

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the “Authority”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Necessity

These Emergency Regulations are necessary to implement, interpret, and make specific Article 7 of the California Pollution Control Financing Authority (the “Authority”) Act (the “Act”).¹ The following is the reason for changes made in October Of 2011: The Authority’s Capital Access Loan Program (CalCAP) is the subject of new legislation passed allowing a new lending instrument to be included in the Program. CalCAP is clarifying other existing regulations to simplify the Program for our lenders as well as to distribute our funds to many qualified businesses throughout the State.

Authority and Reference

Authority: Sections 44520 (a), 44520(b) and 44559.5(f), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as 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.” Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program established by the Act (CalCAP).

Reference: Sections 44559-44559.12 of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by amending Sections 8070, 8072, 8073 and 8074 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 7 is codified at Health and Safety Code section 44559 through 44559.12.

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender's loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid by the lender to the loss reserve account at 150 or 200 percent, depending on the funding source. (Health and Safety Code, § 44559.4(d)). The funds held in the lender's loss reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments will clarify regulations for our lenders and streamline the Program. The addition of new legislation will be addressed with these changes and funding will be made available to more borrowers throughout California. The proposed amendments and objectives for each section are as follows:

Section 8070(j). *Remove (1) from the reference to the Health and Safety Code Section 44559.4(d).* The definition of "Matching Contribution" is adequately described in the Health and Safety Section 44559.4(d). By not specifying the subsection, it makes clear that CalCAP's matching contribution would apply to d(1) or d(2).

Section 8070(s). *Revise the definition of "Qualified Loan" to include TRAC Leases when Loan Loss Reserve contributions come from Independent Contributor Programs and clarify the types of loan enrollments that are eligible for enrollment in CalCAP.* Staff recognizes that a TRAC Lease is a lending instrument and will be treated as any other Qualified Loan type that is allowable in the Program. Enrollments of TRAC Leases will not differ from other enrollments in Independent Contributor Programs. Contributions into a lender's loan loss reserve will be made from the same funds that are already available through Independent Contributor Programs.

Section 8070(s)(4)(A). *Remove "any religious facility or organization" to allow enrollment for this type of loan.* Federal guidelines allow Federal SSBCI funds to be used for religious facilities and organizations. By removing language, CalCAP may contribute Federal funds to pay premiums for religious facility and organization loan enrollments. CalCAP will confer with the State Treasurer's Legal Office before approving loan enrollment applications for this type of business to assure consistency with other California state and federal law.

Section 8070(s)(7). *Add "over a three-year period" to clarify the time limit for additional enrollments for borrowers who already have \$2.5 million enrolled.* This language clarifies the maximum of \$2.5 million the lender will be able to enroll per borrower over a three year period.

Section 8070(w). *Add a definition for TRAC Lease.* With the passing of SB 225, defining language has been added to the statute.

Section 8072(c)(3). *Remove "a non-profit" from information that must be provided about a business.* As a result of the first set of Federal guidelines not allowing non-profits to receive funding through CalCAP, this information requirement was added to the regulations to determine whether State or Federal Funds should be used. The second set

of Federal guidelines allowed non-profit borrower eligibility, so we no longer need to verify.

Section 8072(c)(6). *Add TRAC Lease as an example of a Qualified Loan.* This revision corresponds to the changes made in 8070(s).

Section 8072(c)(9). *Add “or maturity date” to clarify the length of the loan.* This additional language is a practice that CalCAP currently follows and adding it to the regulations will help clarify.

Section 8072(c)(26). *Remove certification that “the borrower does not meet the Participating Financial Institution’s normal underwriting criteria” in order to make CalCAP easier to understand and easier for our lenders to understand.* The Authority is removing this certification after input from participating lenders. The Fees associated with the Program make it clear that the borrower is in need of capital and would not otherwise get a loan without assistance from CalCAP.

Section 8073(f). *Adding information needed.* The Participating Financial Institution shall regularly provide information to the Authority regarding the status of enrolled loans, claims and recoveries.

Section 8074(a). *Change “30 days” to “120 days” and remove “by the Borrower” at the end of the section.* Increasing the number of days that the lender has to inform the Authority that a claim will be made helps ensure that the lender has more time to liquidate assets prior to filing for claim reimbursement. Removing “by the Borrower” allows a claim to be filed on a defaulted loan in which the default is other than the default of the borrower.

Section 8074(b). *Change “30 days” to “120 days”.* Modifying this time frame corresponds to the changes made in Section 8074(a).

8074(d). *Improve the explanation of a claim reimbursement.* Additional language clarifies how reimbursements of interest and out-of-pockets expenses will be paid when only a portion of the loan has been enrolled in CalCAP.

Section 8074(e)(8). *Change “30 days” to “120 days”.* Modifying this time frame corresponds to the changes made in Section 8074(a).

Section 8074(e)(12). *Remove entire section.* This certification is no longer required with the addition of the change to Section 8073(f) that allows the Authority to obtain this information through regularly provided information from the Lender.

Section 8074(g). *Remove “(or any part of it) is among the first one million dollars of Qualified Loans made by a Participating Financial Institution and it” to simplify this section.* Removing this language allows the lender to file multiple claims when a claim exhausts the loan loss reserve fund before reimbursing the entire claim. Once the funds in the loan loss reserve are replenished, additional claims to complete the eligible reimbursement can be filed. This will no longer be restricted to just the first one million of a lenders enrolled loans.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

Mandate on Local Agencies or School Districts

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Executive Director of the Authority has determined that the Emergency 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 State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.