

## **TITLE 4. BUSINESS REGULATIONS**

### **NOTICE OF PROPOSED RULEMAKING**

#### **Proposed Regulatory Action**

The Authority proposes to adopt Sections 8130-8138 of Title 4 of the California Code of Regulations (the "Adopted Regulations") concerning the administration of the California Pollution Control Financing Authority's review of the issuance of rate reduction bonds. These Adopted Regulations are necessary to implement and make specific Article 12 of the California Pollution Control Financing Authority Act (the "Act"). The proposed regulations have been approved by OAL on an emergency basis and this proposed rulemaking would make these changes permanent.

#### **Authority and Reference**

Authority: Government Code Section 6588.7(b)(7). Section 6588.7(b)(7) of the Government Code authorizes the Authority to adopt emergency regulations and instructs the Office of Administrative Law to consider such regulations to be "necessary for the immediate preservation of the public peace, health and safety or general welfare."

Reference: Government Code Division 7, Chapter 5. This regulation will make specific Sections 6585 through 6599.3 of the Government Code.

#### **Informative Digest/Policy Statement Overview**

Existing law establishes the California Pollution Control Financing Authority and authorizes the Authority to develop and administer procedures to review the issuance of rate reduction bonds pursuant to Government Code Section 6588.7(b)(7).

Assembly Bill 850 [AB 850 (Nazarian) Chapter 636, Statutes of 2013] authorizes joint power authorities to issue rate reduction bonds to finance publicly owned utility projects until December 31, 2020. The bonds are to be secured by utility project property and repaid through a separate utility project charge imposed on the utility customers' bills. Each publicly owned utility will have the ability to establish and collect a utility project charge, as a separate nonbypassable charge, to finance the rate reduction bonds. The issuance of rate reduction bonds is a benefit to the publicly owned utility, as well as the customer because the rates of the utility plus the utility project charge are expected to be lower than the rates if the project was financed through revenue bonds. While the bonds are issued by the local joint power authorities, AB 850 includes an additional state review process by the CPCFA.

Assembly Bill 850 requires CPCFA to review each issue of rate reduction bonds for financing costs of a utility project and to determine whether the issue is qualified for issuance under the provisions of the statute (Government Code, section 6588.7(b)(2)(A)-(B)). CPCFA is also required to establish procedures, adopt emergency regulations with the OAL, and report these review determinations to the Legislature annually.

An issue is qualified if four main factors are satisfied. First, the project to be financed must meet statutory criteria. The second criterion requires that the municipal utility elects to finance the project pursuant to the statute. The third criterion states that the financing costs shall fall within the normal range of costs for comparable types of debt issuance. Lastly, the rates of the utility

plus new charge are collectively expected to be lower than the utility rates would be if the project was financed through the issuance of the utility's own revenue bonds.

On August 15, 2014, CPCFA staff posted the AB 850 webpage that provided the program implementation plan, the full text of AB 850, proposed draft regulations and contact information. This posting began a 30-day comment period where stakeholders could propose comments to the draft regulations. CPCFA received comments from one stakeholder and incorporated some of them into revised draft regulations. CPCFA staff also hosted a workshop on October 14, 2014 to discuss the revised draft regulations before presenting them to the CPCFA board. The public will be able to further comment during the OAL Regulatory Process.

Government Code Section 11346.5(a)(3)(D) requires that the notice of proposed rulemaking shall include, "an evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations." CPCFA staff reviewed the California Code of Regulations and found no existing regulations dealing with this issue. Therefore, CPCFA believes that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. Also, the issuance of rate reduction bonds is a benefit to the publicly owned utility, as well as the customer because the rates of the utility plus the utility project charge are expected to be lower than the rates if the project was financed through revenue bonds. The proposed amendment and objective is stated below.

CPCFA staff has evaluated the existing regulations and based on the review, staff has determined that the proposed adoption to the CPCFA Regulations is consistent and compatible with the existing state regulations, and the objective is as follows:

**8130. Applicability.**

This section clearly states that this Article shall apply to the Authority's review of the issuance of rate reduction bonds pursuant to Section 6588.7 of the Government Code.

Necessity. This section is necessary to indicate that Article 12 applies to the review of the issuance of rate reduction bonds.

**§ 8131. Definitions.**

This section clearly defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed definitions are necessary to clarify the existing statutory language and other terms used throughout the regulations. In this section, repeating or paraphrasing of statute is necessary for purposes of clarity.

**§ 8132. Applications for Review.**

This section clearly states that the Authority will accept applications from the applicant for review in a form approved by the Executive Director as prescribed in section 8134. The application will be made available at the Authority office and on its website.

Necessity. This section is necessary to describe the process of obtaining an application. The application contents are stated in Section 8134 of the proposed regulations.

**§ 8133. Application Fees.**

This section describes the application fee which must accompany each application submitted. The application fee provides for the review and processing of each application and is

nonrefundable. This section also states that the Authority may charge additional fees to cover any additional expenses that might be incurred if the Authority must retain an independent financial advisor to verify the submitted application contents.

Necessity. The application fee is necessary to cover the Authority's reasonable costs of administering the review of rate reduction bonds. Based on the Authority's experience as a conduit issuer, the Authority deems the application fee amount reasonable to cover the cost of the anticipated workload. The Authority may charge additional fees in the amount equal to the amount if the Authority must retain an independent financial advisory to verify any information submitted by the applicant. The fee is nonrefundable because the review of each application will incur costs whether the application is approved, denied or withdrawn.

#### **§ 8134. Application Content.**

This section describes the contents of a completed application. For an application to be deemed complete, the applicant must submit information concerning the issuer applicant, the local agency applicant, information concerning the utility project, as well as information concerning the projected financing costs for the proposed rate reduction bond financing. This section clearly states the evidence that is required to meet each of the criteria.

Necessity. A clear description of the application information is necessary to clarify the application contents and evidence that must be provided in order for the Authority to determine whether the issue is qualified for issuance under the provisions of the statute (Government Code, section 6588.7(b)(2)(A)-(B)).

#### **§ 8135. Authority Action.**

The Authority will have 10 business days to inform the applicant whether the application is complete and, if not, what additional documentation or information is required. Once the applicant has submitted the supplemental information or documentation, the Authority will have 7 business days to inform the applicant whether the application is complete and, if not request additional information. The Authority will take action on any completed Application no later than the next board meeting that occurs after at least 60 days following the determination by the Authority that the application is complete. An applicant can withdraw an application any time without penalty or prejudice; however there is a nonrefundable application fee.

Necessity. This section is necessary to specify the actions to be taken by the Authority when an issuer application submits an application for review. The fee is nonrefundable because the review of each application will incur costs whether the application is approved, denied or withdrawn.

#### **§ 8136. Application Approval.**

This section clearly states that in order for the Authority to determine that the issue is qualified for issuance, the application provided must contain evidence that it meets all of the criteria. The Authority will provide an explanation in writing for any refusal to qualify a proposed issuance.

Necessity. A thorough description of the criteria is necessary to clearly state how the Authority will determine if an issue is qualified for issuance pursuant to Government Code Section 6588.7. The Authority is also required to provide the issuer applicant with a written explanation for any refusal to qualify a proposed issuance pursuant to Government Code Section 6588.7(b)(7).

**§ 8137. Reports.**

This section provides the information that must be submitted by each issuer applicant whose application was approved by the Authority within 10 business days following the issuance of any rate reduction bonds. This section also states that annually before March 31, the Authority is required to submit a report to the Legislature of its activities for the proceeding calendar year ended on December 31. The Executive Director is also authorized to seek the information required in this section from the issuer applicant in regards to any application submitted for the Authority to review.

Necessity. The Authority will require information from the issuer applicant in order to submit an accurate report to the Legislature. The Authority is required to submit an annual report pursuant to Government Code Section 6588.7(b). In this section, repeating or paraphrasing of statute is necessary for purposes of clarity.

**§ 8138. Sunset.**

This section clearly describes that with the exception of Section 8137, these regulations shall expire upon the termination of the Authority to review the issuance of rate reduction bonds. Section 8137 will expire when the Authority submits the final report to the Legislature.

Necessity. This section is necessary to clearly state the expiration of these regulations when the authority to issue rate reduction bonds terminate pursuant to Government Code Section 6588.7(k). In this section, repeating or paraphrasing of statute is necessary for purposes of clarity.

**Disclosure Regarding the Proposed Action**

The Executive Director of the Authority has made the following determinations regarding the effect of the Adopted Regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630:** None.

**Other non–discretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None.

**Cost impact on a representative private person or business:** The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Small Business:** The adopted regulations will not have an adverse impact on small business in California and will not affect small business since they do not impose additional restrictions or cost on small business.

**Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:** The Authority has made an initial determination that the Adopted Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Results of the Economic Impact Analysis**

**Assessment regarding effect on jobs/businesses:** The Adopted Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

**Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:** The issuance of rate reduction bonds is a benefit to the publicly owned utility, as well as the customer because the rates of the utility plus the utility project charge are expected to be lower than the rates if the project was financed through revenue bonds.

### **Consideration of Alternatives**

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Adopted Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Adopted Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Adopted Regulations during the written comment period.

### **Agency Contact Person**

Written comments, inquiries and any questions regarding the substance of the Adopted Regulations shall be submitted or directed to:

Andrea Gonzalez, Associate Treasury Program Officer  
California Pollution Control Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, CA 95814  
Telephone: (916) 651-7284  
Fax: (916) 657-4821  
Email: [agonzalez@treasurer.ca.gov](mailto:agonzalez@treasurer.ca.gov)

Doreen Smith, Treasury Program Manager I  
California Pollution Control Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, CA 95814  
Telephone: (916) 651-6503  
Fax: (916) 657-4821  
Email: [dsmith@treasurer.ca.gov](mailto:dsmith@treasurer.ca.gov)

### **Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Adopted Regulations to the Authority. The written comment period on the Adopted Regulations ends at **5:00 p.m. on July 27, 2015**. All the comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

### **Availability of Initial Statement of Reasons And Text of Proposed Regulations**

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the Initial Statement of Reasons and the proposed text of the Adopted Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

### **Public Hearing**

CPCFA does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

### **Availability of Changed or Modified Text**

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

### **Availability of Final Statement of Reasons**

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

# **CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

## **TITLE 4, DIVISION 11, ARTICLE 12**

### **INITIAL STATEMENT OF REASONS**

#### **Introduction**

Pursuant to Section 6588.7(b)(7) of the Government Code, the regulations being adopted herewith by the California Pollution Control Financing Authority (the "Authority") are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Assembly Bill 850 [AB 850 (Nazarian) Chapter 636, Statutes of 2013] authorizes joint power authorities to issue rate reduction bonds to finance publicly owned utility projects until December 31, 2020. The bonds are to be secured by utility project property and repaid through a separate utility project charge imposed on the utility customers' bills. Each publicly owned utility will have the ability to establish and collect a utility project charge, as a separate nonbypassable charge, to finance the rate reduction bonds. The issuance of rate reduction bonds is a benefit to the publicly owned utility, as well as the customer because the rates of the utility plus the utility project charge are expected to be lower than the rates if the project was financed through revenue bonds. While the bonds are issued by the local joint power authorities, AB 850 includes an additional state review process by the CPCFA.

An issue is qualified if four main factors are satisfied. First, the project to be financed must meet statutory criteria. The second criterion requires that the municipal utility elects to finance the project pursuant to the statute. The third criterion states that the financing costs shall fall within the normal range of costs for comparable types of debt issuance. Lastly, the rates of the utility plus new charge are collectively expected to be lower than the utility rates would be if the project was financed through the issuance of the utility's own revenue bonds.

Assembly Bill 850 requires CPCFA to review each issue of rate reduction bonds for financing costs of a utility project and to determine whether the issue is qualified for issuance under the provisions of the statute (Government Code, section 6588.7(b)(2)(A)-(B)). CPCFA is also required to establish procedures, adopt emergency regulations with the OAL, and report these review determinations to the Legislature annually.

#### **Statement of Benefits**

The proposed regulations provide guidelines on the Authority's review of each issue of rate reduction bonds. The issuance of rate reduction bonds is a benefit to the publicly owned utility, as well as the customer because the rates of the utility plus the utility project charge are expected to be lower than the rates if the project was financed through revenue bonds.

#### **Section Analysis**

The proposed objective is as follows:

**8130. Applicability.**

This section clearly states that this Article shall apply to the Authority's review of the issuance of rate reduction bonds pursuant to Section 6588.7 of the Government Code.

Necessity. This section is necessary to indicate that Article 12 applies to the review of the issuance of rate reduction bonds.

**§ 8131. Definitions.**

This section clearly defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed definitions are necessary to clarify the existing statutory language and other terms used throughout the regulations. In this section, repeating or paraphrasing of statute is necessary for purposes of clarity.

**§ 8132. Applications for Review.**

This section clearly states that the Authority will accept applications from the applicant for review in a form approved by the Executive Director as prescribed in section 8134. The application will be made available at the Authority office and on its website.

Necessity. This section is necessary to describe the process of obtaining an application. The application contents are stated in Section 8134 of the proposed regulations.

**§ 8133. Application Fees.**

This section describes the application fee which must accompany each application submitted. The application fee provides for the review and processing of each application and is nonrefundable. This section also states that the Authority may charge additional fees to cover any additional expenses that might be incurred if the Authority must retain an independent financial advisor to verify the submitted application contents.

Necessity. The application fee is necessary to cover the Authority's reasonable costs of administering the review of rate reduction bonds. Based on the Authority's experience as a conduit issuer, the Authority deems the application fee amount reasonable to cover the cost of the anticipated workload. The Authority may charge additional fees in the amount equal to the amount if the Authority must retain an independent financial advisory to verify any information submitted by the applicant. The fee is nonrefundable because the review of each application will incur costs whether the application is approved, denied or withdrawn.

**§ 8134. Application Content.**

This section describes the contents of a completed application. For an application to be deemed complete, the applicant must submit information concerning the issuer applicant, the local agency applicant, information concerning the utility project, as well as information concerning the projected financing costs for the proposed rate reduction bond financing. This section clearly states the evidence that is required to meet each of the criteria.

Necessity. A clear description of the application information is necessary to clarify the application contents and evidence that must be provided in order for the Authority to determine whether the issue is qualified for issuance under the provisions of the statute (Government Code, section 6588.7(b)(2)(A)-(B)).



**§ 8135. Authority Action.**

This section clearly states that the Authority will accept applications from the issuer applicant for review in a form approved by the Executive Director. The Authority will have 10 business days to inform the applicant whether the application is complete and, if not, what additional documentation or information is required. Once the applicant has submitted the supplemental information or documentation, the Authority will have 7 business days to inform the applicant whether the application is complete and, if not request additional information. The Authority will take action on any completed Application no later than the next board meeting that occurs after at least 60 days following the determination by the Authority that the application is complete. An applicant can withdraw an application any time without penalty or prejudice; however there is a nonrefundable application fee.

Necessity. This section is necessary to specify the actions to be taken by the Authority when an issuer application submits an application for review. The fee is nonrefundable because the review of each application will incur costs whether the application is approved, denied or withdrawn.

**§ 8136. Application Approval.**

This section clearly states that in order for the Authority to determine that the issue is qualified for issuance, the application provided must contain evidence that it meets all of the criteria. The Authority will provide an explanation in writing for any refusal to qualify a proposed issuance.

Necessity. A thorough description of the criteria is necessary to clearly state how the Authority will determine if an issue is qualified for issuance pursuant to Government Code Section 6588.7. The Authority is also required to provide the issuer applicant with a written explanation for any refusal to qualify a proposed issuance pursuant to Government Code Section 6588.7(b)(7).

**§ 8137. Reports.**

This section provides the information that must be submitted by each issuer applicant whose application was approved by the Authority within 10 business days following the issuance of any rate reduction bonds. This section also states that annually before March 31, the Authority is required to submit a report to the Legislature of its activities for the proceeding calendar year ended on December 31. The Executive Director is also authorized to seek the information required in this section from the issuer applicant in regards to any application submitted for the Authority to review.

Necessity. The Authority will require information from the issuer applicant in order to submit an accurate report to the Legislature. The Authority is required to submit an annual report pursuant to Government Code Section 6588.7(b). In this section, repeating or paraphrasing of statute is necessary for purposes of clarity.

**§ 8138. Sunset.**

This section clearly describes that with the exception of Section 8137, these regulations shall expire upon the termination of the Authority to review the issuance of rate reduction bonds. Section 8137 will expire when the Authority submits the final report to the Legislature.

Necessity. This section is necessary to clearly state the expiration of these regulations when the authority to issue rate reduction bonds terminate pursuant to Government Code Section 6588.7(k). In this section, repeating or paraphrasing of statute is necessary for purposes of clarity.

## Reliance

The proposed regulations are the result of periodic evaluation of the regulation and feedback from applicants.

## Alternatives Considered

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed Adopted Regulations.

## Mandated Technology or Equipment

The CPCFA Executive Director has determined the revisions do not mandate the use of specific technologies or equipment.

## Economic Impact Statement

The CPCFA Executive Director has determined that the revisions will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons. The proposed regulations will only give the Authority the guidelines to review the issuance of rate reduction bonds which will have no significant adverse economic impact on any business. Furthermore, the CPCFA Executive Director has determined that the amended regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

**The creation or elimination of jobs within California:** The adoption of sections 8131-8138 of the CPCFA Regulations are not expected to have a direct impact on the creation or elimination of jobs within the State of California because this amendment will only authorize CPCFA to review the issuance of rate reductions bonds throughout California.

**The creation of new businesses or the elimination of existing businesses within the State of California:** The proposed language in sections 8130-8138 of the CPCFA Regulations are not expected to have a direct impact on the creating of new businesses or the elimination of new businesses. The proposed regulation change will only give the Authority the guidelines to review of the issuance of rate reduction bonds.

**The expansion of businesses currently doing business within the State of California:** The adoption of sections 8130-8138 of the CPCFA Regulations are not expected to have any direct impact on the expansion of businesses currently doing business within the State of California because this adoption will only give the Authority guidelines to review the issuance of rate reduction bonds.

**The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:** The proposed regulations provide guidelines on the Authority's review of each issue of rate reduction bonds. The issuance of rate reduction bonds is a benefit to the publicly owned utility, as well as the customer because the rates of the utility plus the utility project charge are expected to be lower than the rates if the project was financed through revenue bonds.

## 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. The Authority may charge additional fees in an amount equal to the amount of any additional expenses incurred by the Authority in retaining an independent financial advisor to review the application under circumstances involving the verification of all requirements in Section 8134.~~ 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.