

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: September 19, 2023

**Consideration and Approval of Amendment to Regulations for the California
Capital Access Collateral Support Program Pertaining to the State Small Business
Credit Initiative (SSBCI)**

Prepared by: Lauren Dominguez

Summary. Staff requests Board approval to begin the emergency rulemaking process and file regulations to amend sections 8078.29 through 8078.33 to the California Capital Access Program (CalCAP) regulations. Upon approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. The California Pollution Control Financing Authority's (CPCFA) mission is to promote access to capital through the delivery of diverse financing options to California's citizens. In 1994, the Legislature authorized CPCFA to develop and implement CalCAP, a credit enhancement program to provide loss reserve funding to participating lenders making qualifying loans to California small businesses.

Existing law authorizes CPCFA to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital (Health and Safety Code, § 44559).

The proposed amendments to the CalCAP Collateral Support Program regulations will amend Program eligibility and guidelines to increase lender engagement and participation. The amended regulations provide additional incentives, within U.S. Treasury and the State Small Business Credit Initiative (SSBCI) Program guidelines, which encourage lenders to enroll more loans into the Collateral Support Program.

Regulation Change. Staff proposes to amend Collateral Support Program Sections § 8078.29 through § 8078.33 in CPCFA's regulations, as shown in Attachment A.

Need for Emergency Regulations: Amendments to the CalCAP regulations are necessary to bring the regulations in line with the U.S. Treasury requirements in expending the federal SSBCI funds and meeting U.S. Treasury timelines. The U.S. Treasury requires allocated funds to begin being expended within 90 days of signing the allocation agreement. The State of California signed its allocation agreement with the U.S. Treasury on September 15, 2022. In order for CPCFA to receive additional funding, SSBCI funds must be expended, transferred, or obligated 80% or more of the prior disbursement of allocated funds. It is anticipated that the amendments to the Collateral Support Program will accelerate SSBCI funding to Participating Financial Lenders.

Regulatory Process. On September 12, 2023, staff posted a Notice of Emergency Regulations to provide the required opportunity for the public, including stakeholders, to

comment on the proposed text of the regulations and finding of emergency for five (5) business days.

Upon the Board's adoption of these amendments to the existing regulations as proposed, emergency and regular rulemaking packages will be filed with OAL according to the

established rulemaking process. The public may comment on the proposed emergency regulations within five (5) calendar days after the Authority files the regulations with OAL for review. OAL has up to ten (10) calendar days to review emergency regulations. Assuming OAL approves the emergency regulations, the emergency regulations are effective for 180 days during which time the Authority will begin the regular rulemaking process to conform the emergency regulations as permanent.

To begin the regular rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

September 12, 2023	5-day Notice posted on CPCFA website and sent to Interested Parties
September 19, 2023	CPCFA Board Meeting – Resolution for Proposed Regulations
September 20, 2023	Emergency regulations filed with OAL.
September 27, 2023	Public comment period ends.
October 4, 2023	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
April 1, 2024	Emergency regulations expire.

Permanent Regulations

October 31, 2023	Post Notice of Proposed Rulemaking on CPCFA's website
November 7, 2023	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
November 17, 2023	OAL publishes Notice and 45-day public comment period begins.
January 2, 2024	Public comment period regarding proposed regulations ends.
January 9, 2024	Deliver permanent regulation package to OAL for 30-day review*
February 8, 2024	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

January 4, 2024	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
January 19, 2024	15-day comment period ends.
January 22, 2024	Deliver permanent regulation package to OAL for 30-day review.
February 21, 2024	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Recommendation. Staff recommends adoption of Resolution No. 23-02-003 to amend regulations adding requirements for loans enrolled in the CalCAP for Small Business Program with contributions made with federal funding from the SSBCI and to authorize staff to undertake the emergency and regular rulemaking proceedings and other actions related to CPCFA CalCAP program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY
AND REGULAR RULEMAKING PROCEEDINGS AND OTHER ACTIONS
RELATED THERETO PERTAINING TO THE STATE SMALL BUSINESS
CREDIT INITIATIVE (SSBCI) FOR THE CALIFORNIA CAPITAL ACCESS
COLLATERAL SUPPORT PROGRAM**

September 19, 2023

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the September 19, 2023, meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as regular regulations.

Section 2. The Chair, Executive Director or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

ATTACHMENT A

PROPOSED TEXT OF REGULATIONS

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

§ 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 60 months.
- (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.
- (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.
- (d) "Collateral Support Program Approval" means the Authority's approval of Collateral Support for a Qualified Loan.
- (e) "Collateral Support Program Request" means the request that a Participating Financial Institution must submit to the Authority to apply for Collateral Support.
- (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.
- (g) "Default Notification" means the written notice that a Participating Financial Institution must submit to the Authority upon the default of an enrolled loan.

(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.

(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.

(j) "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.

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

(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.

(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.

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

(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.

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

(s) “Term of Support” means the amount of time a loan is enrolled in the Collateral Support Program, up to a maximum of 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.

§ 8078.30. Application by Financial Institution.

Financial Institutions shall follow the procedures set forth in Section 8071 to apply to become Participating Financial Institutions in the Program.

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

(2) The term of support, which shall be up to a maximum of 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 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 - amount of loan and term of loan enrollment as follows:
 - (1) Small Business Loans are eligible to receive up to 40% of the loan value.
 - (2) All loans are eligible for a five (5) year term of support.
 - (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.
- (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), determined by the term of-Collateral Support as follows:
 - (1) For all loans, there shall be a minimum Closing Fee of 0.50% of the Collateral Support, or \$1000, whichever is greater.
 - (2) All loans 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 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 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) The Authority shall recapture from each Loss Reserve Account, 100 percent of the Collateral Support at the expiration of the term of Support for use for future Collateral Support Program cash deposits, Contributions, and administrative expenditures.

(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.

(c) Upon receipt of a Default Notification from the Participating Financial Institution, the expiration of the term of Support -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.

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.
- (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.
- (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.

§ 8078.34. Subrogation.

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the Collateral Support Program.

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

§ 8078.35. Termination and Withdrawal from the Program.

The procedures for termination and withdrawal from the program set forth in Section 8076 shall be followed for loans enrolled in the Collateral Support Program.

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