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State of Connecticut
Office of the Treasurer

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SMALL BUSINESS IMPACT AND REGULATORY FLEXIBILITY ANALYSIS

AGENCY SUBMITTING REGULATION: OFFICE OF THE TREASURER

DATE: April 15, 2016

SUBJECT MATTER OF REGULATION: DISCLOSURE OF THIRD PARTY FEES PAID OR RECEIVED IN CONNECTION WITH STATE CONTRACTS FOR INVESTMENT SERVICES

REGULATION NUMBER: SEC. 3-13j-2

STATUTORY AUTHORITY: CONN. GEN. STAT. SEC. 3-13*l*

OTHER AGENCIES AFFECTED: NONE

EFFECTIVE DATE USED IN REGULATORY ANALYSIS: April 15, 2016

ANALYSIS PREPARED BY: Christine Shaw (860-702-3211)

Section 4-168a of the Connecticut General Statutes, as amended, states that for proposed amendments that impact small business,[1] the "agency shall, to the extent appropriate, utilize regulatory methods that will accomplish the objectives of the applicable statutes while minimizing adverse impact on small business. Such regulatory methods shall be consistent with public health, safety and welfare." The methods to be considered, "to the extent appropriate," for reducing the impact on small business are:

[1] Firms providing investment services for the Treasurer's Office may meet the definition of "small business" under section 4-168a due to the number of employees at the firm. It would be exceptionally rare for the Treasurer to have a contract with an investment services provider having "gross annual sales" of under $5 million.

1. The establishment of less stringent compliance or reporting requirements for small businesses;

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

3. The consolidation or simplification of compliance or reporting requirements for small businesses;
4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Under Section 3-13j of the Connecticut General Statutes, the Treasurer may not enter into a contract for investment services unless she receives from the prospective contractor a disclosure of all third party fees attributable to the contract. In addition, firms awarded a State contract for investment services must provide an annual disclosure of third party fees. Section 3-13*l* of the Connecticut General Statutes prohibits the payment or receipt of "finder's fees" in connection with State investment transactions. Each of these provisions was enacted to prevent political corruption and influence peddling in the State contracting process. Section 3-13j-2 of the Regulations of Connecticut State Agencies sets forth the manner and form of disclosure under the statute.

Currently, all prospective and existing investment services providers, including small businesses, follow the same process for third party fee disclosure, returning the form mandated under existing regulations. From time to time, the information disclosed by respondents on the form gives rise to additional questions, or does not provide sufficient information to determine whether payments disclosed are prohibited finder's fees. Under such circumstances, additional due diligence by the Treasurer's Office may be necessary, and the proposed amendment to 3-13j-2 makes clear that such due diligence may occur and is authorized.

In addition, current regulations require firms to update their disclosure, if there is any change to the information previously provided, within sixty (60) days of the change. The amended regulation reduces the time period to thirty (30) days, and is being proposed for two reasons: first, the change allows the Treasurer's Office to promptly

investigate the new disclosure and, if necessary, take appropriate action. (In the case of a prospective contractor, such action may include a decision not to award a contract; in the case of an existing contract, action may include contract termination or referral to the Attorney General.) In addition, the thirty (30) day time period for updating previously-made disclosures is consistent with a recent amendment to Conn. Gen. Stat. Sec. 4a-81, which requires state contractors to disclose consulting agreements entered into in connection with such contract, and now requires previously-made disclosures to be updated "(A) not later than thirty days after the effective date of any such change, or (B) upon the submittal of any new bid or proposal, whichever is earlier." See Conn. Public Act 11-229, section 5. Section 4a-81 applies to state contracting generally, and firms contracting with the Treasurer's Office must comply with section 4a-81 as well as section 3-13j.

In proposing to amend the regulation, the Treasurer's Office has considered that responding to an additional inquiry and reducing the time within which a firm must update previously-made disclosures may be a greater burden for a small business that has fewer employees to perform such compliance-related duties. Accordingly, the Treasurer's Office has considered the methods of reducing the impact on small business, taking into account the public welfare, particularly the public interest reflected in sections 3-13j through 3-13*l* of ensuring that state investment transactions are free from corruption and influence peddling, and has concluded as follows:

1. The establishment of less stringent compliance or reporting requirements for small business would be inconsistent with the intent of Conn. Gen. Stat. §3-13j and *l*. Certain individuals and firms involved in past issues involving impermissible fees, the impetus for the enactment of the finder's fee prohibition, were small businesses, and there is no lesser need for disclosure from such firms.

2. Similarly, the establishment of less stringent schedules or deadlines for compliance or reporting requirements is inconsistent with the intent of Conn. Gen. Stat. Secs. 3-13j and 3-13*l*, for the reasons stated in paragraph (1);

3. The proposed thirty-day period for updating previous disclosures represents a simplification and consolidation of compliance and reporting requirements. It would align with the requirements of Conn. Gen. Stat. Sec. 4-81, as amended by Conn. Public Act 11-229. Secs. 3-13j and 4a-81 -- disclosure statutes with similar objectives concerning transparency and removal of political influence from state contracting—and there is significant overlap, both in the firms required to submit disclosures and in the firms required to be disclosed under sections 3-13j

and 4a-81. Aligning the updating timeframe simplifies and consolidates the procedure for small businesses.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation is not applicable; and

5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation requirements is inconsistent with the intent of Conn. Gen. Stat. Secs. 3-13j and 3-13*l*, for the reasons stated in paragraph (1).

The Treasurer's Office believes that the proposed amendment is necessary to safeguard the public welfare and is not unduly burdensome. The impact on small businesses that have contracts with the Treasurer's Office has been reduced by aligning the time frame for updating disclosures to a similar state law with which such businesses must also comply.