



April 20, 2017

NEW CDIAC REGULATIONS EFFECTIVE APRIL 1, 2017

What is CDIAC?

The California Debt Investment Advisory Commission (“CDIAC”) was created in 1981 by the Legislature to, among other things, “collect, maintain, and provide comprehensive information on all state and local debt authorization and issuance, and serve as a statistical clearinghouse for all state and local debt issues.” CDIAC is funded through fees placed on bond underwriters, purchasers, or lenders in an amount equal to .025% of the principle amount of the issue, but not to exceed \$5,000 for any one issue. CDIAC derives its authority from Government Code sections 8855 et seq., as well as other statutes in the Government, Education and Water Codes.

What is New?

On April 1, 2017, regulations codified at California Code of Regulations (“CCR”) Title 4, § 6000-6062, became effective. The regulations formalize CDIAC’s heretofore guidelines, policies and procedures and make them subject to the Administrative Procedures Act (“APA”). In addition, the new regulations make changes in the following five areas:

1. Issuance Fee Increase

Several exemptions and exceptions to the Issuance Fee have been eliminated. The statutory fee will now apply to all state and local debt issues except: a) issues with a maturity less than 18 months; b) issues where the purchaser or lender is an agency of the state or local government; c) issues by a local entity that are purchased by a joint powers authority (Marks-Roos.) The new regulations, consistent with past practice, define an issue as: debt entered into by an issuer and sold on a contemporaneous or nearly contemporaneous basis, in one or more series, under the terms of one debt contract with the same creditor.

2. Report of Debt Issuance (RPDI)

New data elements have been added to the RPDI and procedural clarifications have been made concerning its filing with CDIAC.

- The report now asks for the amount of the principal, specifically, that will be used to redeem, refund, pay-down, or refinance other debt of the issuer. (§ 6010(g))
- Issuers must indicate if there is an intention to repay the debt with currency other than US dollars. (§ 6010(h))
- If the issue is a voter-approved general obligation debt, issuers must provide information about the authorizing election, the amount authorized, and the amount of the proposed issue charged against the reported authority. (§ 6010(i))
- Of the purposes for the debt issuance indicated, issuers will provide the approximate percentage applied to each purpose. (§ 6010(u))
- A proposed issue of commercial paper notes must be reported to CDIAC as soon as the decision is made to issue the notes. Further, the report is not required to be submitted if the issue is used entirely to repay other commercial paper notes of the issuer. (§ 6012)
- A report is required for each draw from a line of credit. The report must be submitted 30 days prior to the settlement date or upon the decision if the decision is made less than 30 days prior to settlement of the draw. (§ 6013)

3. Report of Final Sale (RFS)

The regulations have added new data elements and some procedural clarifications to the RFS Report.

- The information submitted on the report must be reported as of the settlement date or as projected on the settlement date if the settlement date is more than 21 days after the sale date. (§ 6020)
- The report will allow issuers to update information reported on the RPDI that has changed since the RPDI was submitted. The debt policy certification stipulated in Government Code section 8855(i) may not be modified, however. The new RFS will pre-populate data submitted on the RPDI to provide context to the issuer for any edits or updates. (§ 6020(a))
- The report will ask for the amount of the net original issue premium, specifically, that will be used to redeem, refund, pay-down, or refinance other debt of the issuer. (§ 6020(e))
- If any amount of the principal issued was used to refund, redeem, or refinance other debt, or the debt issued was in the form of revenue bonds per Government Code section 54313 and a private sale method was used, the issuer must provide a written statement why the private sale method was used. If the RFS is filed within two weeks of sale and the section of the RFS that addresses this requirement is completed, the issuer will be compliant with Government Code section 53583(c)(2)(b) or 54418. (§ 6020(q))

If the issuer files the RFS two weeks after a sale they must have already submitted a separate report to CDIAC that provides the reason for using the private sale method in order to be compliant with statute. A downloadable report entitled “Reason for Private Sale” is required to be filed for ease and consistency in reporting. (§§ 6060-6061)

- An RFS is not required for an issue of commercial paper notes if the proceeds are used entirely for the purpose of paying off other commercial paper notes of the issuer. (§ 6022)
- An RFS is required for the initial and each subsequent draw from a line of credit. (§ 6023)

4. Mello-Roos Yearly Fiscal Status Report (YFSR)

The changes to this report are primarily the clarification of terms and reporting procedures.

- The information required under Government Code section 53359.5(b)(10) regarding parcels that are delinquent with respect to their special tax payments must be provided as of the latest equalized tax roll within the Reporting Year. The online submittal system will be modified to accept an uploaded pdf. file containing this information. (§ 6041(b))

5. Marks-Roos Yearly Fiscal Status Report (YFSR)

The only noticeable change relates to the reportable status of an authority issue. If a Marks-Roos authority uses the proceeds from its bond issue to acquire local obligations or transfers funds to a local obligor under a debt agreement, a Marks-Roos YFSR is required. (§ 6051)

If you have any questions concerning this update or related issues, do not hesitate to contact our office.

— Christopher P. Burger

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