

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Proposed Regulatory Action

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”) proposes to implement, interpret, and make specific Sections of the Act by adding Sections 8078.1 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the administration of the California Pollution Control Financing Authority’s California Capital Access Loan Program (“CalCAP”) for Small Business Program (“CalCAP/SB”), and the Collateral Support Program (“CalCAP/CSP”). These Proposed Regulations are necessary to ensure program clarity and continuity, and to refine and clarify program features of the California Pollution Control Financing Authority Act (the “Act”). The Proposed Regulations have been approved by the Office of Administrative Law (“OAL”) on an emergency basis, and this proposed rulemaking would make these changes permanent.

Authority and Reference

Authority: Sections, 44520 (a), 44520 (b) 44559.5 (f), Health and Safety Code.

Reference: Sections 44559-44559.9 of the Health and Safety Code.

Reference: 12 U.S. Code § 5703 (b)(4)

Informative Digest/Policy Statement Overview

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.)

The proposed amendment to the regulations will add language conforming to the U.S. Treasury and the State Small Business Credit Initiative (SSBCI) Program requirements for loans enrolled in the CalCAP for Small Business Program. The Federal Funds allocated to the State of California, and CalCAP specifically, as part of the American Rescue Plan Act of 2021, will benefit California small business owners by strengthening our existing State programs by creating billions of dollars in lending and investments to small businesses that are otherwise not getting the support needed to expand and create jobs.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

§ 8078.1 Federal Capital Access Program and Funding

Section 8078.1 (a) through 8078.1 (j). These sections add the U.S. Treasury requirements for loans enrolled under the State Small Business Credit Initiative enacted pursuant to the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2).

Necessity. The proposed amendments are necessary to implement the requirements for enrolling loans in the CalCAP for Small Business Program utilizing federal funds.

Disclosure Regarding the Proposed Action

The Authority has made the following determinations regarding the effect of the Proposed 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 proposed regulations will not have an effect on small business because the program is voluntary for any small business that seeks to apply for financial assistance in any of the CalCAP Programs.

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 proposed 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 proposed 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 broad objective of the regulations is to provide sustainable access to capital for small businesses that have difficulty obtaining financing.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the proposed 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 proposed 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 Proposed Regulations during the written comment period.

Agency Contact Person

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

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Regulations to the Authority. The written comment period on the Proposed Regulations ends at **5:00 p.m. (PT) on May 22, 2023**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time and day in order to be considered by the Authority.

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 801 Capitol Mall, Second Floor, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the California Regulatory Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Proposed 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 on the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

PROPOSED TEXT OF REGULATIONS

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.

§ 8078.1. Federal Capital Access Program and Funding.

(a) Where the Contribution comes from funds provided under the State Small Business Credit Initiative enacted pursuant to the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2) the following shall apply, notwithstanding any other provision of this article, to the extent allowed by the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2) (American Rescue Plan Act):

(b) "Participating Financial Institution" also includes all those listed in Health and Safety Code Section 44559.1(d) and all certified community development financial institutions whether or not organized for profit.

(c) The Participating Financial Institution must obtain written assurance from the Borrower that:

(1) the loan will be used solely for a business purpose;

(2) the loan will not be used to repay delinquent federal or jurisdiction income taxes unless the borrower has a payment plan in place with the relevant taxing authority;

(3) the loan will not be used to repay taxes held in trust or escrow (e.g. payroll or sales tax);

(4) the loan will not be used to reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance;

(5) the loan will not be used to purchase any portion of the ownership interest of any owner of the business;

(6) the loan will not be used for business purposes prohibited by the U.S. Treasury;

(7) the loan will not be used to finance ineligible businesses;

(8) no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act 42 U.S.C. §16911);
and

(9) the Borrower is not:

(A) an executive officer, director, or principal shareholder of the Participating Financial Institution;

(B) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or

(C) a related interest or immediate family member of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.

(d) Ineligible businesses include the following business types:

(1) a business engaged in speculative activities that develop profits from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business through the normal course of trade;

(2) a business that earns more than half of its annual net revenue from lending activities, unless the business is a Community Development Financial Institution that is not a depository institution or a bank holding company;

(3) a business engaged in pyramid sales plans, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

(4) a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses;

(5) a business deriving more than one-third of gross annual revenue from legal gambling activities; or

(6) other businesses that are restricted by federal fund law or the Department of Treasury.

(e) The Participating Financial Institution must provide written assurance affirming the following:

(1) the Qualified Loan has not been made in order to place under the protection of the CalCAP prior debt that is not covered under CalCAP and that is or was owed by the Borrower to the Participating Financial Institution or to an affiliate of the Participating Financial Institution;

(2) the Qualified Loan is not a refinancing of a loan previously made to the borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution; 21

(3) no principal of the Participating Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. §16911));

(4) the Participating Financial Institution will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right of Financial Privacy Act (12 U.S.C. §3401 et seq.) as applicable; and

(5) the Participating Financial Institution is in compliance with the requirements of 31 C.F.R. §103.121.

(f) Federal capital access funds shall not be used for the following:

(1) activities that relate to acquiring or holding passive investments in real estate, the purchase of securities; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995. P.L. 104-65, as amended (2 U.S.C. 1602(7));

(2) financing a non-business purpose;

(3) covering the unguaranteed portions of an SBA loan unless CalCAP receives prior written consent of the U.S. Treasury;

(4) supporting existing extension of credit, including but not limited to prior loans, lines of credit or other borrowings that were previously made available as part of a state small business credit enhancement program.

(g) The federal Matching Contribution shall be equal to the sum of the Fees paid by the Borrower and Participating Financial Institution, unless another amount is allowed by the American Rescue Plan Act.

(h) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds, unless another amount is allowed by the American Rescue Plan Act.

(i) Any Borrower or Participating Financial Institution fees assessed by the Authority as allowed by the American Rescue Plan Act may be deposited in a Loss Reserve Account.

(j) Claims for reimbursement may be processed according to the requirements of the American Rescue Plan Act.

Note: Authority cited: Sections 44520 and 44559.5(f), Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.11, Health and Safety Code.