

# **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”).<sup>1</sup> The following is the reason for changes made in May of 2012: The Authority’s Capital Access Program (CalCAP) is the subject of an expansion. With Federal funding that was allocated to the Program in 2011, the Authority is developing a collateral support program that will fall under the current Capital Access Program. Because a collateral support program will be organized slightly differently than the current Capital Access Program, some clarification to the existing regulations is necessary to operate both programs harmoniously and ensure the functionality to these two programs.

### **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 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, 8071, 8072, 8078 and 8078.2 of Title 4, Division 11, Article 7 of the California Code of Regulations.

### **Informative Digest**

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

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<sup>1</sup> 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 percent when State funds are used. When Federal funds are used to pay CalCAP's contribution, the Authority will match the borrower's and lender's fee at 100 percent. 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, § 44559.3.)

**The proposed amendments to the regulations will explain the allowable contributions to the Loss Reserve Account and will clarify uses of the Federal Funds in a manner consistent with the statute, as well as the Small Business Jobs Act. The proposed amendments and objectives for each section are as follows:**

**Section 8070(b).** *Remove the definition of "Early Stage Loan" and add the definition of "Contribution".* Early Stage Loan is being removed from regulation because it no longer applies to the Program. The definition of Contribution is being added to clarify that contributions can be any allowable amount of funds deposited into Loss Reserve Accounts and differ from Matching Contributions.

**Section 8070(f).** *Revise the definition of "Independent Contributor".* To simplify the definition, we have changed it to include "deposits funds and fees" to allow matching contributions, collateral pledge contributions and premiums paid by the lender and/or borrower. This added language allows all acceptable deposits eligible for any program to be deposited into the lenders' Loss Reserve Accounts.

**Section 8070(i).** *Add "and Section 8078.2".* This language will be added to help clarify the definition of a Loss Reserve Account and how these accounts can be used as they pertain to CalCAP. Because contributions deposited into this account can be made with Federal funds and may differ from the contributions being made with State funds, the definition of a Loss Reserve Account must also refer to the Federal funding section of the Regulations.

**Section 8070(v).** *Revise the definition of "Standards".* Changing this definition will not limit Independent Contributors to assisting businesses based on their geographical location or the type of business. Instead, Standards would now be any approved criteria that will allow Independent Contributors to assist borrowers.

**Section 8071(c).** *Remove the last sentence that refers to "Early Stage Loans".* An Early Stage Loan no longer applies to the Program. This sentence in Section 8071(c) is not necessary because the definition of "Early Stage Loan" will be removed in Section 8070(b) as referenced above.

**Section 8072(c)(15).** *Remove "Matching" from the explanation of Contributions paid by the Independent Contributor.* Contributions made by the Independent Contributor are not required to be a matching amount if that has been established in a contract between CPCFA and the agency acting as an Independent Contributor.

**Section 8072(c)(20).** *Remove "Matching" from the explanation of a certification required by the Participating Financial Institution.* This certification from the

Participating Financial Institution regarding the Borrower's interest in the Fees and Contributions refers to any Contributions made to the Loss Reserve Account, whether the contributions are matching or not.

**Section 8072(h).** Remove *“Matching”* from the explanation of transfers once a Qualified Loan is enrolled. Once a Qualified Loan is enrolled in the Program, any Contributions will be transferred into the Loss Reserve Account. These Contributions are not required to be matching.

**Section 8078(a)(5).** Remove *“matching”* from the explanation of what the Independent Contributor's funds will be used for. These changes are consistent with changes made in Section 8072(c)(15). CalCAP statute allows Independent Contributors to deposit funds for uses deemed appropriate by CPCFA.

**Section 8078(e).** Remove *“matching”* to be consistent with Section 8078(a)(5) and the CalCAP statute. Because an Independent Contributor is not subject to the maximums set forth in the CalCAP statute, the amount an Independent Contributor chooses to deposit may exceed a matching amount.

**Section 8078.2(a).** Remove *“matching”* to clarify what the Federal funds may be used for and add the following additional language: *“to the extent allowed by the Small Business Jobs Act (H.R. 5297, Public Law No. 111-240)”*. The State Small Business Credit Initiative (SSBCI) is governed by the Small Business Jobs Act which allows Federal funding to be used for purposes other than those defined in the Health and Safety Code. Contributions made to a lender's Loss Reserve Account are not required to be a matching amount and can be any amount allowable by the SSBCI when those funds are used. The additional language makes it clear that when Federal SSBCI funds are used, the Small Business Jobs Act governs to the extent allowed by CPCFA statute.

**Section 8078.2(g).** Change *“Lender”* to *“Participating Financial Institution”* and add the language *“unless another amount is allowed”* to the explanation of the federal Matching Contribution. Changing the word *“lender”* to *“Participating Financial Institution”* keeps the regulations consistent throughout and uses a defined term for clarification. The additional language makes it clear that when Federal funds are used, the amount of the contribution can be established by SSBCI.

**Section 8078.2(h).** Add the language *“unless another amount is allowed”* to the explanation of the amount that any one borrower can borrow under the Program. Adding this language will be consistent with the language in Section 8078.2(g). Also, SSBCI is permitted to set amounts according to the Small Business Jobs Act. This Act allows borrowers to borrow more than \$5,000,000 for defined purposes, for example when loans are enrolled for collateral support.

**Section 8078.2(i).** Add *“Borrower and Participating Financial Institution fees may be assessed by the Authority as allowed”*. The United States Treasury, under the Small Business Jobs Act, allows the Authority to assess fees upon the Borrower. The additional language places that authorization into CalCAP regulation.

**Section 8078.2(j).** Add *“A Loss Reserve Account may receive contributions or fees”*. This addition explains that when SSBCI funds are used, deposits into the Loss Reserve Account can be appropriate for contributions and fees. The contributions do not have to

be a matching amount and the contributions, along with the fees can be an amount that is allowed pursuant to the Small Business Jobs Act.

**Section 8078.2(k).** Add “*Claims for reimbursement may be processed according to the requirements of the Small Business Jobs Act*”. CalCAP will pay claims for collateral support in the manner consistent with the requirements of the Small Business Jobs Act when SSBCI funds were used for enrollment.

### **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.