

**California Pollution Control Financing Authority  
801 Capitol Mall, 2<sup>nd</sup> Floor  
Sacramento, CA 95814**

June 2, 2017

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS AND  
ADDITION OF DOCUMENTS AND INFORMATION TO THE RULEMAKING FILE**

Pursuant to the requirements of Government Code section 11346.8, 11347.1, and section 44 of Title 1 of the California Code of Regulations, the California Pollution Control Financing Authority (Authority) is providing notice of changes made to proposed regulation sections 8078.15 and 8078.17. These changes are necessary to bring clarity to the proposed regulations text. The Authority is also acknowledging that the proposed reporting requirements instituted by the program are to ensure financial transparency and prudent use of the public funds.

Pursuant to the requirements of Government Code section 11346.5(a)(11), CPCFA is providing notice that the proposed regulations require businesses to report certain information to CPCFA.

In addition, pursuant to the requirements of Government Code sections 11346.8(c), and 11346.9(a)(1), CPCFA is providing notice that information which the agency has relied upon in adopting the proposed regulations has been added to the rulemaking file and is available for public inspection and comment. The documents and information added to the rulemaking file are as follows:

1. Addendum to the Initial Statement of Reasons
2. Health and Safety Code section 44559.4 added as a Reference citation

These documents and the text of the proposed regulations are available for public inspection at the Authority's office located at 801 Capitol Mall, 2<sup>nd</sup> Floor, Sacramento, CA 95814 from June 2, 2017 through June 16, 2017 between the hours of 8:00 a.m. and 5:00 p.m. If you have any comments regarding the proposed changes, the documents and/or other information, written comments must be submitted to the Authority by 5:00 p.m. on June 16, 2017, to:

Elena Miller, Deputy Executive Director  
California Pollution Control Financing Authority  
PO Box 942809  
Sacramento, CA 94209-0001

All written comments received by 5:00 p.m. on June 16, 2017, which pertain to the proposed changes, above listed documents and other information will be reviewed and responded to by the Authority's staff as part of the compilation of the rulemaking file.

## 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

All sections affected in this rulemaking are being adopted. Changes are illustrated with an underline for proposed additions, and a strikethrough for proposed deletions.

#### **8078.15 Definitions**

- (a) "CalCAP/Seismic Safety Contribution" means the Contribution(s) made by the Authority from the California Seismic Safety Capital Access Loan Program Fund established pursuant to Section 44559.14(c)(1) of the Health and Safety Code.
- (b) "Cost Estimate" means a written proposal or estimate of the Eligible Costs of materials, services, and other expenses identified to complete the Seismic retrofit construction for each Eligible project as provided by an engineer, architect or a licensed contractor.
- (c) "Earthquake-Resistant Bracing System" means a bracing system, certified by the Department of Housing and Community Development, designed and constructed for the purpose of protecting the health and safety of the occupants and reducing damage in the event of an earthquake.
- (d) "Eligible Costs" means and includes all or any part, as defined in Section 44559.14(b)(2) of the Health and Safety Code, the costs paid or incurred on or after January 1, 2017, for an Eligible project, including any engineering or architectural design work necessary to permit or complete the Eligible project less the amount of any grant provided by a public entity for the Eligible project. "Eligible Costs" do not include costs paid or incurred for any of the following:
  - (1) Maintenance, including abatement of deferred or inadequate maintenance, and correction of violations unrelated to the seismic retrofit construction.
  - (2) Repair, including repair of earthquake damage.
  - (3) Seismic retrofit construction required by local building codes as a result of addition, repair, building relocation, or change of use or occupancy.
  - (4) Other work or improvement required by local building or planning codes as a result of the intended seismic retrofit construction.
  - (5) Rent reductions or other associated compensation, compliance actions, or other related coordination involving the qualified residential property owner or qualified small business and any other party, including a tenant, insurer, or lender.

- (6) Replacement of existing building components, including equipment, except as needed to complete the seismic retrofit construction.
- (7) Bracing or securing nonpermanent building contents.
- (8) The offset of costs, reimbursements, or other costs transferred from the Qualified residential property owner or Qualified small business to others.
- (e) "Eligible project" means Seismic retrofit construction that is necessary to ensure that the Qualified building is capable of substantially mitigating seismic damage, and the financing necessary to pay Eligible Costs of the project.
- (f) "Program", "CalCAP/Seismic Safety Financing Program" and "CalCAP/Seismic Safety Program" means the California Seismic Safety Capital Access Loan Program established pursuant to the Section 44559.14 of the Health and Safety Code. Where the term "Program" is used in Sections 8078.15 to 8078.21 inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p).
- (g) "Qualified building" means a building in California that is certified by the appropriate local building code enforcement authority for the jurisdiction in which the building is located as hazardous and in danger of collapse in the event of a catastrophic earthquake. A "Qualified building" may be a single-family residence, multiunit housing building, multiunit housing building with commercial space, or mobilehome, manufactured home, and multifamily manufactured home installed in accordance with Section 18613 of the Health and Safety Code.
- (h) "Qualified Loan" means a loan or portion of a loan as defined in Section 44559.1(j) of the Health and Safety Code or a loan made to a Qualified residential property owner, where the proceeds of the loan or portion of the loan are limited to the Eligible Costs for an Eligible project under this Program, and where the loan or portion of the loan does not exceed two hundred fifty thousand dollars (\$250,000), and where the term of loss coverage for each qualified loan is no more than ten years. "Qualified Loan" does not include any of the following:
- (1) Any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program; and
  - (2) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$250,000.
- (i) "Qualified small business" means a business referred to in subdivisions (i) and (m) of Section 44559.1 ~~(i) and (m)~~ of the Health and Safety Code that owns and occupies, or intends to occupy, a Qualified building for the operation of the business, that is not dominant in its field of operation, and that together with affiliates, has 500 or fewer employees.
- (j) "Qualified residential property owner" means either an owner and occupant of a residential building that is a Qualified building or a Qualified small business that owns one or more residential buildings, including a multiunit housing building, that is a Qualified building.

- (k) "Qualified commercial property owner" means either an owner and occupant of a commercial building that is a Qualified building or a Qualified small business that owns one or more commercial buildings that is a Qualified building.
- (l) "Recapture" means the withdrawal of CalCAP/Seismic Safety Contribution amounts on an annual basis when enrolled loans mature or after one-hundred twenty (120) months from the date of enrollment, whichever occurs first. Recapture is not applicable for Contributions on charged off loans for which a claim has been approved.
- (m) "Registered mobilehome" means a mobilehome or manufactured home that is currently registered with the Department of Housing and Community Development and the Borrower's name is on the Department of Housing and Community Development registration for that mobilehome or manufactured home.
- (n) "Seismic retrofit construction" means alteration performed on or after January 1, 2017, of a Qualified building or its components to substantially mitigate seismic damage. Seismic retrofit construction includes, but is not limited to, all of the following:
- (1) Anchoring the structure to the foundation.
  - (2) Bracing cripple walls.
  - (3) Bracing water heaters.
  - (4) Installing automatic gas shutoff valves.
  - (5) Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage.
  - (6) Anchoring fuel storage.
  - (7) Installing an Earthquake-Resistant Bracing System for mobilehomes or manufactured homes that are registered with the Department of Housing and Community Development.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.14, Health and Safety Code. Reference: Sections 18613, 18613.4, 18613.5, 18613.7, 44559.1, 44559.3, 44559.5 and 44559.11, Health and Safety Code; Section 13340, Government Code.

#### **§ 8078.17 Loan Enrollment.**

- (a) The terms and conditions of the Qualified Loans, including rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower, consistent with the Participating Financial Institution's usual methods for making determinations on loans that are not enrolled in the Program and subject to the safety and soundness standards as set forth in applicable federal banking regulations or State law regulating the Participating Financial Institution.
- (b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:

- (1) by notifying the Authority in writing, within 15 business days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and
  - (2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held either by the Participating Financial Institution or the Program Trustee.
- (c) A Participating Financial Institution may enroll all or any portion of a Qualified Loan in the Program by submitting a CalCAP/Seismic Safety Loan Enrollment Application which shall include the following information:
- (1) The name of the Borrower, including an official business name or "Doing Business As", if any.
  - (2) Name and title of individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower.
  - (3) If a small business owner, brief description of the Borrower's business and regular activities and either the SIC Code(s) or the NAICS Code(s) applicable to such business.
  - (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Costs for Seismic retrofit construction.
  - (5) Location(s) of the Qualified building, including physical address.
  - (6) Whether the Qualified building is a residential or commercial property, and the number of dwelling units.
  - (7) Amount of the Qualified Loan being enrolled in the Program, and total loan amount if different, and the Participating Financial Institution loan number.
  - (8) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
  - (9) Date of the Qualified Loan.
  - (10) Interest rate applicable to the Qualified Loan.
  - (11) Term or maturity date of the Qualified Loan.
  - (12) Whether the loan is for alteration(s) or retrofit(s) of a Qualified building located in a Severely Affected Community.
  - (13) If a Qualified small business, number of ~~full-time equivalent~~ employees ~~currently~~ employed by the Borrower at the time of loan origination.

- (14) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the property owner receiving the Qualified Loan is a Qualified small business, Qualified residential property owner, or Qualified commercial property owner.
- (15) The Participating Financial Institution's certification upon enrollment of a Qualified Loan that the proceeds of the loan will be used for the Eligible Costs of Seismic retrofit construction.
- (16) The Participating Financial Institution's certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (17) The Participating Financial Institution's certification that the total amount of loans for the Borrower enrolled in the CalCAP/Seismic Safety Program does not exceed \$250,000.
- (18) The Participating Financial Institution's certification that it has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the CalCAP/Seismic Safety Contribution.
- (19) The Participating Financial Institution's certification that the Borrower has provided a Cost Estimate prepared by an engineer, architect or a licensed contractor, and that the Cost Estimate for Seismic retrofit construction to be financed is limited to Eligible Costs.
- (20) The Participating Financial Institution's certification, when the Qualified building is a mobilehome or manufactured home, that the Borrower has provided a record of Borrower's name on a current registration from the Department of Housing and Community Development for the mobilehome or manufactured home.
- (21) The Participating Financial Institution's certification that its usual methods of securing collateral have been applied, including if applicable that a lien has been placed on the Borrower's Qualified building for the amount of the Qualified Loan.
- (22) The Participating Financial Institution's certification that the Borrower will provide all applicable licenses and permits needed for the Seismic retrofit construction and satisfy the local building enforcement agency and the Department of Housing and Community Development compliance and inspection requirements once Seismic retrofit construction is completed.
- (23) The Participating Financial Institution's certification that the Qualified Loan is not a restructured or refinanced loan and has not previously been enrolled in the Program.
- (24) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.
- (25) The Participating Financial Institution shall be authorized to certify to the information requested by subsections (13), (14), (15), (19) and (22) above based upon the Participating Financial Institution's established due diligence and underwriting standards, and shall maintain

substantiating documentation in the Borrower's loan file.

- (26) Certification from the Participating Financial Institution that it has not, and will not, enroll the Qualified Loan, or any portion thereof, in any other Capital Access Loan Program for Small Business offered by the Authority as long as funds are available for this Program.
- (27) Certification from the Participating Financial Institution that it has provided the Borrower CPCFA's Privacy Notice for the CalCAP/Seismic Safety Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the CalCAP/Seismic Safety Financing Program informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:
  - (A) To consultants, auditors or contractors retained by the CPCFA where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement;
  - (B) To another governmental entity where required by state or federal law; or
  - (C) As otherwise required by law.
- (28) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:
  - (A) That, when applicable, it and the Eligible project satisfy the definitions in Sections 8078.15(d), (e), (g), (h), (i), (j) and (k) of the California Seismic Safety Capital Access Loan Program Regulations;
  - (B) The Qualified building is located within the boundaries of the State of California;
  - (C) The Borrower has legal control of the facility for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;
  - (D) The Borrower agrees to allow the Participating Financial Institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA;
  - (E) The Borrower has no legal, beneficial, or equitable interest in the CalCAP/Seismic Safety Contribution;
  - (F) If the Seismic retrofit construction financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the Qualified Loan in this Program is limited to Eligible Costs necessary and allocable to the Eligible project;
  - (G) The Borrower will provide all applicable licenses and permits needed for construction related to Eligible Costs for the Seismic retrofit construction to the Participating Financial Institution;

- (H) The Borrower has provided verification of Eligible Costs less the amount of any grant provided by a public entity for the Eligible project to the Participating Financial Institution;
  - (I) The Borrower's certification that the proceeds of the loan will be used for the Seismic retrofit construction of an Eligible project;
  - (J) The Borrower's certification when the Qualified building is a mobilehome or manufactured home that it is currently registered with the Department of Housing and Community Development and the Borrower's name is on the Department of Housing and Community Development registration for that mobilehome or manufactured home;
  - (K) The Borrower agrees to allow CPCFA staff or its designee to inspect the project site.
- (d) Upon enrollment of a Qualified Loan, the Participating Financial Institution shall elect a Contribution between 2 and 3.5 percent of the Qualified Loan, and shall deposit the Participating Financial Institution's and Borrower's Contributions each in the elected amount into the Participating Financial Institution's Loss Reserve Account established for the Program pursuant to Section 8078.18.
  - (e) Upon verification of the deposit of the Participating Financial Institution's and Borrower's Contributions, Qualified Loans with a term of sixty (60) months or less shall receive a CalCAP/Seismic Safety Contribution equal to four times the amount of the Participating Financial Institution's Contribution. All other Qualified Loans shall receive a CalCAP/Seismic Safety Contribution equal to three times the amount of the Participating Financial Institution's Contribution.
  - (f) All Qualified Loans with a term of sixty (60) months or less that support Eligible projects located in a Severely Affected Community shall receive an additional CalCAP/Seismic Safety Contribution in the amount of two times the Participating Financial Institution's Contribution. All other Qualified Loans that support Eligible projects located in a Severely Affected Community shall receive an additional CalCAP/Seismic Safety Contribution in the amount equal to the Participating Financial Institution's Contribution.
  - (g) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed one hundred twenty (120) months from the date of first disbursement of the Qualified Loan.
  - (h) Qualified Loans shall no longer be enrolled in the Program upon the sale, transfer or refinancing of the Qualified building or Qualified Loan, and shall be deemed to have matured within the meaning of 8078.18(c) upon the date of such sale, transfer or refinancing.

Note: Authority cited: Sections 44520, 44559.4, 44559.5, 44559.11 and 44559.14, Health and Safety Code.  
Reference: Sections 18613, 18613.4, 18613.5, 18613.7, 44559.1, 44559.2, 44559.3, 44559.5 and 44559.11, Health and Safety Code; Section 13340, Government Code.



# CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

## TITLE 4, DIVISION 11, ARTICLE 7

### ADDENDUM TO THE INITIAL STATEMENT OF REASONS

#### Introduction

Pursuant to Article 8, Section 44520 (b) of the Health and Safety Code, the California Pollution Control Financing Authority (the "Authority" or "CPCFA") is authorized to adopt these regulations which are necessary for the immediate preservation of the public peace, health and safety, and general welfare.

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)

The proposed additions to the regulations allow the Authority to include alternate provisions specific to the CalCAP/Seismic Safety Financing Program within CalCAP's existing Small Business Loan and Independent Contributor Programs.

#### Statement of Benefits

The proposed regulations provide guidelines on the Authority's creation of a financing program to assist residential property owners and small business owners in seismically retrofitting residences and small businesses with a priority on soft-story buildings and unreinforced brick and concrete buildings. The proposed regulations help meet California's and federal policy goals associated with mitigating damage to buildings deemed hazardous and in danger of collapse in the event of a catastrophic earthquake.

#### Section Analysis

##### § 8078.15. Definitions.

§ 8078.15(a). This section defines "CalCAP/Seismic Safety Contribution". It is needed in order to clarify from which account the funds are deriving.

§ 8078.15(b). This section defines "Cost Estimate". It is needed to clarify what type of document lenders are expected to collect and borrowers are expected to furnish. It also clarifies who is qualified to provide the Cost Estimate to the borrower.

§ 8078.15(c). This section provides a definition for "Earthquake-Resistant Bracing System". This is necessary so that borrowers, lenders, and stakeholders understand what costs are eligible to be enrolled in the Program.

§ 8078.15(d)(1-8). This section provides a definition for "Eligible Costs". This is necessary so that borrowers, lenders, and stakeholders understand what types of costs are eligible to be enrolled in the Program.

§ 8078.15(e). This section provides a definition for “Eligible Project”. It is necessary to clarify for what purpose loan funds may be used and the financing of costs of the project.

§ 8078.15(f). This section defines the term “Program”, “CalCAP/Seismic Safety Financing Program”, and “CalCAP/Seismic Safety Program” and is necessary to provide clarity throughout the regulations and other program materials since the Authority administers many similar financing programs. It is also necessary to identify how the Program became established.

§ 8078.15(g). This section provides a definition for “Qualified Building”. This is necessary so that borrowers and lenders understand what types of buildings are eligible to be enrolled in the Program.

§ 8078.15(h)(1-2). This section defines “Qualified Loan”. This is necessary to establish the maximum enrollment amount per borrower and the maximum term of loss coverage as well as clarify that only the portions of loans that are related to Eligible Costs of Eligible Projects are eligible. This definition further serves to prohibit loans which are, were, or will be enrolled in any other government program substantially similar to the Program.

§ 8078.15(i). This section defines “Qualified Small Business”. This is necessary because it clarifies that only small businesses that owns and occupies, or intends to occupy, a qualified building are eligible for the Program.

§ 8078.15(j). This section defines “Qualified Residential Property Owner”. This is necessary because it clarifies that an owner and occupant for a residential building or a small business that owns one or more residential buildings, including multiunit housing are eligible for the Program.

§ 8078.15(k). This section defines “Qualified Commercial Property Owner”. This is necessary because it clarifies that an owner and occupant of a commercial building that owns more than one building are eligible for the Program.

§ 8078.15(l). This section defines “Recapture”. This is necessary to clarify what recapture entails, when funds will be withdrawn, and which contributions are exempt from recapture.

§ 8078.15(m). This section defines “Registered Mobilehome”. This is necessary to clarify that a manufactured or mobilehome must be registered with the Department of Housing and Community Development that lists the borrowers name on the registration to be eligible for the Program.

§ 8078.15(n)(1-7). This section defines “Seismic Retrofit Construction”. This is necessary because it clarifies when and what alterations may be performed on a qualified building to be eligible for the Program.

**§ 8078.16. Application by Financial Institution.**

This section describes how financial institutions may apply to participate in the CalCAP/Seismic Safety Financing Program. The content of the application has already been established in section 8071 of the regulations, but is restated in this section for clarity and continuity of the CalCAP/Seismic Safety Financing Program.

**§ 8078.17. Loan Enrollment.**

**§ 8078.17(a).** This section clarifies who sets the terms and conditions of the Qualified Loans, which is necessary to ensure that the Authority does not get involved in the lender's underwriting.

**§ 8078.17(b)(1-2).** This section describes the circumstances under which a Participating Financial Institution may enroll a Qualified Loan under the Program. This is necessary in order to set a standard by which the Authority may reject applications for enrollment if a lender fails to submit the application to the Authority in a timely manner or fails to transmit the appropriate fees and supporting documentation.

**§ 8078.17(c)(1,3,7,9-11).** These describe content required for the loan enrollment application, and have already been established in section 8072(c) of the regulations, but are restated in this section for clarity and continuity of the CalCAP/Seismic Safety Financing Program.

**§ 8078.17(c)(2).** This section requires the name of the responsible person signing for a loan, to specify the individual acting on behalf of the business.

**§ 8078.17(c)(4).** This section describes content required for the loan enrollment application already established in section 8072(c)(4) of the regulations, but adds "consistent with uses permitted as Eligible Project Costs". This "consistent uses" portion was added to state to both borrowers and lenders that only eligible costs may be enrolled in the program.

**§ 8078.17(c)(5).** This section requires the borrower to disclose the location of the building where seismic retrofits will be made. It is necessary to ensure the Qualified Building is located in the state of California.

**§ 8078.17(c)(6).** This section requires the borrower to disclose the type of property and how many dwelling units are on the property. It is necessary to ensure that the building is eligible under the Program.

**§ 8078.17(c)(8).** This section describes content required for the loan enrollment application already established in section 8072(c)(6) of the regulations, but changes the exempli gratia used to "secured, unsecured, and term loan". The reason for the change from 8072(c)(6), was because some of the exempli gratia do not apply to the CalCAP/Seismic Safety Financing Program which does not allow lines of credit, or TRAC leases.

**§ 8078.17(c)(12).** This section requests to know whether the physical alterations or retrofits of a Qualified Building will be located in a Severely Affected Community, and is necessary because the Authority deposits an additional contribution into the lender's loan loss reserve account equal to the lender's contribution when the installation is located in a Severely Affected Community. The Authority provides this incentive to assist those communities that suffer from areas of high unemployment. Severely Affected Community is defined in Title 4, Division 11, Article 7, Section §8070 (t).

**§ 8078.17(c)(13).** This section requests to know the quantity of employees the borrower employs. This is necessary because the number of employees a business can have, together with its affiliates, is 500 or fewer employees in order to qualify for the Program.

**§ 8078.17(c)(14).** This section requires the lender to certify that the loan is a Qualified loan and the property owner receiving the Qualified loan is either a Qualified small business, Qualified residential property

owner, or Qualified commercial property owner. This is necessary to ensure that the loan and borrowers are eligible under the Program.

**§ 8078.17(c)(15).** This section requires the lender to certify that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project. This is necessary to ensure the public funds are used in an authorized manner.

**§ 8078.17(c)(16).** This section requires the borrower to self-certify that it agrees to allow its lender to provide its financial records to CPCFA if requested by the Executive Director. This provision is necessary to allow CPCFA to obtain financial records in the course of a program audit, or in the event a dispute or investigation into a fraudulent loan enrollment or claim originates.

**§ 8078.17(c)(17).** This section requires the lender to certify that the borrower does not have more than \$250,000 enrolled in the program, and is necessary to prevent a borrower from monopolizing the limited funding available in the program.

**§ 8078.17(c)(18).** This section requires the borrower to self-certify it has no legal, beneficial, or equitable interest in the matching contribution. This provision comes from existing CalCAP regulations Section 8072(c)(20) and will help ensure that Program funds are not used for ulterior motives.

**§ 8078.17(c)(19).** This section requires the lender to certify that the Borrower has provided Cost Estimate that identifies the physical alterations or retrofits to be financed. This is necessary to ensure the loan proceeds are being used for eligible purposes and to ensure the lenders are collecting the proper supporting documentation on behalf of the Authority.

**§ 8078.17(c)(20).** This section requires the lender to certify that the borrower provided proper documentation if the qualified building is a mobilehome or manufactured home. This is necessary to ensure that the qualified home is eligible in the Program.

**§ 8078.17(c)(21).** This section requires the lender to certify that their Financial Institution's usual methods of securing collateral have been applied, including if applicable that a lien has been placed on the qualified building for the amount of the loan. This is necessary to ensure that the loan is eligible under the Program.

**§ 8078.17(c)(22).** This section requires the lender to certify the borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) or alteration(s). This is necessary to help ensure the Authority is not assisting projects that are illegal or may never reach completion due to lack of proper permitting or licensure.

**§ 8078.17(c)(23).** This section requires the lender to certify that the loan is not a restructured or refinanced loan and has not been previously been enrolled in the Program. This is necessary to ensure that the loan is eligible under the Program.

**§ 8078.17(c)(24).** This section describes content required for the loan enrollment application already established in Section 8072 (c)(23), but changes "in applicable federal bank regulations" to "in applicable lender regulations". This is necessary to ensure the lender acknowledges that it is a regulated lender. While the Authority initially reviews and approves every lending institution, this provision is an additional

safeguard for the Authority if the lender ever falls out of its regulatory compliance whether it is a federal regulation or not.

**§ 8078.17(c)(25).** This section authorizes the lenders to accept the borrower's self-representation that the loan meets the requirements of Section 8078.17(c)(13), (14), (15),(19) and (22) of the regulations. Section 13 states that the lender must certify to the number of full-time equivalent employees currently employed by the borrower. Section 14 states that the lender must certify that the loan is a Qualified Loan and that the business receiving the loan is a Qualified Business. Section 15 states that the lender must certify that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project. Section 19 states that the lender must certify that the borrower has provided a Cost Estimate and that the physical alterations or retrofits is limited to Eligible Costs. Section 22 states that the lender must certify that the borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) and satisfy the local building enforcement agency and the Department of Housing and Community Development compliance and inspection requirements once Seismic retrofit construction is completed. These provisions are needed to allow lenders the flexibility to accept the borrower's self-representation regarding Sections 13, 14, 15, 19, and 22 without requiring the lender to perform an impractical due diligence. Another reason the lender is allowed to base these certifications off of the borrower's self-certification is because the lender may not have access to all prior lending agreements in which the borrower has been involved, so the lender may be unable to verify that the borrower meets the definition of a Qualified Loan and does not have more than \$250,000 enrolled in the Program.

**§ 8078.17(c)(26).** This section requires the lender to certify that it has not and does not intend to enroll any portion of the loan in any other Capital Access Loan Program for Small Business which the Authority offers if funds are still available in the CalCAP/Seismic Safety Financing Program. This section is necessary because it is statutorily required through Health and Safety Code Section 44559.13(d)(4).

**§ 8078.17(c)(27)(A-C).** This section requires the lender to certify it has provided the borrower with CPCFA's privacy notice. This notice is required under the California Information Practices Act, civil code section 1798.17.

**§ 8078.17(c)(28)(A).** This section requires the borrower to self-certify that it satisfies the definitions in Sections 8078.15(d), (e), (g), (h), (i), (j) and (k) of the regulations. This is required to ensure the borrower has an understanding of the definitions and certifies to meeting them. It is also necessary to ensure that the Program funding is only being used to support qualified loans made for eligible costs of eligible projects for eligible buildings.

**§ 8078.17(c)(28)(B).** This section requires the borrower to self-certify that the building is located within California. This is necessary because it is statutorily required by Health and Safety Code Section 44559.1(j)(1).

**§ 8078.17(c)(28)(C).** This section requires the borrower to self-certify that the borrower has legal control of the facility for the length of the enrolled loan or longer and assumes financial liability of the loan. This is necessary because CPCFA does not intend to support loans made to businesses who do not or will not have legal control of the facility throughout the entire course of the loan or who will not assume financial liability of the loan.

§ 8078.17(c)(28)(D). This section requires the borrower to self-certify to allow the participating Financial Institution to provide information from financial records of the borrower upon requires of the Executive Director of CPCFA.

§ 8078.17(c)(28)(E). This section requires the borrower to self-certify it has no legal, beneficial, or equitable interest in the matching contribution. This provision comes from existing CalCAP regulations Section 8072(c)(20) and will help ensure that Program funds are not used for ulterior motives.

§ 8078.17(c)(28)(F). This section requires the borrower to certify to their understanding that costs that are related to a larger construction project which are not directly allocable or necessary to the Eligible Project are not permitted to be included in the enrolled amount. This is necessary to ensure that Program funds are only being used to support the portions of loans that are for Eligible Costs of Eligible Projects.

§ 8078.17(c)(28)(G). This section requires the borrower to self-certify that it will provide the Participating Financial Institution with all applicable licenses or permits needed for construction related retrofit(s) or alteration(s). This is necessary to help ensure CPCFA is not assisting projects that are illegal or may never reach completion due to lack of proper permitting or licensure.

§ 8078.17(c)(28)(H). This section requires the borrower to self-certify that it has provided a Cost Estimate to the Participating Financial Institution and that the physical alterations or retrofits to be financed are eligible. This is necessary to ensure the loan proceeds are being used for eligible purposes and to ensure the lenders are collecting the proper supporting documentation on behalf of the Authority.

§ 8078.17(c)(28)(I). This section requires the borrower to self-certify that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project. This is necessary because it will help ensure that the Program funds are being used to support eligible loans.

§ 8078.17(c)(28)(J). This section requires the borrower to self-certify that when the Qualified building is a mobilehome or manufactured home that it is currently registered with the Department of Housing and Community Development and the burrow's name is on the Department of Housing and Community Development registration for that mobilehome or manufactured home.

§ 8078.17(c)(28)(K). This section requires the borrower to agree to allow CPCFA staff or a designee to inspect the project site. This is necessary to resolve potential compliance issues if one arises related to whether or not the loan proceeds were used consistent with the Program regulations.

§ 8078.17(d). This section describes the amount the participating financial institution and borrower are expected to deposit into the lender's loss reserve account. It is necessary to provide clarity to lenders regarding how much the borrower and lender must contribute in order to benefit from the Program and to clarify that the lender, rather than the Authority, decides the amount as long as it falls within the 2 to 3.5 percent range.

§ 8078.17(e). This section describes the percentage contribution that a qualified loan will receive from the Authority and is necessary to provide clarity to lenders on how much funding they can expect the Authority to contribute in the loan loss reserve account based on the length of the loan term. To incentivize loan enrollment for five years or less, which reduces administrative costs and makes the program more sustainable, the Authority decided after stakeholder outreach that the CalCAP/Seismic Safety contribution

would be equal to four times the amount of the Participating Financial Institution fee for loans enrolled in the program for sixty months or less. The CalCAP/Seismic Safety contribution would be equal to three times the Participating Financial Institution fee for loans enrolled in the program for greater than sixty months up to one hundred and twenty months. This provision is necessary based on input from stakeholders and lenders regarding the right balance of incentives to maximize loan enrollment and extend the life of the program. The Authority based its proposed contribution rates on the success of other CalCAP programs. This section incentivizes loans for a shorter term due to most defaults on loans occurring within the first sixty months of the loan initiation.

**§ 8078.17(f).** This section describes the percentage of funding that a qualified loan will receive from the Authority if the project site is located in a Severely Affected Community. It is necessary to provide clarity to lenders on how much funding they can expect to receive in the reserve account if the loan meets this additional requirement. The Authority decided that the additional CalCAP/Seismic Safety contribution amount would be two times the amount of the Participating Financial Institution's fee for loans enrolled in the Program for sixty months or less. The additional CalCAP/Seismic Safety contribution amount would be equal to the Participating Financial Institution's fee for loans enrolled in the program for a period greater than sixty months up to one hundred twenty months. This provision is necessary based on input from stakeholders and lenders regarding the right balance of incentives while maximizing the available funding to support as many projects as possible. The Authority based its proposed contribution rates on the success of other CalCAP programs.

**§ 8078.17(g).** This section limits the enrollment period in the Program to 120 months, and is necessary to ensure the Authority abides by the limitations set forth in Health and Safety Code 44559.14 (d)(5). It also serves to establish a date after which the Authority may recapture the funds it deposited into the loan loss reserve account.

**§ 8078.17(h).** This section declares that qualified loans shall be unenrolled in the Program upon the sale, transfer or refinancing of the Qualified building or qualified loan, and shall be deemed to have matured within the meaning of 8078.18(c) upon the date of such sale, transfer or refinancing.

#### **§ 8078.18. Loss Reserve Accounts**

**§ 8078.18(a)(1-2).** These sections describe the purposes of establishing a Loss Reserve Account for a Participating Financial Institution and are already established in a substantially similar form in existing regulation Section 8073(a). This is necessary in order to specify acceptable uses of the Loss Reserve Account.

**§ 8078.18(b).** This section establishes the Authority as the owner of all of the funds in the loss reserve account and describes the Executive Director's authority to withdraw improperly deposited funds or accrued interest that has been credited to the account. This section is necessary to ensure there is no misunderstanding among participating lenders regarding whether they own any of the funding placed into their reserve account and to notify them in advance of the circumstances under which the Executive Director may withdraw funds from the account.

**§ 8078.18(c).** This section states the Executive Director's authority to withdraw the Authority's contribution from the lenders' Loss Reserve Accounts when the loan matures or upon the termination of loan coverage, whichever is earlier. This is necessary to ensure there is no misunderstanding between CPCFA and the

Participating Financial Institutions regarding whether the funds which were used to support loans that have already matured and for which claims have not been filed would remain in the lenders' accounts.

§ 8078.18(d). This section describes the measures CPCFA will take to notify Participating Financial Institutions of the dollar amounts which will be withdrawn from the Loan Loss Reserve Accounts due to the loans' eligibility for recapture. This is necessary in order to avoid misunderstandings with the lenders related to how much remains in the lender's Loan Loss Reserve Account for potential claims.

§ 8078.18(e). This section states that lenders that hold loss reserve accounts at their own institution must provide a monthly bank statement to CPCFA no later than the 15<sup>th</sup> of each month. This is necessary to allow CPCFA to reconcile and monitor the loss reserve account to ensure funds are not being withdrawn without CPCFA's authorization. CPCFA believes 15 days into the month is ample time for the lender to provide a bank statement balanced with CPCFA's need to timely monitor Loss Reserve Accounts held outside of the trustee.

§ 8078.18(f). This section states that lenders must provide a quarterly report listing all loans that are enrolled and all loans that are in default, and must be provided no later than 15 days after the end of the quarter. This is necessary to allow CPCFA to monitor loans that are in default to ensure funds are available for possible claims. CPCFA must be able to view these reports in a timely manner and CPCFA has determined that 15 days is sufficient time for lenders to provide the report.

#### **§ 8078.19. Claim for Reimbursement**

This section describes how financial institutions may file claims for reimbursement with CPCFA in the CalCAP/Seismic Safety Financing Program. The content of the claim application and claim procedure have already been established in Section 8074 of the regulations but is restated in this section for clarity and continuity of the CalCAP/Seismic Safety Financing Program.

#### **§ 8078.20. Subrogation**

This section describes the procedures for subrogation in the CalCAP/Seismic Safety Financing Program. The content of the subrogation procedures has already been established in Section 8075 of the regulations but is restated in this section for clarity and continuity of the CalCAP/Seismic Safety Financing Program.

#### **§ 8078.21. Termination and Withdrawal from Program**

This section describes the procedures for termination and withdrawal from the CalCAP/Seismic Safety Financing Program. The content of the termination and withdrawal procedures has already been established in Section 8076 of the regulations but is restated in this section for clarity and continuity of the CalCAP/Seismic Safety Financing Program.

### **Reliance**

The proposed regulations are the result of collaborative effort between the Authority, California Department and Housing and Community Development, and interested parties through public workshops.



### **Alternatives Considered**

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed Adopted Regulations

### **Mandated Technology or Equipment**

The CPCFA Executive Director has determined the proposed Adopted Regulations do not mandate the use of specific technologies or equipment.

### **Economic Impact Assessment**

The CPCFA Executive Director has determined that the proposed Adopted Regulations will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons, because they do not impose any kind of restrictions or burdens on businesses or persons. The Program is voluntary and the regulations provide financial incentives to lenders to make loans to assist residential property owners and small business owners in seismically retrofitting residences and small businesses with a priority on soft-story buildings and unreinforced brick and concrete buildings. Furthermore, the CPCFA Executive Director has determined that the amended 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 other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

**The creation or elimination of jobs within California:** The adoption of Sections 8078.15-8078.21 of the CPCFA Regulations are not expected to have a direct impact on the creation or elimination of jobs within the State of California, due to the limited amount of funding available to support small business and due to the nature of the uses of loan proceeds.

**The creation of new businesses or the elimination of existing businesses within the State of California:** The proposed language in sections 8078.15-8078.21 of the CPCFA Regulations is not expected to have a direct impact on the creation or elimination of new businesses. However, the Authority anticipates the proposed language of the CPCFA Regulations to benefit the health and welfare of people because capital will be used to finance seismic retrofits for small businesses and residences.

**The expansion of businesses currently doing business within the State of California:** The adoption of Sections 8078.15-8078.21 of the CPCFA Regulations are not expected to have an impact on the expansion of businesses within the State of California. The program is designed to increase access to capital for residential property owners and small business owners in seismically retrofitting residences and small business buildings.

**The 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 enable residential property owners and small business owners in seismically retrofitting residences and small business buildings to mitigate seismic damage. The proposed regulations will have some worker safety benefits and welfare of California residents because it enables people to take preventative measures to improve building safety. The Authority does not expect that the proposed regulations will impact the state's environment because the proposed regulations are intended to help meet State and local goals associated with mitigating damage to buildings deemed hazardous and in danger of collapse in the event of a catastrophic earthquake.

**The effect on businesses from Regulations:** The adoption of the proposed regulations is not expected to have an effect on businesses in California. The Authority anticipates the proposed regulations will benefit the welfare of the people and businesses because funds will be used for the purpose of public health and safety to help mitigate seismic damage.

**Business Report:** It is necessary for the health and safety or welfare of the people of the State of California that reporting requirements created in this rulemaking apply to businesses. The reporting requirements allow CPCFA to reconcile and monitor the use of funds, and to ensure that the public funds are used for the purposes they were intended.

#### **Documents Relied Upon**

CPCFA did not rely upon any documents when preparing the proposed Adopted Regulations for the CalCAP/Seismic Safety Financing Program.