

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Sections 44520 and of the Health and Safety Code, the California Pollution Control Financing Authority (the “Authority”) proposes to adopt emergency regulations (the “Emergency Regulations”), which 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 the California Pollution Control Financing Authority Act (the “Act”).¹ The reason for the changes to the Authority’s California Capital Access Program (“CalCAP”) regulations is to refine and clarify program features, and to adopt the recapture mechanism to recycle older contributions to support future enrollments in the CalCAP program. In addition, the Emergency Regulations are necessary to implement and administer the CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP / ARB”). The Authority is also amending the regulations to incorporate program rules from the Authority’s allocation agreement with the U.S. Treasury Department to ensure clarity for CalCAP’s Participating Financial Institutions. The implementation of the recapture mechanism is essential for the continuation of the CalCAP programs, as the fund balances for these programs are anticipated to be exhausted by the end of this year.

Authority and Reference

Authority: Sections 44520, 44559.5, and 44559.11, Health and Safety Code.

Reference: Sections 39601, 39650, and 44559-44559.12, Health and Safety Code; and Section 1798.17, Civil Code.

Informative Digest

Existing law establishes the California Capital Access Program (“CalCAP”) 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, § 44559.2)

¹ The Act is codified in Health and Safety Code section 44500 et seq.

The proposed amendments to the regulations allow the Authority to include provisions specific to CalCAP. The regulations will refine and clarify some definitions and program requirements, adopt the recapture mechanism to recycle older contributions to support future loan enrollments, and delete sections that are no longer applicable.

The proposed amendments to the regulations allow the Authority to implement and administer the CalCAP / ARB. The CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP / ARB”) assists owners and operators of small fleets of heavy-duty diesel trucks achieve early compliance with ARB’s Statewide Truck and Bus Regulations designed to reduce diesel particulate matter emissions.

The proposed amendments to the regulations allow the Authority to include provisions specific to the Collateral Support Program within CalCAP’s existing Small Business Loan Program. The proposed regulations will clarify rules and procedures for the program participation.

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.

The Proposed Amendments and Objectives for Each Section are as Follows:

§ 8070. Definitions.

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Section 8070(b). Adds the term “Change in Terms” defined as any change in material terms of an enrolled loan.

Section 8070(c). Clarifies the term “Contribution” as funds deposited in the loan loss reserve account by the Authority or an Independent Contributor.

Section 8070(e). Eliminates the word “Premium” or “Premiums” from the definition. This change simplifies the reference to lenders or borrower’s contribution.

Section 8070(j). Eliminates the term “Matching Contributions” from the definition. This change is needed because the programs do not allow for matching contributions. The Program only distinguishes between contributions or fees.

Section 8070(o). Adds the term “Outstanding Principal Balance”.

Section 8070(t). Updates the definition of “Qualified Loan” to add more specificity to the businesses that are excluded from participation in the program.

Section 8070(u). Adds the term “Quarterly Report”.

Section 8070(v). Adds the term “Recapture”.

Section 8070(t). Adds the term “Refinance”.

Section 8070(t). Updates the term “Severely Affected Community”.

Necessity. The proposed amendments are necessary to include definitions specific to the Capital Access Program for Small Businesses.

§ 8071. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the Capital Access Program for Small Businesses.

Section 8071(a)(9). Adds the requirement for the Financial Institution to provide annual audited statements upon the Authority’s request.

Section 8071(b). Specifies the authority of the Executive Director to determine at enrollment in the program whether to establish the Loss Reserve Account at the Program Trustee or at the Participating Financial Institution.

Section 8071(c). Eliminates the option for the Participating Financial institution to request the establishment of two or more Loss Reserve Accounts. This will eliminate confusion and corrections for transferred funds.

Necessity. The proposed amendments are necessary to include definitions specific to the Capital Access Program for Small Businesses.

§ 8072. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the Capital Access Program for Small Businesses Financing Program’s policies and regulations.

Section 8072(c). Adds the Census Tract Number associated to the Borrower’s business address, and the location of the facilities being financed if different from the borrower’s business, as information needed for the loan enrollment.

Sections 8072(c)(1), 8072(c)(2), 8072(c)(5), 8072(c)(7), 8072(c)(13). Add clarifications as to the information needed for the loan enrollment.

Section 8072(c)(17). Adds and makes clarifications to the certification requirements of the Participating Financial Institutions.

Section 8072(i). Adds clarifications to the reporting requirements of the Change in Terms and specifies the process.

Section 8072(k). Specifies that loan enrollments submitted after the effective date of the adoption of the regulations will be subject to the Recapture.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the Capital Access Program for Small Businesses Financing Program.

§ 8073. Loss Reserve Accounts.

These sections describe the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Section 8073(b). Adds clarity to the reporting requirement for Loss Reserve Accounts held by the Participating Institutions and the due date for submission.

Section 8073(c)(3). Adds the timely submission of the Quarterly Report to the funding conditions in the Loss Reserve Account.

Section 8073(d). Prohibits withdrawal from the Loss Reserve Accounts held by the Participating Institution without express, written instruction from the Authority.

Section 8073(e). Adds clarification to the process of loans enrolled in the program who are assigned, transferred, pledged or securitized to another entity. This process requires prior written approval of the Executive Director.

Section 8073(f). Adds clarification to the data needed to be included in reports if requested by the Authority and introduces suspension for failure to submit the Quarterly reports.

Section 8073(g). Provides a full description of the recapture process and the voluntary election process of the lenders to participate in this process.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8074. Claim for Reimbursement.

These sections describe how participating financial institutions are to make claims for reimbursement for loans enrolled in the Capital Access Program for Small Businesses.

Section 8074(c). Clarifies that the Authority may reasonably request additional information from the Borrower's loan file to substantiate the eligibility and the reasonableness of the costs claimed.

Section 8074(e)(6). Specifies the required documentation that needs to be submitted with the claim reimbursement request.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8076. Termination and Withdrawal from Program.

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts in case of termination or withdrawal from the program.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

§ 8078.1. Preferred Lenders.

This section is eliminated as periodic evaluation of the regulations determined that there is no need for this section.

Necessity. The proposed elimination of an unnecessary section of the regulation is necessary for simplification.

§ 8078.2. Federal Capital Access Program and Funding.

This section is eliminated as the allocation agreement with the United States Treasury ended March 31, 2017.

Necessity. The proposed elimination of this section of the regulation is necessary because this program ended.

§ 8078.3. Definitions.

This section is amended to adjust references throughout the definitions.

Necessity. The proposed amendments are necessary to correct references to the definitions specific to the Capital Access Program for Small Businesses.

§ 8078.22. Definitions.

This section defines the terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the CalCAP / ARB Program.

§ 8078.23. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the Air Resources Board Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the CalCAP / ARB Program.

§ 8078.24. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the ARB's Program policies and regulations.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the CalCAP / ARB Program.

§ 8078.25. Loss Reserve Accounts.

This section describes the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8078.26. Claim for Reimbursement.

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the CalCAP / ARB Program.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8078.27. Subrogation.

This section describes the procedure for the Authority's right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated will help the Authority enforce its rights.

§ 8078.28. Termination and Withdrawal from Program

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

§ 8078.29. Definitions.

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the Collateral Support Financing Programs.

§ 8078.30. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the Collateral Support Financing Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the Collateral Support Financing Program.

§ 8078.31. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the Collateral Support Financing Program policies and regulations.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the Collateral Support Financing Program.

§ 8078.32. Loss Reserve Accounts.

This section describes the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8078.33. Claim for Reimbursement.

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the Collateral Support Financing Program.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8078.34. Subrogation.

This section describes the procedure for the Authority's right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated will help the Authority enforce its rights.

§ 8078.35. Termination and Withdrawal from Program.

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

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

No other matters prescribed by statute are applicable to the Authority or to any specific regulation or class of regulations.

Mandate on Local Agencies or School Districts

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

Fiscal Impact

The Authority has determined that the Emergency Regulations do not impose any additional cost or savings to any state agency, any cost to any local agency or school district that is required to be reimbursed under Government Code section 17500 et seq., any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.