

**State of California
Office of Administrative Law**

In re:
California Pollution Control Financing
Authority

Regulatory Action:

Title 04, California Code of Regulations

**Amend sections: 8078.29, 8078.31, 8078.32,
8078.33**

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2023-0920-04

OAL Matter Type: Emergency (E)

This emergency rulemaking action from the California Pollution Control Financing Authority ("CPCFA") amends regulations for the administration of the Capital Access Loan Program's ("CalCAP") Collateral Support Program, Article 7 (commencing with Section 44558) of Chapter 1 of Division 27 of the Health and Safety Code ("HSC").

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/2/2023 and will expire on 4/2/2024. The Certificate of Compliance for this action is due no later than 4/1/2024.

Date: October 2, 2023



Ashita Mohandas
Attorney

For: Kenneth J. Pogue
Director

Original: Shela Tobias-Daniel, Executive
Director

Copy: Kamika McGill

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2023-0920-04E	EMERGENCY NUMBER 2023-0920-04E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 02 2023

received at 1:53pm

OFFICE OF ADMIN. LAW
2023 SEP 20 PM 2:20

AGENCY WITH RULEMAKING AUTHORITY California Pollution Control Financing Authority	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California Capital Access Collateral Support Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND Sections 8078.29, 8078.31, 8078.32, 8078.33
TITLE(S) 4	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)


<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Kamika McGill	TELEPHONE NUMBER (916) 653-0289	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kamika.mcgill@treasurer.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 09/18/2023
TYPED NAME AND TITLE OF SIGNATORY Shela Tobias-Daniel, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 02 2023

Office of Administrative Law

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority.
Article 7. Capital Access Program for Small Businesses

Text of Modified Regulations

Changes are illustrated with an underline for proposed additions,
and a strikethrough for proposed deletions.

§ 8078.29. Definitions.

In addition to the definitions in Section 8070, the following definitions shall apply only to the Collateral Support Program, Sections 8078.29 to 8078.35 inclusive. To the extent the definitions contained herein conflict with definitions contained in Section 8070, the definitions in this section shall control for purposes of the Collateral Support Program.

(a) "Annual Fee" means the fee charged by the Authority for annual renewals of Collateral Support for lines of credit up to a total of ~~48~~60 months.

~~(b) "Annual Recapture" means the percentage of the original Collateral Support Contribution repaid to the Authority on an annual basis.~~

~~(c)~~(b) "Bridge Loan" means a loan needed prior to obtaining permanent financing or support, including Small Business Administration, 504 bridge loans, where the Participating Financial Institution is at increased risk pending future take-out financing or guarantee.

~~(d)~~(c) "Collateral Support" or "Collateral Support Contribution" means an amount of cash deposit offered and underwritten by the Authority covering a collateral shortfall of a Qualifying Loan of an otherwise credit-worthy Borrower.

~~(e)~~(d) "Collateral Support Program Approval" means the Authority's approval of Collateral Support for a Qualified Loan.

~~(f)~~(e) "Collateral Support Program Request" means the request that a Participating Financial Institution must submit to the Authority to apply for Collateral Support.

~~(g)~~(f) "Closing Fee" means the fee charged to the Borrower to participate in the Collateral Support Program when the Qualified Loan closes, based on the original amount and term of support, and type of Qualified Loan.

~~(h)~~(g) "Default Notification" means the written notice that a Participating Financial Institution must submit to the Authority upon the default of an enrolled loan.

~~(i)~~(h) "Final Approval" means the discretionary approval of the Collateral Support offered and underwritten by the Authority after the submission of final loan documents and payment of the Closing Fee by the Participating Financial Institution.

~~(j)~~(i) "Final Enrollment" means loan enrollment in the Program after the submission of final loan documents and payment of the Closing Fee by the Participating Financial Institution after receiving the Initial Approval.

~~(k)~~ "Green & Manufacturing Loans" means ~~(1) loans used primarily for supporting new or expanded business processes, products, services, and tenant improvements consistent with specific state policy goals or regulations furthering energy and water conservation, alternative energy, and environmental protection; (2) loans to provide working capital to contractors and other businesses providing specific services furthering energy and water conservation, alternative energy, and environmental protection;~~
~~(3) loans to be used primarily for new or expanded production of materials and products for use or sale using labor and machines, tools, chemical and biological processing, assembly or formulation.~~

~~(j)~~(i) "Initial Approval" means the discretionary, preliminary approval by the Authority of a Collateral Support Program Request submitted to the Authority, including any conditions, contingencies or additional parameters specified by the Authority necessary for Final Approval of the Collateral Support offered and underwritten by the Authority.

~~(m)~~(k) "Program" means the Collateral Support Program.

~~(n)~~(l) "Qualified Business" means the same as specified in Section 8070, except that, together with affiliates, the Qualified Business may have 750 or fewer employees.

~~(o)~~(m) "Qualified Loan" means the same as specified in Section 8070, and any Small Business Loan, except that:

- i. It may not be any loan that exceeds \$20,000,000;
- ii. The proceeds of the loan may not be disbursed to the Borrower prior to the Authority's Initial Approval; and
- iii. The Participating Financial Institution must certify that the loan is being made to an otherwise credit-worthy Borrower with a strong credit profile that meets all the Participating Financial Institution's regular underwriting policy, but for a collateral shortfall.

~~(p)~~(n) "Principal Loan Amount" means the Qualified Loan disbursed to an eligible Borrower with a minimum amount of ~~\$50~~25,000 and a maximum amount of \$20,000,000.

~~(q)~~(o) "Risk Assessment" means the valuation made by the Participating Financial Institution consistent with its usual credit policy, which must include: the value of the collateral based on the industry standard of measurement, such as through an appraisal; the Participating Financial institution's valuation of the collateral; the Borrower's risk rating; summary of the relationship and history of the business; the Borrower's cash flow; and financial analysis of the Borrower.

~~(r)~~(p) "Small Business Loans" means a Qualified Loan.

(q) "Severely Affected Community (SAC) Contribution" means the additional support for which the Borrower may qualify when the Qualified Business is located in a Severely Affected Community.

(r) "Socially and Economically Disadvantaged Individuals (SEDI) Contribution" means the additional support for which the Borrower may qualify when:

- (i) the Qualified Business is owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances or,
- (ii) the Qualified Business is owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii) or,

(iii) the Qualified Business will build, open, or operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii); or

~~(s)~~(iv) the Qualified Business is located in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

~~(t)~~(s) "Term of Support" means the amount of time a loan is enrolled in the Collateral Support Program, up to a maximum of ~~48~~60 months from the date of the first disbursement of the loan.

Note: Authority cited: Sections 39601(a), 39650, 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Sections 44559.1, 44559.3, 44559.5 and 44559.11, Health and Safety Code.

§ 8078.31. Loan Enrollment.

In addition to the terms and conditions set forth in Section 8072, the following additional provisions shall apply to the Collateral Support Program:

(a) Participating Financial Institutions must submit to the Authority a Collateral Support Program Request and receive an Initial Approval prior to the funding of the loan. The Collateral Support Program Request shall include, all of the information required in Section 8072, in addition to the following:

(1) The type of the Qualified Loan, including whether the Qualified Loan is:

(A) A term loan, a bridge loan, or a line of credit;~~and~~

~~(B) A Green & Manufacturing Loan or a Small Business Loan.~~

(2) The term of support, which shall be up to a maximum of ~~48~~60 months.

(3) The requested amount of Collateral Support, subject to the limits in this Section.

(4) The anticipated date of loan disbursement.

(5) Risk Assessment of the Borrower that shall include the following:

(A) Collateral Support Contribution, based on the Participating Financial Institution's usual credit policy;

(B) Any appraisals applicable to the use of the proceeds or collateral;

(C) An evaluation demonstrating the need for the Collateral Support, including an evaluation demonstrating a strong credit profile of the borrower and the loan except for the lack of collateral;

(D) Description of all other available collateral, including that of any co-guarantors; and

(E) Confirmation that all such other available collateral shall be pledged and liquidated first in the event of a default, work-out or charge-off; and the order in which it shall be liquidated prior to making a claim against the Collateral Support.

(b) The Authority shall, upon receipt of a Collateral Support Program Request from the Participating Financial Institution, provide an Initial Approval if the Executive Director determines that the Qualified Loan meets the requirements of the Collateral Support Program.

(1) The Authority shall review each Collateral Support Program Request for completeness, for consistency with the terms and conditions for a Qualified Business and a Qualified Loan, and to determine whether the Authority shall offer and underwrite the Collateral Support.

(2) The Executive Director shall notify the Participating Financial Institution of the Executive Director's determination within 15 business days after receipt by the Authority of all documentation required to make such determination. The Executive Director's determination shall be final.

(3) At the time of Initial Approval, the Executive Director shall also be authorized to require reasonable conditions, contingencies, or additional parameters necessary to support a prudent underwriting of the Collateral Support by the Authority, including but not limited to additional requirements to ensure the eligibility of the Borrower and the loan, the availability of cash flow, the value of the available collateral, and the liquidation plan in the event of a default.

(4) The Initial Approval will include confirmation of the following:

(A) The total anticipated amount of the Qualified Loan.

(B) The term of enrollment of the Qualified Loan.

(C) The total amount of the Collateral Support, including Severely Affected Community or Socially and Economically Disadvantaged incentives Individual incentives if applicable.

(D) The applicable Closing Fee.

(E) Any conditions, contingencies, or additional parameters deemed reasonable by the Executive Director.

(5) Upon the Initial Approval of the Collateral Support Program Request, the Authority will issue notice of such approval with instructions for the Participating Financial Institution to open a Loss Reserve Account pursuant to Section 8078.32 and deposit the Borrower's Closing Fee prior to the disbursement of the loan.

(6) The Initial Approval of the Collateral Support Program Request is valid for ninety (90) days.

(c) Within fifteen (15) business days of the closing of a Qualified Loan that has received with Initial Approval, the Participating Financial Institution shall complete and submit to the Authority the following for Final Enrollment:

(1) Changes, if any, to the total amount of the Qualified Loan.

(2) Changes, if any, to the term of enrollment of the Qualified Loan.

(3) Revisions, if any, to the Risk Assessment of the Borrower.

(4) Documentation responsive to any conditions, contingencies, or additional parameters placed on the Collateral Support Program Request.

(5) All certifications and representations required by the Participating Financial Institution and Borrower.

(6) Proof of Closing Fee deposit and Loss Reserve Account opening.

(7) The date of the disbursement of loan proceeds to the Borrower. The date of the disbursement must be after the date of the Initial Approval, and prior to the Final Enrollment.

(d) Collateral Support shall be determined based on the ~~type of loan,~~ amount of loan, and term of loan enrollment as follows:

~~(1) Green & Manufacturing Loans are eligible to receive up to 40% of the loan value, up to a maximum Contribution of \$2,500,000.~~

~~(2)(1) Small Business Loans are eligible to receive up to 40% of the loan value, a maximum Contribution of \$500,000 as follows:~~

~~(A) Total loan values in the amount of \$50,000 to \$250,000 are eligible to receive Collateral Support up to 40% of the loan value.~~

~~(B) Total loan values in the amount of \$250,001 but no greater than \$20,000,000 are eligible to receive Collateral Support up to 30% of the loan value.~~

~~(3)(2) All loans are eligible for a ~~four~~ five (45) year term of support.~~

~~(4)(3) All loans are eligible for an additional Severely Affected Community (SAC) Contribution if the Qualifying Business is located in a Severely Affected Community, or if the Qualified Business is considered to be Socially and Economically Disadvantaged in an amount of 10% of the loan value, not to exceed 25% of the Collateral Support, as long as the total amount of the Collateral Support in addition to the Severely Affected Community (SAC) Contribution does not exceed the maximum Contribution permitted for the type of loan.~~

~~(e) Closing Fees shall be calculated based on the amount of Collateral Support (exclusive of the additional Severely Affected Community (SAC) Contribution), or Socially and Economically Disadvantaged (SEDI) Contribution the type of loan, and determined by the term of loan enrollment Collateral Support as follows:~~

~~(1) For all loans types, there shall be a minimum Closing Fee of 0.50% of the Collateral Support, or \$1000, whichever is greater.~~

~~(2) All loans types will be subject to Closing Fees based on the Term of Support as follows:~~

~~(A) If Term of Support is less than or equal to 12 months, the fee will be 0.5% of the Collateral Support.~~

~~(B) If Term of Support is greater than 12 months, but does not exceed 24 months, the fee will be 0.75% of the Collateral Support, unless the loan is for a Bridge Loan, in which case the fee will be 0.50% of the Collateral Support.~~

~~(C) If Term of Support is greater than 24 months, but does not exceed 36 months, the fee will be 2.00% of the Collateral Support.~~

~~(D) If Term of Support is greater than 36 months, but does not exceed 48 months, the fee will be 2.75% of the Collateral Support.~~

~~(E) If the Term of Support is greater than 48 months, but does not exceed 60 months, the fee will be 3.00% of the Collateral Support.~~

~~(3) For lines of credit, the fee will be calculated based on the Collateral Support amount as provided in subdivision (e)(2). Prior to the expiration of the original Term of Enrollment, the Participating Financial Institution may request an extension, contingent upon current underwriting and subject to a 1.0% fee per year for each annual renewal up to a maximum of ~~48~~ 60 months.~~

(4) For Bridge Loans, prior to the expiration of the original Term of Enrollment, the Participating Financial Institution may request an extension in writing. There is no fee associated with an approved extension as long as the total Term of Support as extended does not exceed 24 months. If the effect of any extension or series of extensions would increase the total Term of Support for the Bridge Loan into a tier associated with a higher Closing Fee, then any difference between the fees paid at closing and the newly calculated fees associated with the amended Term of Support would be charged to the Participating Financial Institution upon approval of the extension.

Note: Authority cited: Sections 44520 and 44559.5, Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.12, Health and Safety Code; and Section 1798.17, Civil Code.

§ 8078.32. Loss Reserve Accounts.

In addition to the requirements and procedures applicable to Loss Reserve Accounts provided in Section 8073, the following requirements and procedures shall apply only to the Collateral Support Program.

(a) A Loss Reserve Account shall be created for each Qualified Loan enrolled in the Collateral Support Program.

~~(b) Except for Bridge Loans and lines of credit, in conjunction with the loan anniversary for each Qualified Loan, the Authority shall recapture from each Loss Reserve Account, a 100 percent percentage of the Collateral Support at the expiration of the Term of Support according to an incremental recapture schedule, for use for future Collateral Support Program cash deposits, Contributions, and administrative expenditures. The percentage to be returned for each Annual Recapture will be based on the original Term of Support. The entire amount of Collateral Support for Bridge Loans and lines of credit will be recaptured at the expiration of the Term of Support.~~

(c) Annual Recapture is based on the Term of Support as follows:

~~(1) If Term of Support is less than or equal to 12 months, then 100% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured at the expiration of the term of support.~~

~~(2) If Term of Support is greater than 12 months, but does not exceed 24 months, then 50% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon the Annual Recapture date and at the expiration of the term of support.~~

~~(3) If Term of Support is greater than 24 months, but does not exceed 36 months, then 33.3% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon each Annual Recapture date and at the expiration of the term of support.~~

~~(4) If Term of Support is greater than 36 months, but does not exceed 48 months, then 25% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon each Annual Recapture date and at the expiration of the term of support.~~

~~(5)~~(1) The Authority shall deposit all Recaptured funds in the CalCAP for Collateral Support Program Fund dedicated solely for future program and administrative expenditures of the CalCAP for Collateral Support Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct and indirect administrative costs of the Program.

~~(d)(c)~~ Upon receipt of a Default Notification from the Participating Financial Institution, the expiration of the Term of Support Annual Recapture is suspended. Submittal of Default Notification does not suspend the Authority's withdrawal of interest and other income from the Loss Reserve Account. If the default or delinquency affecting the Qualifying Loan is subsequently resolved through a Change in Terms, settlement, or other workout which avoids charge-off of the loan, the Participating Financial Institution shall promptly withdraw the Default Notification, ~~and the Annual Recapture will resume according to the original schedule and loan anniversary date.~~

Note: Authority cited: Sections 44520 and 44559.5(f), Health and Safety Code. Reference: Sections 44559.3 and 44559.8, Health and Safety Code.

§ 8078.33. Claim for Reimbursement.

(a) Upon the default of an enrolled loan, the Participating Financial Institution must submit a written Default Notification, or prior to the expiration of the Term of Support, ~~in order to suspend further Annual Recapture.~~

(b) For a loan in default, the Participating Financial Institution shall provide in each Quarterly Report a short report of the status of the loan, including a short narrative of the loan collection history, and the status of the attempt to work out the default including the sale of proceeds or attempts to liquidate collateral.

(c) If the default or delinquency affecting the Qualifying Loan is subsequently resolved through a Change in Terms, settlement or other workout which avoids charge-off and collateral liquidation of the loan, the Participating Financial Institution shall promptly withdraw the Default Notification, ~~and the Annual Recapture will resume according to the original schedule and loan anniversary date.~~

(d) Within thirty (30) calendar days following charge-off and collateral liquidation, whichever is later, the lender will submit a written claim for Collateral Support Payment, including: a history of the account payments, the date of charge-off, the complete loan collection history, any attempts to work out the default prior to charge off, the sale of proceeds, and the success of attempts to liquidate collateral and guarantees pledged at closing in advance of the Collateral Support.

(e) The Collateral Support shall not be claimed by a Participating Financial Institution in lieu of pursuing and liquidating pledged collateral. All pledged collateral must be liquidated consistent with the participating financial institution's usual method for loans not enrolled in the Collateral Support Program.

(f) After liquidation of all pledged collateral for a charged-off loan, a Participating Financial Institution may be reimbursed for: the amount of loan principal charged-off net liquidated collateral; reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including the preservation of collateral, and other related costs; and accrued and unpaid interest. Proper documentation of any claimed expenses shall be presented at the time of the claim. The amount paid on a claim will never exceed the present amount in the Collateral Support Loss Reserve account.

(g) If, in the attempt to work out a default or charge-off, a Participating Financial Institution seeks to have an amended or new loan or debt structure with the Borrower covered by Collateral Support, the Participating Financial Institution shall submit a Collateral Support Program Request pursuant to Section 8078.31 and the Authority shall review it as a new loan or Refinance subject to all Program requirements, including fees if applicable.

Note: Authority cited: Sections 44520 and 44559.5(f), Health and Safety Code. Reference: Section 44559.5, Health and Safety Code.