Article 12 shall apply to the Authority's review of the issuance of Rate Reduction Bonds pursuant to Section 6588.7 of the Government Code.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.
Reference: Section 6588.7(b), Government Code.

§ 8131. Definitions.

The following definitions shall govern construction of this Article 12.

- (a) "Application" means an application submitted by an Issuer Applicant to the Authority for review of its proposed Rate Reduction Bonds issuance.
- (b) "Authority" means the California Pollution Control Financing Authority.
- (c) "Conservation or Reclamation Purposes" is defined in Section 6585(d) of the Government Code.
- (d) "Financing Costs" is defined in Section 6585(g) of the Government Code.
- (e) "Issuer Applicant" means an entity created pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code (commencing with Section 6500) whose financing activities are limited to financing Utility Projects and projects for the use or benefit of public water agencies and which applies to the Authority for review and approval of an issuance of Rate Reduction Bonds.
- (f) "Legislative Body" is defined in Section 6585(i) of the Government Code.
- (g) "Local Agency" is defined in Section 6585(j) of the Government Code.
- (h) "Local Agency Applicant" means a Local Agency that owns and operates a Publicly Owned Utility and which applies to an Issuer Applicant to finance costs of a Utility Project for the Publicly Owned Utility with the proceeds of Rate Reduction Bonds and whose senior lien unenhanced revenue bonds payable from revenues of the Publicly Owned Utility are, or upon issuance would be, rated not lower than Baa3 by Moody's

Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings, Inc.

- (i) "Mandate" is defined in Section 6585(k) of the Government Code.
- (j) "Mandating Entity" is defined in Section 6585(l) of the Government Code.
- (k) "Publicly Owned Utility" is defined in Section 6585(o) of the Government Code.
- (l) "Rate Reduction Bonds" mean bonds that are issued by an Issuer Applicant, the proceeds of which are used directly or indirectly to pay or reimburse a Local Agency or its Publicly Owned Utility for the payment of the costs of a Utility Project, and that are secured by a pledge of, and are payable from, Utility Project Property as provided in Government Code Section 6588.7.
- (m) "Utility Project" is defined in Section 6585(r) of the Government Code.
- (n) "Utility Project Charge" is defined in Section 6585(s) of the Government Code.
- (o) "Utility Project Property" is defined in Section 6585(t) of the Government Code.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.

Reference: Section 6585, Government Code.

§ 8132. Applications for Review.

The Authority will accept Applications from Issuer Applicants for review in a form approved by the Executive Director as prescribed in Section 8134. Application forms may be obtained from the Authority office located in the City of Sacramento. The Authority may also make Applications available on its website <http://www.treasurer.ca.gov/cpcfafa/>.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.

Reference: Section 6588.7(b), Government Code.

§ 8133. Application Fees.

A check or a wire transfer in the amount of \$10,000, shall be made payable to "CPCFA Fund" and shall accompany each Application. At the discretion of the Executive Director, the Authority may charge additional fees to cover any additional expenses that may be incurred by the Authority. Such fees provide for review and processing of the Application and are nonrefundable.

Note: Authority cited: Section 6588.7(b)(3), Government Code.

Reference Section 6588.7(b)(3), Government Code.

§ 8134. Application Content.

The Application shall contain all of the following.

- (a) Information concerning the Issuer Applicant:
 - (1) Name, address, phone number and email address of contact person for Issuer Applicant.
 - (2) Copies of the following documents:
 - (i) Issuer Applicant's joint exercise of powers agreement indicating the provisions therein which qualify the Issuer Applicant to issue Rate Reduction Bonds and certified by the chair, executive director, secretary or other authorized officer of the Issuer Applicant;
 - (ii) Issuer Applicant's by-laws, rules or other similar document certified by the chair, executive director, secretary or other authorized officer of the Issuer Applicant; and
 - (iii) Issuer Applicant's Notice of Agreement and any Notice of Amendment filed with the Secretary of State.
 - (3) Certificate from the chair, executive director or other authorized officer of the Issuer Applicant to the effect that the Issuer Applicant's joint exercise of powers agreement limits the financing activities of the Issuer Applicant to financing Utility Projects and projects for the use or benefit of public water agencies.
- (b) Information concerning the Local Agency Applicant:
 - (1) Name, address, phone number and email address of contact person for Local Agency Applicant.
 - (2) Evidence the Local Agency Applicant is, or owns and operates, a Publicly Owned Utility. Such evidence may consist of:
 - (i) Certificate from the chair, mayor, chief executive officer, general manager, assistant general manager, executive director or other authorized officer of the Local Agency Applicant to the effect that the Local Agency Applicant is, or owns and operates, a Publicly Owned Utility furnishing water service to not less than 25,000 retail customers; or
 - (ii) Copy of charter documents establishing that the utility is a Publicly Owned Utility owned and operated by, or is a department or other subdivision of, the Local Agency Applicant certified by the chair, mayor, chief executive officer, general manager, assistant general manager, executive director or other authorized officer of the Local Agency Applicant, as well as the certification of such officer to the effect that such

Publicly Owned Utility is furnishing water service to not less than 25,000 retail customers.

- (3) Evidence that senior lien unenhanced revenue bonds payable from the revenues of the Publicly Owned Utility owned or operated by Local Agency Applicant are, or upon issuance would be, rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings, Inc. Such evidence may consist of:
 - (i) Current rating reports from one or more of the aforementioned rating agencies; or
 - (ii) A report of an independent investment banker or financial consultant concluding, based on an analysis of other Publicly Owned Utilities of comparable size, financial metrics, debt service coverage ratios, management experience and credit quality, that senior lien unenhanced bonds payable from the revenues of the Publicly Owned Utility upon issuance would be rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings Inc.
- (4) Resolutions, ordinances or other official actions of the Legislative Body of the Local Agency Applicant, adopted at public meetings held with all proper notice and at which a quorum was present and acting throughout, certified by the chair, president or other presiding officer of such Legislative Body and evidencing the determination by the Legislative Body of the Local Agency Applicant that:
 - (i) The project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project;
 - (ii) The Local Agency Applicant is electing to finance costs of the Utility Project pursuant to Section 6588.7 of the Government Code and the Financing Costs associated with the financing are to be paid from Utility Project Property, including the Utility Project Charge for the Rate Reduction Bonds issued for the Utility Project in accordance with Section 6588.7 of the Government Code; and
 - (iii) Based on information available to, and projections used by, the Legislative Body of the Local Agency Applicant, the rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility.
- (5) Evidence that the Legislative Body of the Local Agency Applicant had a reasonable basis on which to make the findings and determinations set forth in Section (b)(4) above. Such evidence may consist of:

- (i) A report of an independent certified consulting engineer setting forth the principal facts, assumptions, projections, variables and calculations and concluding that:
 - a. The Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project; and
 - b. The rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility; or
- (ii) A report of the chief engineer of the Publicly Owned Utility setting forth the principal facts, assumptions, projections, variables and calculations and concluding that:
 - a. The Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project; and
 - b. The rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility; or
- (iii) Such other documents, reports, analyses and other materials which, in the event the Project is a Utility Project because it is in response to a Mandate, may include legal memoranda or opinions, setting forth the principal facts, assumptions, projections, variables and calculations and concluding that:
 - a. The Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project; and
 - b. The rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility.

(c) Information concerning the Utility Project:

- (1) In support of the conclusion that the Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project, the reports and materials referred to in Sections 8134(b)(5)(i), (ii) and (iii) must establish that:
 - (i) The items to be financed with the proceeds of the sale of Rate Reduction Bonds consist of the acquisition, construction, installation, retrofitting,

rebuilding, or other addition to, or improvement of, any equipment, device, structure, improvement, process, facility, technology, rights or property, located either within or outside of, the State of California, and that is used, or to be used, in connection with the operations of a Publicly Owned Utility for Conservation or Reclamation Purposes or in response to a Mandate; and

(ii) The use of the items to be financed with the proceeds of the sale of Rate Reduction Bonds will either:

a. Be designed to reduce the amount of potable water to be supplied by a Publicly Owned Utility or reduce the amount of water imported by the Publicly Owned Utility, including, without limitation, storm water recapture and treatment, water recycling, development of local groundwater resources, groundwater recharging, and water reclamation; or

b. Respond to a requirement, imposed by a Mandating Entity by any means, including without limitation, a statute, rule, regulation, an administrative or judicial order, a building, operating, or licensing requirement or condition, or an agreement with, or license or permit from, the Mandating Entity, on a facility of a Publicly Owned Utility or a facility operated in whole or in part for the benefit of a Publicly Owned Utility, or on the operations of a Publicly Owned Utility, or on the water pumped, acquired, or supplied by the Publicly Owned Utility.

(d) Information concerning the projected Financing Costs for the proposed Rate Reduction Bond financing:

(1) The Application shall provide the Financing Costs projected to be incurred in connection with the proposed Rate Reduction Bond financing, including:

(i) Anticipated Rate Reduction Bond Scale

- a. Not to exceed principal amount
- b. Maturities
- c. Interest rates
 - (A) Fixed or variable
 - (B) Current interest or capital appreciation bonds
- d. Redemption provisions

(ii) Anticipated Professional Fees

- a. Bond counsel fee
- b. Financial advisor fee
- c. Underwriters counsel fee
- d. Trustee counsel fee

- e. Accounting fee
 - f. Engineering fee
 - g. Other legal fees
 - h. Other consultants fees
- (iii) Issuance Fees
- a. Underwriting or placement fees
 - b. Trustee fee
 - c. Rating agency fees
- (iv) Credit or Liquidity Enhancement Fees
- a. Bond insurance fee
 - b. Bank letter of credit or standby bond purchase agreement fees
 - c. Debt service reserve amount or surety fees
 - d. Other credit or liquidity enhancement fees
- (v) Servicing and Administrative fees
- a. Publicly Owned Utility servicing fee (bill and collect the Utility Project Charge)
 - b. Annual trustee fees
 - c. Interest rate swap
 - d. Other servicing and administrative fees
- (2) Certificate from an independent financial advisor to the effect that based on information available to them, the projected Financing Costs fall within the normal range of financing costs for comparable types of debt issuance.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7) , Government Code.
 Reference: Sections 6588.7(b) and 6588.7(c), Government Code.

§ 8135. Authority Action.

- (a) Within 10 business days of receipt the Authority will advise the Issuer Applicant in writing whether Application is complete and, if not, what additional information or documentation is required.
- (b) Within 7 business days of submission of the additional information, the Authority will advise the Issuer Applicant in writing whether Application is complete and, if not, describing what additional information or documentation is required.
- (c) The Authority shall take action on any completed Application no later than the next meeting of the Authority that occurs after at least 60 days following determination by the Authority that the Application is complete. During said 60 days, the Authority may request supplemental information in support of the Authority's review of an Application.

- (d) An Issuer Applicant can withdraw an Application at any time without penalty or prejudice, however the application fee paid pursuant to Section 8133 is not refundable. An Issuer Applicant can resubmit a withdrawn Application at any time.

Note: Authority cited: Sections 6588.7(b)(3), 6588.7(b)(5) and 6588.7(b)(7), Government Code.
Reference: Section 6588.7(b), Government Code.

§ 8136. Application Approval.

- (a) The Authority shall determine that an issue of Rate Reduction Bonds is qualified for issuance under 6588.7 of the Government Code if the Application establishes to the satisfaction of Authority that:
- (1) The project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project;
 - (2) The Local Agency Applicant is electing to finance costs of the Utility Project pursuant to Section 6588.7 of the Government Code and the Financing Costs associated with the financing are to be paid from Utility Project Property, including the Utility Project Charge for the Rate Reduction Bonds issued for the Utility Project in accordance with Section 6588.7 of the Government Code;
 - (3) Based on information available to, and projections used by, the legislative body of the Local Agency Applicant, the rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility; and
 - (4) The projected Financing Costs fall within the normal range of financing costs for comparable types of debt issuance.
- (b) The Authority shall provide an explanation in writing for any refusal to qualify a proposed issuance but shall not alter or modify any term or condition related to the Utility Project Property.

Note: Authority cited: Sections 6588.7(b)(2), 6588.7(b)(3), 6588.7(b)(4) and 6588.7(b)(7), Government Code.
Reference: Section 6588.7(b), Government Code.

§ 8137. Reports.

- (a) Each Issuer Applicant whose Application is approved shall provide to the Authority, within 10 business days following issuance of any Rate Reduction Bonds, the following information:

- (1) Principal amount of Rate Reduction Bonds sold.
- (2) The maturity dates of Rate Reduction Bonds sold.
- (3) The interest rate or rates on the Rate Reduction Bonds sold and, if such Rate Reduction Bonds bear interest at a variable rate, how, by whom and how often such rate is determined.
- (4) The credit ratings assigned to such Rate Reduction Bonds by nationally recognized securities rating organizations.
- (5) Whether the bonds were sold by competitive bid or negotiated sale.
- (6) Comparison of interest rates and transactional costs on the Rate Reduction Bonds with other comparable types of debt occurring near the same time.

The Authority shall provide a form for such reports.

- (b) Annually no later than March 31, the Authority shall submit to the Legislature a report of its activities pursuant to Section 6588.7(b) of the Government Code for the preceding calendar year ended December 31. The Authority shall require information from Issuer Applicants to ensure that the necessary data is available to complete this report. The report shall include all of the following:
 - (1) Listing of Applications received.
 - (2) Listing of proposed issuances qualified under the provisions of Section 6588.7(b) of the Government Code.
 - (3) Report of Rate Reduction Bonds sold, the interest rates on the Rate Reduction Bonds, whether the Rate Reduction Bond sales were pursuant to public bid or were negotiated, and any rating given the Rate Reduction Bonds by a nationally recognized securities rating organization.
 - (4) A specification of proposed issuances of Rate Reduction Bonds qualified but not yet issued.
 - (5) A comparison of the interest rates and transactional costs on issuances of Rate Reduction Bonds qualified under Section 6588.7(b) of the Government Code with interest rates on comparable types of debt issuance occurring at or near the same time as the Rate Reduction Bond issuances.
- (c) The Executive Director shall be authorized to seek the information required in sections (a)(1) through (5) from the Issuer Applicant concerning any Application submitted to the Authority for review.

Note: Authority cited: Sections 6588.7(b)(3), 6588.7(b)(7) and 6588.7(b)(8), Government Code.
Reference: Section 6588.7(b)(8), Government Code.

§ 8138. Sunset.

With the exception of Section 8137, these regulations shall expire upon the termination of the authority to issue Rate Reduction Bonds under Section 6588.7 of the Government Code. Section 8137 of these regulations shall expire upon the Authority's submission of its final report to the Legislature thereunder.

Note: Authority cited: Sections 6588.7(b)(3), 6588.7(b)(7), 6588.7(b)(8) and 6588.7(k), Government Code.

Reference: Section 6588.7(b)(8) and 6588.7(b)(9), Government Code.