

## **IX. REGULATIONS**

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### **A. CalCAP Regulations**

#### **Title 4. Business Regulations**

#### **Division 11. California Pollution Control Financing Authority.**

#### **Article 7. Capital Access Program for Small Businesses**

#### **§ 8070. Definitions.**

In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:

- (a) “Borrower” means a Qualified Business which obtains a Qualified Loan from a Participating Financial Institution.
- (b) “CalCAP” means California Capital Access Program.
- (c) “Change in Terms” means any change in material terms of an enrolled loan, including changes to the name(s) of the borrower or co-borrowers, the total loan amount, the maturity date, or the interest rate.
- (d) “Contribution” means any or all eligible funds deposited by the Authority or Independent Contributor to a Loss Reserve Account.
- (e) “Executive Director” means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.
- (f) “Fees” or “Fee” means a non-refundable fees or fee as set forth in Health and Safety Code Section 44559.4(c).
- (g) “Financial Institution” means an institution as set forth in Health and Safety Code Section 44559.1(d). Financial Institution also includes microbusiness lenders, as defined in Section 13997.2 of the Government Code that make small business loans and require a minimum of four hours of preloan business technical and/or credit assistance to borrowers and a minimum of two hours of postloan assistance each year, and are subject to an audit requirement by its Federal or State regulated funding source.
- (h) “Independent Contributor” means any individual, company, corporation, institution, foundation, utility, government agency or other entity, including any consortium of these persons or entities, whether public or private (but excluding any Borrower), that, pursuant to the provisions of this Article, deposits Contributions to a Loss Reserve Account.
- (i) “Individual” means a natural person, together, if applicable, with any of his or her spouse, parents, siblings or children or the parents or spouse of any of them.
- (j) “Law” means Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the California Health and Safety Code, as amended from time to time.

(k) “Loss Reserve Account” means an account held by a Program Trustee or by any Participating Financial Institution that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Sections 8073, 8078.6, 8078.11, 8078.18, and 8078.25.

(l) “Money Market Fund” means an open-ended management investment company regulated under the Investment Company Act of 1940, as amended, which values its securities pursuant to Section 270.2a-7 of Title 17 of the Code of Federal Regulations.

(m) “Participating Financial Institution” means a Financial Institution that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.

(n) “Passive Real Estate Ownership” means ownership of real estate for the purpose of deriving income from speculation, trade or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be satisfied when a Participating Financial Institution makes a Qualified Loan to an Individual, or to a partnership or trust wholly owned or controlled by one or more Individuals, for the purpose of financing property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and in such case the Qualified Loan will be deemed to be made also to such Qualified Business.

(o) “Primary business location in California” means that a business will be deemed to be located in California if either:

(1) a majority of the employees of the business are located in California; or

(2) the Executive Director determines that the Primary business location is in California by finding that the average of the “Payroll Factor” as defined in Revenue and Taxation Code Section 25132, the “Income Factor” as defined in Revenue and Taxation Code Section 25128, and the “Sales Factor” as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.

(p) “Outstanding Principal Balance” means the amount due and owing to satisfy the payoff of the underlying loan, less interest and other charges.

(q) “Primary economic effect in California” means, as applied to a business activity, that either of the following conditions exists:

(1) At least 51 percent of the total revenues of the business activity are generated in California; or

(2) At least 51 percent of the total jobs of the business activity are created or retained in California.

(r) “Program” means the Capital Access Loan Program for Small Businesses established pursuant to the Law.

(s) “Program Trustee” means a bank or trust company, or the State Treasurer, chosen by the Authority from time to time to hold or administer some or all of the Loss Reserve Accounts.

(t) “Qualified Business” and “Small Business Concern” means a business as set forth in Health and Safety Code Section 44559.1 subdivisions (i) and (m), that is not dominant in its field of operation, and that together with affiliates, has 500 or fewer employees.

(u) “Qualified Loan” means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. “Qualified Loan” does not include any of the following:

(1) A loan for the construction or purchase of residential housing.

(2) A loan to finance Passive Real Estate Ownership.

(3) A loan for the Refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.

(4) A loan, the proceeds of which will be used

(A) to provide any of the following businesses or facilities, regardless of the source of funds used for the Authority's Contribution:

(i) massage parlor, sauna or hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, liquor store, bar, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, a store or other facility whose principal business is religious, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, or shooting range or gallery.

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

(iii) a business that earns more than half of its annual net revenue from lending activities, unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution;

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

(v) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that permits illegal prostitution on its premises;

(vi) businesses that may be restricted by federal law;

(vii) activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities, and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995. P.L. 104-65, as amended;

(viii) financing a non-business purpose;

(ix) covering the unguaranteed portions of an Small Business Administration loan unless the Authority receives prior written consent of the U.S. Treasury; or

(x) supporting existing extension of credit, including prior loans, lines of credit or other borrowings that were previously made available as part of a substantially similar governmental small business credit enhancement program.

(B) to provide any of the following facilities when the Authority's Contributions will be paid for with fees from the issuance of tax-exempt bond sales, all items listed in (A) and: a store whose principal business is the sale of alcoholic beverages for consumption off premises, private or commercial golf course, country club, spas that provide massage services, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), suntan facility, airplane, aircraft, skybox (or other private luxury box), health club facility.

(C) in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.

(5) 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.

(6) any loan that exceeds \$5,000,000.

(7) any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower (including all related entities among which a common enterprise exists) to have a total enrolled

principal amount in excess of \$2,500,000 at any Participating Financial Institution over a three-year period.

(v) "Quarterly Report" means the mandatory report on the status of loans enrolled submitted to the Authority by each Participating Financial Institution on a quarterly basis, no later than the 15th of the month following the end of each quarter.

(w) "Recapture" means the withdrawal of the Authority's Contributions pursuant to each program's rules set forth in Sections 8073, 8078.11, 8078.18, and 8078.25.

(x) "Refinance" means the revision or repayment of an existing debt obligation with a new debt obligation with different terms and conditions, including a Change in Terms, a restructure, an extension on a line of credit, or a lease assumption.

(y) "Severely Affected Community" means any area, as designated by the Executive Director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended; and any other comparable economically distressed geographic area so designated by the Executive Director from time to time.

(z) "Small Business Assistance Fund" means a fund of that name created by the Authority.

(aa) "Standards" means the criteria to be used by an Independent Contributor in assisting businesses through the Program.

(bb) "TRAC Lease" means "Terminal Rental Adjustment Clause" as defined in Section 7701(h)(3) of Title 26 of the United States Code.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7, 44559.9 and 44559.12, Division 27, Health and Safety Code.

### **§ 8071. Application by Financial Institution.**

(a) A Financial Institution seeking to participate in the Program will complete a registration application provided by the Authority.

The application shall include the following information:

- (1) name of applicant Financial Institution.
- (2) name, address and telephone number of contact person.
- (3) combined capital and surplus as of the end of the Financial Institution's most recent fiscal year.
- (4) number of lending branches.
- (5) certification that the applicant Financial Institution is not subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program, and the name of that body.

(6) a full description of the board of directors, including number, race, ethnicity and gender of its members.

(7) the Financial Institution's rating from a nationally recognized credit rating agency which assesses the financial soundness and stability of financial institutions.

(8) the Financial Institution's agreement to follow the Program's procedures as set forth in the Law and this Article.

(9) the Financial Institution's agreement to provide its annual audited financial statements upon the Authority's request, and permit an audit of any of its records relating to enrolled Qualified Loans, during normal business hours on its premises, by the Authority or its agents, and to supply such other information concerning enrolled Qualified Loans as shall be requested by the Executive Director.

(10) acknowledgment by the Financial Institution that the Authority and the State will have no liability to the Participating Financial Institution under the Program except from funds deposited in the Loss Reserve Account for the Participating Financial Institution.

(b) Upon receipt of a completed application, the Executive Director will within 10 days review and determine whether additional information is required, or whether the application is sufficient to permit the applicant to be a Participating Financial Institution. The Executive Director's decision whether an application is sufficient, and whether to establish the Loss Reserve Account at the Program Trustee or at the Participating Financial Institution, shall be final.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

#### **§ 8072. Loan Enrollment.**

(a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.

(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, or the Contribution from an Independent Contributor on behalf of the Borrower and/or the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees or Contributions have been deposited in a Loss Reserve Account held by either the Participating Financial Institution or the Program Trustee.

(c) The notification to the Authority shall include at least the following information:

(1) Borrower name, which includes the Borrower's legal name and the name by which the Borrower does business, if any, and the business address.

(2) Brief description of the Borrower's business and regular activities, Census Tract Number associated to the Borrower's business address, and the location of the facilities being financed if different, either the SIC Code(s) or the NAICS Code(s) applicable to Borrower's business, and the amount of its annual revenues.

(3) Whether this business has been open for two years or more, and is owned by one of the following: a woman, minority, or veteran.

(4) Brief summary of the intended use of the proceeds of the Qualified Loan.

(5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled) and the Participating Financial Institution loan number.

(6) Type of the Qualified Loan (e.g., line of credit, term loan, TRAC Lease).

(7) Date of the Qualified Loan, based on the first disbursement of proceeds to the Borrower.

(8) Interest rate applicable to the Qualified Loan.

(9) Term or maturity date of the Qualified Loan.

(10) Geographic location of the Qualified Business and the location of the facilities being financed if different.

(11) Whether the Qualified Business or the location of the facilities being financed is in a Severely Affected Community.

(12) Whether the loan is secured.

(13) Whether the loan is a Refinance, and if so, the name of the prior lender if different than the Participating Financial Institution, whether the prior loan was enrolled under the Program or any other government lending program, and whether the amount of the loan was increased as part of the Refinance.

(14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.

(15) Whether any portion of the Fees payable by the Borrower or the Contribution was or is to be paid by an Independent Contributor; the identity of such Independent Contributor; and a certification that the Independent Contributor has approved the use of its funds to pay such Fees or Contribution in connection with the Qualified Loan.

(16) Number of persons currently employed by the Borrower, and number of jobs expected to be created, retained or affected by the Qualified Loan.

(17) Certification by the Participating Financial Institution that:

- (A) The loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (B) The Qualified Loan is for a business activity that has its Primary economic effect in California.
- (C) Upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, including documents validating the Borrower's establishment of a business entity, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (D) The Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Contribution.
- (E) The enrolled amount of the loan does not exceed \$2,500,000.
- (F) The Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid by the Borrower.
- (G) The lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable federal banking regulations.
- (H) The Participating Financial Institution has validated that the Borrower has secured or made application for all applicable licenses or permits needed to conduct business.
- (I) The Participating Financial Institution has not, and will not, enroll any portion of the same loan in any other government program substantially similar to the Program.
- (J) The Qualified Loan is not a Refinance of a loan previously made to the Borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution and not enrolled in the Program.
- (K) The Participating Financial Institution has provided the Borrower the Authority's Privacy Notice for the CalCAP for Small Business Loan Program, which provides the notice required under the California Information Practices Act (Civil Code section 1798.17). The Privacy Notice informs the Borrower that personal information protected by the California Information Practices Act may be disclosed under the following circumstances:
- (i) To consultants, auditors or contractors retained by the Authority where disclosure is required to fulfill Program requirements and subject to a nondisclosure agreement;
  - (ii) To another governmental entity where required by state or federal law; or
  - (iii) As otherwise required by law.
- (L) The Participating Financial Institution will make available to the Authority all records related to the use of the funds in the Loss Reserve Account.

The Participating Financial Institution shall be authorized to rely on representations made to the Participating Financial Institution by the Borrower for the information requested in subdivisions (c)(4), (c)(16), (c)(17)(A), (c)(17)(B) and (c)(17)(D); provided that no such Borrower representation may be



relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan. All other certifications shall be based upon the Participating Financial Institution's established due diligence and underwriting standards applied in the regular course of business, and the Participating Financial Institution shall maintain substantiating documentation in the Borrower's loan file.

(18) The Participating Financial Institution must obtain written certification from the Borrower that:

(A) The loan will be used solely for a business purpose;

(B) The loan will not be used to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

(C) The loan will not be used to repay taxes held in trust or escrow;

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

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

(F) The loan will not be used to finance ineligible businesses or facilities identified in Section 8070;

(G) The Borrower is not:

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

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

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

(d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its employees in California, the Participating Financial Institution shall be authorized to submit information to, and seek a determination from, the Executive Director that such Borrower has its Primary business location in California. Such determination shall be made by the Executive Director within 10 days of receipt of a written request from a Participating Financial Institution containing information about the business activities of the proposed Borrower.

(e) If a Borrower seeking a Qualified Loan from a Participating Financial Institution is an employee, member, director, officer, principle shareholder, or affiliate of the Participating Financial Institution, the terms and the conditions of the Qualified Loan and the internal procedures used to approve the Qualified Loan must comply with the following requirements:

(1) If the Participating Financial Institution is a federal-chartered bank, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and

insider transactions and Sections 371c, 371c-1, 375a, and 375b of the Title 12 of the United States Code, and Sections 215.4 of Title 12 of the Code of Federal Regulations.

(2) If the Participating Financial Institution is a state-chartered bank, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 3370 et seq. of the Financial Code, and Sections 10.19300 to 10.19302 of Title 10 of the California Code of Regulations.

(3) If the Participating Financial Institution is a federal-chartered savings association, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Section 1468 of Title 12 of the United States Code.

(4) If the Participating Financial Institution is a state-chartered savings association, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Sections 6503 and 6529 of the Financial Code.

(5) If the Participating Financial Institution is a federal-chartered credit union, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1757 and 1761c of Title 12 of the United States Code and Section 701.21(d) of Title 12 of the Code of Federal Regulations.

(6) If the Participating Financial Institution is a state-chartered credit union, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 15050 of the Financial Code.

(7) If the Participating Financial Institution is a not-for-profit certified community development financial institution (CDFI), the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1805.807 of Title 12 of the Code of Federal Regulations.

(8) If the Participating Financial Institution is a lending institution as described in Section 44559.1(d)(2) of the Health and Safety Code, the Qualified Loan must be made in accordance with any applicable federal laws that regulate conflicts of interests and insider transactions and Section 120.140 of Title 13 of the Code of Federal Regulations.

(f) The Participating Financial Institution may pre-qualify with the Authority any qualified loan. Pre-qualifications do not necessarily guarantee that funds for Contributions will be available at the time of final enrollment, unless the funding source requires it. Pre-qualifications shall be valid for six (6) months.

(g) The Authority shall, upon receipt of documentation and Fees from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 15 business days after receipt by the Authority of all documentation and Fees required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized to review an application for enrollment submitted by a Participating Financial Institution in advance of

the making of the loan, and notify the institution whether such loan meets the requirements of the Law and this Article.

(h) Upon enrollment of a Qualified Loan, the Contribution shall be transferred for deposit in the Loss Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and of the source of funds from which the transfer was made.

(i) The Participating Financial Institution must notify the Authority whenever a Change in Terms occurs on a currently enrolled loan prior to maturity, within fifteen (15) business days after such change. If any of the terms other than the interest rate have changed, then the Participating Financial Institution shall also submit a new loan enrollment application for the loan and deposit Fees (if applicable) pursuant to Section 8072 for any increase to the total loan amount. If the Authority determines that the Change in Terms constitutes an ineligible Refinance as defined in Section 8070, neither the original nor the refinanced loan will continue to be enrolled in the Program.

(j) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed ten years.

(k) Loan enrollments submitted on or after August 15, 2017 will be subject to Recapture as specified in Section 8073.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.12, Division 27, Health and Safety Code; and Section 1798.17, Civil Code.

### **§ 8073. Loss Reserve Accounts.**

(a) Upon the Executive Director's acceptance of an application under Section 8071, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:

- (1) to receive all Fees deposited by the Participating Financial Institution, Borrowers and/or Independent Contributors;
- (2) to receive Contributions deposited by the Authority and/or Independent Contributors; and
- (3) to pay claims in accordance with Section 8074.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by the Program Trustee. For each Loss Reserve Account held by a Participating Financial Institution, the Participating Financial Institution shall submit to the Authority a monthly statement of the account activities and balance, no later than the 15th of the following month.

(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing demand account or deposit account at a banking institution, or a Money Market Fund if approved in writing by the Executive Director, or a combination thereof, and earning a rate of interest that would be expected of accounts of similar type and size. The Loss Reserve Account shall be insured by the Federal

Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Securities Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not deposit any Loss Reserve Account with a Participating Financial Institution if:

(1) there are any charges by the Participating Financial Institution for the establishment or maintenance of the Loss Reserve Account at such Financial Institution; or

(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, it has a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank Financial Quarterly, or Credit Union Financial Profiles; or it has a rating of "C" or below from LACE Financial Corp; or it has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director.

(3) the Participating Financial Institution has not timely submitted its Quarterly Report described in Section 8073, and, for accounts held at the Participating Financial Institution, the monthly statements described in Section 8078.

(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve Account upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below). Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the loss reserve all interest and income that has been credited to the Loss Reserve Account as set forth in Health and Safety Code Section 44559.3(d), and any Contributions subject to Recapture as provided in Section 8073. The Executive Director shall be authorized to return to a Participating Financial Institution any Fees improperly deposited in a Loss Reserve Account. No Participating Financial Institution holding its Loss Reserve Account shall make any withdrawal from the account without written instruction from the Authority.

(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with the approval of the applicable Participating Financial Institution, to assign, transfer, pledge or create security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including a trustee of a securitization trust or trusts) in connection with the securitization of all or a portion of the Participating Financial Institution's loans enrolled in the Program. Any loan enrolled in the program or portion thereof which is subsequently assigned, transferred, pledged or securitized without the advance written approval of the Executive Director shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account. If a Participating Financial Institution desires to assign, transfer, pledge or securitize all or a portion of any enrolled loan or Loss Reserve Account, it shall submit a written request to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of loans and the amount of the Loss Reserve Account subject to the request, and a draft of the legal document specifying the assignment, transfer, pledge or securitization.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims and recoveries upon request, including timely Quarterly Reports of the data regarding: Outstanding Principal Balance of all enrolled loans; all loans in default and charged off, and claim amounts; and deposits made to replenish the Loss Reserve Account pursuant to Section

8074, in the form provided by the Authority. Failure to submit timely and complete Quarterly Reports will result in the suspension of any pending loan enrollments or claim applications from that Participating Financial Institution, and transfer of any Loss Reserve Accounts held by the Participating Financial Institution to the Program Trustee.

(g) The Executive Director is authorized to Recapture from each Loss Reserve Account the Authority's Contribution for each enrolled loan when the corresponding Qualified Loan matures or upon five years from the date of enrollment, whichever occurs first, and subject to each of the following conditions:

(1) Recapture shall be conducted on an annual basis following the end of each fiscal year based on the data reported in the Quarterly Reports submitted for the term ending June 30th.

(2) Recapture is not applicable for Contributions for Qualified Loans that are charged off as a result of a default, and have a pending or approved claim with the Authority, and are reported as such on the Quarterly Report.

(3) The Executive Director shall limit the amount of the annual Recapture of Contributions from each Loss Reserve Account if necessary to ensure that the balance remaining in that Loss Reserve Account immediately following Recapture is greater than a minimum threshold set as a percentage of the Outstanding Principal Balance of loans enrolled in the 60 months prior to each annual Recapture. Beginning in 2017, the minimum threshold will be fifteen percent (15%), and the minimum threshold will decrease by one percent (1%) for each successive year until it reaches the permanent minimum threshold of ten percent (10%).

(4) Recapture shall apply to each new Loss Reserve Account established on or after August 15, 2017.

(5) For Loss Reserve Accounts established before August 15, 2017, each Participating Financial Institution shall affirm in writing its election to continue enrolling loans in the Program subject to Recapture applicable to Contributions for all past and future Qualified Loans. This election may not later be withdrawn by the Participating Financial Institution. Loans enrolled on or after August 15, 2017 will be deemed ineligible if the Participating Financial Institution has not first submitted its election in writing. For any Participating Financial Institution that submits its election in writing after August 15, 2017, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to this subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments on or after the date of its written election. Nevertheless, Qualified Loans enrolled before August 15, 2017 will be supported by the Loss Reserve Account and the Participating Financial Institution will be eligible for claim reimbursement pursuant to Section 8074 for the previously enrolled Qualified Loans until maturity.

(6) The Authority shall deposit all Recaptured funds in the CalCAP for Small Business Loan Program Fund dedicated solely for future program and administrative expenditures of the CalCAP for Small Business Loan Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct and indirect administrative costs of the Program.

(h) The Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution at least ten (10) business days prior to the effective date of the suspension. Causes for suspension shall be for violations of applicable statutes or regulations. If the violations are not

corrected within thirty (30) business days from the effective date of the suspension the Executive Director is authorized to terminate participation of a Participating Financial Institution in the Program. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.3 and 44559.8, Division 27, Health and Safety Code.

#### **§ 8074. Claim for Reimbursement.**

(a) A Participating Financial Institution shall notify the Authority within 120 days after it has charged off all or part of a Qualified Loan as a result of a default.

(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 120 days.

(c) The Authority shall pay claims within 30 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the certifications, representations and warranties provided by the Participating Financial Institution or Borrower pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid. The Authority may request and the lender shall provide, any and all information from the Borrower's loan file to substantiate the eligibility of the Borrower's business and the enrolled loan, and the reasonableness of the costs claimed.

(d) Claim reimbursement shall not exceed the enrolled amount of the qualified loan or loans that form the basis for the claim, except when reasonable out-of-pocket expenses are claimed. In the event only a portion of the loan was enrolled, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion to the total loan amount.

(e) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:

- (1) Name and number of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person.
- (3) Name of the business receiving the defaulted Qualified Loan.
- (4) Amount and date of the Qualified Loan and the Authority's loan number.
- (5) Date and amount of default.

(6) A description of the facts and circumstances of the default, efforts to settle or cure the default, efforts to liquidate collateral or collect from other sources, and any other narrative information and documentation necessary to demonstrate that the claim is eligible under Health and Safety Code Section 44559.5, and that any out-of-pocket expenses sought are reasonable.

(7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.

(8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 120 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.

(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.

(11) Statement whether the Qualified Loan qualifies under Section 8074(g).

(f) Except as provided in Section 8074(g) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(g) If a Qualified Loan suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(h) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the

portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.5, Division 27, Health and Safety Code.

#### **§ 8075. Subrogation.**

(a) The Authority will be subrogated to the rights of the Participating Financial Institution in collateral, personal guarantees and all other forms of security for the Qualified Loan that have not been realized upon by the Participating Financial Institution, when the Participating Financial Institution's loss has been fully covered by payment of a loss claim, or by a combination of payment of a loss claim and recovery from the Borrower, liquidation of collateral, or from other sources.

(b) At the time of subrogating its rights, the Participating Financial Institution shall provide the Authority with all original security agreements, any documents evidencing title to real property, certificates of title, guarantees, and any other documents representing security for the Qualified Loan, duly recorded and perfected, and accompanied by enforceable assignments and conveyances to the Authority, unless such security documents also secure indebtedness to the Participating Financial Institution which was not covered by the Qualified Loan. In such latter case, the Participating Financial Institution shall enter into an intercreditor agreement with the Authority, providing that the Participating Financial Institution shall be entitled to recover under such security documents, to the extent possible, the full amount of its loss on any indebtedness not covered by the Qualified Loan but secured by the same collateral as the Qualified Loan; the balance of any amounts recovered under such security documents shall be deposited in the Loss Reserve Account. The Participating Financial Institution shall provide regular reports, as requested by the Executive Director, concerning its activities in collecting moneys owed from a defaulted Borrower.

(c) The Executive Director shall be authorized to enter into agreements with any Participating Financial Institution to provide for such institution to act as the Authority's agent to secure recovery under any collateral or security documents to which the Authority has been subrogated.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

#### **§ 8076. Termination and Withdrawal from Program.**

(a) A Participating Financial Institution shall be authorized to withdraw from the Program after giving written notice to the Authority. Such notice shall specify either:

- (1) that the Participating Financial Institution waives any further interest in the Loss Reserve Account (including for the reason that all Qualified Loans covered by the Loss Reserve Account have been repaid); or



(2) that the Participating Financial Institution will not enroll any further loans under the Program but that the Loss Reserve Account shall continue in existence to secure all Qualified Loans enrolled prior to such notice until such loans mature or are charged off.

(b) After receipt of a notice under subsection (a)(1) or receipt of a certificate from a Participating Financial Institution which has withdrawn from the Program pursuant to subsection (a)(2), certifying that all Qualified Loans secured by the Loss Reserve Account have been repaid and that there are no pending claims for reimbursement under Section 8074, the remaining balance in the Loss Reserve Account shall be distributed to the Authority; provided that such moneys shall be distributed to the Authority and to the Participating Financial Institution in the amount of the Authority Share and the Participating Financial Institution Share, respectively. For purposes of this Section 8076, "Participating Financial Institution Share" means the ratio of the total amount of Participating Financial Institution Fees made to the Loss Reserve Account, to the total amount of Authority Contributions and Borrower and Participating Financial Institution Fees made to such Loss Reserve Account and "Authority Share" means 100 minus the Participating Financial Institution Share.

(c) The Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program, by notice in writing, upon the occurrence of any of the following:

- (1) entry of a cease and desist order, regulatory sanction, or any other action against the Participating Financial Institution by a regulatory agency that may impair its ability to participate in the Program;
- (2) failure of the Participating Financial Institution to abide by the Law or this Article; or
- (3) failure of the Participating Financial Institution to enroll any Qualified Loans under the Program for a period of one year.
- (4) Provision of false or misleading information regarding the Participating Financial Institution to the authority, or failure to provide the authority with notice of material changes in submitted information regarding the Participating Financial Institution.

In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans, but all previously enrolled Qualified Loans shall continue to be covered by the Loss Reserve Account until they are paid, claims are filed, or the Participating Financial Institution withdraws from the Program pursuant to Section 8076(a)(1).

(d) If for a consecutive 12-month period the amount in the Loss Reserve Account continuously exceeds the Outstanding Principal Balance of all the Participating Financial Institution's Qualified Loans made since the beginning of the Program, the Executive Director shall be authorized to withdraw any such excess to bring the Loss Reserve Account down to an amount equal to 100 percent of the Outstanding Principal Balance. Distributions shall be made to the Authority and to the Participating Financial Institution based on the Authority Share and the Participating Financial Institution Share, respectively.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

### **§ 8077. Reports of Regulatory Agencies.**

The Executive Director shall be authorized to seek information directly from any federal or state regulatory agency concerning any Participating Financial Institution participating in the Program.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

### **§ 8078. Participation in the Program by Certain Public or Private Entities.**

(a) The Authority shall be authorized to permit any individual, company, corporation, institution, utility, government agency or other entity, including any consortium of these persons or entities, to become an Independent Contributor after such person or entity

(1) submits to the Authority its Standards; provided that the Authority shall not enforce compliance by the Independent Contributor with its Standards;

(2) represents to the Authority that it will not enter into an exclusive arrangement with a particular Participating Financial Institution, but that it is prepared to work with any Participating Financial Institution under the Program;

(3) agrees to indemnify the Authority against any loss, liability or claim arising from the use of the Independent Contributor's funds in the Program;

(4) represents to the Authority that it understands and intends to abide by the provisions of the Law and this Article with regard to its participation in the Program; and

(5) deposits with the Program Trustee an initial amount of at least \$15,000 to be used to pay Fees payable by Borrowers and/or Contributions in connection with Qualified Loans, or receives a written waiver from the Executive Director of this requirement.

(6) agrees to reimburse the Authority for any reasonable costs related to the Independent Contributor's participation in the program, unless waived by the Authority.

(b) An Independent Contributor shall advise the Authority at any time the Standards provided to the Authority pursuant to Section 8078(a)(1) above are changed.

(c) The Authority shall be authorized to terminate an Independent Contributor's participation in the Program at any time, upon written notice, for any cause, including, but not limited to, failure to maintain a minimum deposit of at least \$5,000 with the Program Trustee. An Independent Contributor shall be authorized to terminate its participation in the Program at any time, upon written notice.

(d) An Independent Contributor must pay all fees of the Program Trustee attributable to the funds that the Independent Contributor deposits with the Program Trustee.

(e) Fees and Contributions paid by Independent Contributors shall not be subject to the maximums set forth in Health and Safety Code Section 44559.4(c).

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44525, 44526, 44559.3 and 44559.9, Division 27, Health and Safety Code.

### **§ 8078.3. Definitions.**

In addition to the definitions in Section 8070, the following definitions shall apply only to the Electric Vehicle Charging Station Financing Program.

(a) “Borrower Rebate” means a payment made to a Borrower from the Participating Financial Institution’s Loan Loss Reserve Account upon a valid claim made pursuant to Section 8078.7.

(b) “CEC” and “Energy Commission” means the California Energy Commission.

(c) “Disadvantaged Communities” means the top twenty five (25) percent of communities that are disproportionately affected by environmental pollution and socioeconomic characteristics as described by CalEnviroScreen 2.0 Tool<sup>1</sup>.

(d) “Electric Vehicle Charging Station” or “EVCS” means an element in an infrastructure that supplies electric energy for the recharging of plug-in electric vehicles.

(e) “EVCS supply equipment” means equipment which meets the minimum technical requirements set by the Energy Commission as follows:

(1) Direct current fast chargers shall utilize:

- (A) Either the CHAdeMO standard, or SAE combination standard, or a combination of both; and
- (B) An open standard protocol for purposes of network interoperability.

(2) Level 2 charging equipment shall utilize:

- (A) The SAE J1772 standard; and
- (B) An open standard protocol for purposes of network interoperability.

(3) Open standard protocol is waived for medium- and heavy-duty EVCS supply equipment.

(f) “Eligible Project Costs” means the amount to pay for acquisitions and services necessary and allocable to the installation and operation of one or more EVCSs in the State of California as allowed by the Energy Commission, specifically:

- (1) The design and development of EVCS in locations accessible to either the Borrower’s employees, the Borrower’s tenants if in an Multi-Unit Dwelling (MUD), or the public generally;

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<sup>1</sup> <http://www.oehha.ca.gov/ej/ces2.html>

(2) The acquisition of EVCS supply equipment, electric panel or grid improvements, materials and supplies (including conduit and construction materials), signage, and hardware and software necessary and allocable for fully operational charging station(s);

(3) Labor necessary and allocable to install fully operational charging station(s); and

(4) The costs for operating, servicing and maintaining the EVCS during the term of the loan, if the Borrower's primary business is not EVCS installation, operation or manufacturing.

(g) "Multi-Unit Dwelling" or "MUD" means a classification of housing where multiple housing units are contained within one building or multiple buildings within a complex or community. Common types of MUDs include duplexes, townhomes, and apartments, mobile homes and manufactured-home parks.

(h) "Program" means the Electric Vehicle Charging Station Financing Program established pursuant to the Interagency Agreement between the Authority and the Energy Commission. Where the term "Program" is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p).

(i) "Qualified Business" means any entity eligible under section Health and Safety Code section 44559.1(i) and (m) that together with its affiliates has 1,000 or fewer employees, and that is not dominant in its field of operation. Where the term "Qualified Business" is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(s).

(j) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business where the loan proceeds are for Eligible Project Costs for the installation and operation of one or more EVCS. "Qualified Loan" does not include any of the following:

(1) A loan for the construction or purchase of residential housing;

(2) A loan to finance Passive Real Estate Ownership;

(3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance;

(4) Any loan, the proceeds of which will be used to install EVCS at any of the facilities described in Section 8070(t)(4)(A);

(5) 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

(6) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$500,000.

Where the term "Qualified Loan" is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(t).

(k) "Trustee" means a bank or trust company, or the State Treasurer, chosen by CPCFA from time to time to hold or administer some or all of the Program Accounts.

Note: Authority cited: Sections 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.

#### **§ 8078.4. Application by Financial Institution.**

Financial Institutions shall follow the procedures set forth in Section 8071 in making application to become Participating Financial Institutions in the Electric Vehicle Charging Station Financing 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.

#### **§ 8078.5. Loan Enrollment.**

(a) A Participating Financial Institution may enroll all or any portion of a Qualified Loan by submitting an EVCS Loan Enrollment Application which shall include the following information:

- (1) The official business name of the Borrower, which includes the Borrower's legal name and the name by which the Borrower does business, if any, and the business address.
- (2) The name and title of the individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower.
- (3) Brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues over the last three years.
- (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Project Costs.
- (5) Location(s) of the project(s) to be installed.
- (6) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled) and the Participating Financial Institution loan number.
- (7) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
- (8) Date of the Qualified Loan.
- (9) Interest rate applicable to the Qualified Loan.
- (10) Term or maturity date of the Qualified Loan.
- (11) Whether the loan is for the installation of EVCS in a Disadvantaged Community.

- (12) Whether the loan is for the installation of EVCS at a Multi-Unit Dwelling.
- (13) Number of persons currently employed by the Borrower, and number of jobs expected to be created and retained by the Qualified Loan.
- (14) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (15) 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.
- (16) The certification that the Participating Financial Institution has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the Contribution.
- (17) The Participating Financial Institution's certification that the total amount of loans enrolled by the Borrower in the Program does not exceed \$500,000.
- (18) The Participating Financial Institution's certification that the Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS.
- (19) 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.
- (20) The Participating Financial Institution shall be authorized to base the information requested by subsections (14) and (18) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.
- (21) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.
- (22) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:
- (A) That it satisfies the definitions in Sections 8078.3(e), 8078.3(f), 8078.3(i), and 8078.3(j) of the EVCS Financing Program Regulations;
  - (B) The EVCS installation is compliant with Section 8078.3(c) or 8078.3(g) of the EVCS Program Regulations, if applicable;
  - (C) The EVCS installation is located within the boundaries of the State of California;
  - (D) The Borrower has legal control of the EVCS installation site for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;

- (E) 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;
- (F) The Borrower has no legal, beneficial, or equitable interest in the Contribution;
- (G) If the EVCS installation financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the loan in this Program is the portion of costs of the total project as reasonably allocated to the installation and operation of the EVCS, as documented by the master contractor and/or installer of the EVCS;
- (H) The Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS to be procured with the Qualified Loan;
- (I) The Borrower agrees to allow California Energy Commission staff or its designee to inspect the EVCS and EVCS installation site;
- (J) The Borrower acknowledges awareness of potential regulations from the California Department of Food and Agriculture, Division of Measurement Standards, governing the retail sale of electricity from EVCS. Once effective, installed EVCS may be required to adhere to adopted regulation requirements; and
- (K) The Borrower is aware of the Borrower Rebate if it complies with Section 8078.7 of the EVCS Financing Regulations.

(23) Certification from the Participating Financial Institution that it has provided the Borrower CPCFA's Privacy Notice for the EVCS Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the EVCS 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.

Information related to this loan not including personally identifying information may be disclosed to the California Energy Commission for statistical reporting.

(b) Upon enrollment of a Qualified Loan, CPCFA shall direct the Trustee to transfer a Contribution for deposit in the Participating Financial Institution's established Loan Loss Reserve Account, and the Trustee shall notify the Participating Financial Institution of the transfer.

(c) The Contribution for each Qualified Loan shall be calculated as follows:

- (1) All Qualified Loans shall receive a Contribution in the amount of 20 percent of the enrolled loan amount.

(2) All Qualified Loans that support installation of Electric Vehicle Charging Stations in Disadvantaged Communities or in a Multi-Unit Dwelling shall receive an additional Contribution in the amount of 10 percent of the enrolled loan amount (total Contribution of 30 percent).

(d) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed forty-eight (48) months from the date of first disbursement of the Qualified Loan.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.11, Health and Safety Code; and Section 1798.17, Civil Code.

#### **§ 8078.6. Loan Loss Reserve Accounts.**

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loan Loss Reserve Trust Account for that Participating Financial Institution for the following purposes:

- (1) To receive all Contributions deposited from the EVCS Financing Program;
- (2) To pay claims in accordance with the Claim for Reimbursement Section 8074; and
- (3) To pay Borrower Rebates in accordance with Section 8078.7.

(b) All moneys in a Loan Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided in the Interagency Agreement with the Energy Commission and these regulations. Interest or income earned on moneys credited to the Loan Loss Reserve Account shall be deemed to be part of the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loan Loss Reserve Trust Account all interest and income that has been credited to the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw contributions improperly deposited in a Loan Loss Reserve Account. The Executive Director shall be authorized to direct that funds be withdrawn from Loan Loss Reserve Accounts to fund qualifying Borrower Rebates.

(c) Moneys in a Participating Financing Institution's Loan Loss Reserve Account shall not exceed the outstanding principal of its enrolled loans. From time to time, the Executive Director may withdraw from the Loan Loss Reserve Account all Loan Loss Reserve contributions that exceed the amount of outstanding principal.

(d) If any Loan Loss Reserve Account is held at a Participating Financial Institution, the Participating Financing Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loan Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.

(e) The Participating Financial Institution shall provide reports on the quarterly basis to CPCFA no later than the 15 days after the end of the quarter, listing all enrolled loans which are in default whether or



not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Section 44559.3, Health and Safety Code.

#### **§ 8078.7. Borrower Rebate.**

(a) A Borrower shall be eligible for a Borrower Rebate of fifty (50) percent of the Contribution if the following conditions are met:

- (1) The Borrower provides the Participating Financial Institution with a copy of an Electric Vehicle Charging Station Certificate of Commissioning relative to the EVCS financed;
- (2) The Borrower has no more than one 30-day late payment on the Qualified Loan;
- (3) The Qualified Loan has been paid off or forty-eight months have elapsed from the date of first disbursement of the Qualified Loan, whichever is sooner; and
- (4) The Borrower certifies that any outstanding balance of the loan repaid at the time of application for the Borrower Rebate was not refinanced into another credit structure with any Participating Financial Institution.

(b) A Participating Financial Institution shall make the request for a Borrower Rebate as specified in subdivision (c) of this section to CPCFA within 90 calendar days after the conditions in subdivision (a) of this section have been satisfied.

(c) To make a request for a Borrower Rebate, the Participating Financial Institution shall submit a Request for Borrower Rebate form to CPCFA which shall include the following information:

- (1) Name of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person for the Participating Financial Institution.
- (3) Name, telephone number and address of the Qualified Business requesting the Borrower Rebate.
- (4) Amount, date of first disbursement of the Qualified Loan and loan number.
- (5) Amount of Contribution.
- (6) Amount of Borrower Rebate.
- (7) Date Borrower qualified for Borrower Rebate.
- (8) Participating Financial Institution certification of other evidence that the conditions in subdivision (a) of this section have been satisfied.

(d) CPCFA shall authorize the payment of a Borrower Rebate within 30 calendar days of receipt of a completed request for Borrower Rebate; provided, however, that the Executive Director shall be authorized to reject a request for Borrower Rebate if he or she determines that the certifications

provided by the Participating Financial Institution and Borrower at the time of enrolling the Qualified Loan were false or unsubstantiated. CPCFA shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of a Borrower Rebate up to an additional 30 calendar days if CPCFA requires more information in order to validate the payment of the Borrower Rebate.

(e) Upon approval of a claim for Borrower Rebate, CPCFA shall instruct the Trustee to withdraw the appropriate amount from the Loan Loss Reserve Account and disburse the Borrower Rebate to the Borrower.

(f) CPCFA may, in its sole determination, authorize a Borrower Rebate upon independent verification that the Borrower has satisfied the requirements of subdivision (a) of this section in the event the Participating Financial Institution is unable or unwilling to supply the documentation needed for Borrower Rebate authorization.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Sections 44559.3 and 44559.11, Health and Safety Code.

#### **§ 8078.8. Definitions.**

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Americans with Disabilities Act Small Business Capital Access Financing Program, Sections 8078.8 to 8078.14 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 California Americans with Disabilities Act Small Business Capital Access Financing Program.

(a) “Americans with Disabilities Act” or “ADA” means the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.) and amendments thereto.

(b) “Certified Access Specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5 of the Government Code.

(c) “CalCAP/ADA Contribution” means the Contribution(s) made by the Authority from the California Americans with Disabilities Act Small Business Capital Access Financing Program Fund established pursuant to Section 44559.13(b)(2) of the Health and Safety Code.

(d) “CASp Report” means a written inspection report pursuant to Section 55.53 of the California Civil Code.

(e) “Cost Estimate” means a written proposal or estimate of the costs of materials, services and other expenses to complete some or all of the physical alterations or retrofits identified in the CASp Report, as provided by the CASp or by a licensed contractor.

(f) “Eligible Costs” means and includes all or any part, as defined in subdivision (b)(3) of Section 44559.13 of the Health and Safety Code, of the price of construction, purchase price of real or personal property, the price of demolishing or removing any buildings or structures, the price of all machinery

and equipment, the amount of financing charges and interest prior to, during, and for a period not to exceed the later of one year or one year following completion of construction, as determined by the authority, the price of insurance during construction, the amount of funding or financing noncapital expenses, the amount of reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements, the price of engineering, financial, and legal services and other service contracts, the price of plans, specifications, studies, surveys, estimates, administrative expenses, and any other expenses of funding or financing, that are necessary and allocable to the eligible project, and shall not include costs not directly related to physical alterations necessary for compliance with the Americans with Disabilities Act.

(g) “Eligible Project” means the physical alterations or retrofits to an existing small business facility as defined in subsection (l) necessary to ensure that the facility is in compliance with the Americans with Disabilities Act as identified in a CASp report on the facility, and the financing necessary to pay eligible costs of the project.

(h) “Program”, and “CalCAP/ADA Financing Program” and “CalCAP/ADA Program” and “CalCAP/ADA” mean the California Americans with Disabilities Act Small Business Capital Access Loan Program, referred to herein as the California Americans with Disabilities Act Small Business Capital Access Financing Program, established pursuant to the Section 44559.13 of the Health and Safety Code. Where the term “Program” is used in Sections 8078.8 to 8078.14 inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p) of the California Code of Regulations Title 4, Division 11, Article 7.

(i) “Qualified Loan” means a loan or portion of a loan as defined in Section 44559.1 subdivision (j)(1) of the Health and Safety Code, where the proceeds of the loan or portion of the loan are limited to the Eligible Costs for an Eligible Project under this Program, where the loan or portion of the loan does not exceed fifty thousand dollars (\$50,000), and where the term of loss coverage for each qualified loan is no more than sixty (60) months. “Qualified Loan” does not include any of the following:

- (1) Any portion of a loan to the extent the same 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 \$50,000.

(j) “Recapture” means the withdrawal of CalCAP/ADA Contribution amounts on an annual basis when enrolled loans mature or after sixty (60) 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.

(k) “Small Business” or “Qualified Business” means a business referred to in Section 44559.1 (i) and (m) of the Health and Safety Code, that meets the following additional criteria:

- (1) Fifteen or fewer full-time equivalent employees;
- (2) Less than one million dollars (\$1,000,000) in total gross annual income from all sources; and
- (3) Does not provide overnight accommodations.

(l) “Small Business Facility” or “Facility” means an existing small business facility of less than 10,000 square feet plus common areas and publicly or privately owned access points such as sidewalks and parking lots, if responsibility for those areas has been shifted to the small business owner pursuant to local ordinance or an enforceable lease agreement.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Sections 44559.1, 44559.3, 44559.5 and 44559.11, Health and Safety Code; 42 U.S.C. Section 12101; Section 4459.5, Government Code; and Section 55.53, Civil Code.

#### **§ 8078.9. Application by Financial Institution.**

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

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code; and 42 U.S.C. Section 12101.

#### **§ 8078.10. 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.

(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/ADA Loan Enrollment Application which shall include the following information:

(1) The official business name of the Borrower, including a “Doing Business As” if any, and the business address.

(2) Name and title of individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower(s).

(3) 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, and the amount of its annual revenues.

- (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Costs.
- (5) Location(s) of the Small Business Facility.
- (6) Amount of the Qualified Loan being enrolled in the Program, and total loan amount if different, and the Participating Financial Institution loan number.
- (7) Whether the Qualified Loan is secured, unsecured, or a term loan.
- (8) Date of the Qualified Loan.
- (9) Interest rate applicable to the Qualified Loan.
- (10) Term or maturity date of the Qualified Loan.
- (11) Whether the loan is for alteration(s) or retrofit(s) of a Small Business Facility located in a Severely Affected Community.
- (12) The Participating Financial Institution's certification as to the number of full-time equivalent employees currently employed by the Borrower.
- (13) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (14) 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 an Eligible Project.
- (15) 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.
- (16) The Participating Financial Institution's certification that the total amount of loans for the borrower enrolled in the CalCAP/ADA program does not exceed \$50,000.
- (17) 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/ADA Contribution.
- (18) The Participating Financial Institution's certification that the Borrower has provided a CASp Report and a Cost Estimate and that the physical alterations or retrofits to be financed are included in the CASp Report.
- (19) The Participating Financial Institution's certification that the Borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) or alteration(s).
- (20) 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.

(21) The Participating Financial Institution shall be authorized to certify to the information requested by subsections (12), (13), (14), (18) and (19) 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.

(22) 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.

(23) Certification from the Participating Financial Institution that it has provided the Borrower the CPCFA's Privacy Notice for the CalCAP/ADA 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/ADA 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.

(24) 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 satisfies the definitions in Sections 8078.8(f), (g), (i), (k) and (l) of the California Americans with Disabilities Act Small Business Capital Access Financing Program Regulations;
- (B) The facility 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/ADA Contribution;
- (F) If the physical alteration(s) or retrofit(s) financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the 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 retrofit(s) or alteration(s) to the Participating Financial Institution;
- (H) The Borrower has provided a CASp report and a Cost Estimate to the Participating Financial Institution and that the physical alterations or retrofits to be financed are included in the CASp Report;

(I) The Borrower's certification that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project;

(J) 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 CalCAP/ADA Program pursuant to Section 8078.11.

(e) Upon verification of the deposit of the Participating Financial Institution's and Borrower's Contributions, all Qualified Loans shall receive a CalCAP/ADA Contribution equal to four times the amount of the Participating Financial Institution's Contribution.

(f) All Qualified Loans that support Eligible Projects located in a Severely Affected Community shall receive an additional CalCAP/ADA 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 sixty (60) months from the date of first disbursement of the Qualified Loan.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Sections 44559.2 and 44559.4, Health and Safety Code; and 42 U.S.C. Section 12101.

#### **§ 8078.11. Loss Reserve Accounts.**

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loss Reserve Account for that Participating Financial Institution for this Program for the following purposes:

(1) To receive deposits from the Participating Financial Institution Contributions, the Borrower Contributions and the CalCAP/ADA Contributions; and

(2) To pay claims in accordance with Section 8078.12.

(b) All moneys in a Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided by these regulations. Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loss Reserve Account all interest and income that has been credited to the Loss Reserve Account. The Executive Director shall be authorized to withdraw Contributions improperly deposited in a Loss Reserve Account.

(c) The Executive Director shall be authorized to Recapture the CalCAP/ADA Contribution from the Loss Reserve Account when the corresponding Qualified Loan matures or at five years from the date of enrollment, whichever occurs first.

(d) On an annual basis after March 31, CPCFA will send a notice to the Participating Financial Institution listing the CalCAP/ADA Contribution amounts that will be recaptured based on the status of the loan(s) at the end of the previous calendar year.

(e) If any Loss Reserve Account is held at a Participating Financial Institution, the Participating Financial Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.

(f) The Participating Financial Institution shall provide reports on a quarterly basis to CPCFA no later than 15 days after the end of each quarter, listing the status of all enrolled loans, claims and recoveries whether or not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code; and 42 U.S.C. Section 12101.

#### **§ 8078.12. Claim for Reimbursement.**

Participating Financial Institutions shall follow the procedures set forth in Section 8074 in making claims for reimbursement for loans enrolled in the California Americans with Disabilities Act Small Business Capital Access Financing Program. Any references to Section 8072 shall be replaced with Section 8078.10.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code; and 42 U.S.C. Section 12101.

#### **§ 8078.13. Subrogation.**

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the California Americans with Disabilities Act Small Business Capital Access Financing Program.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code; and 42 U.S.C. Section 12101.

#### **§ 8078.14. Termination and Withdrawal from Program.**

The procedures for termination and withdrawal from the program set forth in Section 8076 shall be followed for loans enrolled in the California Americans with Disabilities Act Small Business Capital Access Financing Program.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code; and 42 U.S.C. Section 12101.



## § 8078.15. Definitions.

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Seismic Safety Capital Access Loan Program, Sections 8078.15 to 8078.21 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 Program.

(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 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; and Section 13340, Government Code.

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

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

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.14, Health and Safety Code.

Reference: Section 44559.2, Health and Safety 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 employees 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, 44559.5, 44559.11 and 44559.14, Health and Safety Code.  
Reference: Sections 18613, 44559.2 and 44559.4, Health and Safety Code.

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

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loss Reserve Account for that Participating Financial Institution for this Program for the following purposes:

- (1) To receive deposits from the Participating Financial Institution Contributions, the Borrower Contributions and the CalCAP/Seismic Safety Contributions; and
- (2) To pay claims in accordance with Section 8078.19.

(b) All moneys in a Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided by these regulations. Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loss Reserve Account all interest and income that has been credited to the Loss Reserve Account. The Executive Director shall be authorized to withdraw Contributions improperly deposited in a Loss Reserve Account.

(c) The Executive Director shall be authorized to Recapture the CalCAP/Seismic Safety Contribution from the Loss Reserve Account when the corresponding Qualified Loan matures or at ten years from the date of enrollment, whichever occurs first.

(d) On an annual basis after March 31, CPCFA will send a notice to the Participating Financial Institution listing the CalCAP/Seismic Safety Contribution amounts that will be recaptured based on the status of the loan(s) at the end of the previous calendar year.

(e) If any Loss Reserve Account is held at a Participating Financial Institution, the Participating Financial Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.

(f) The Participating Financial Institution shall provide reports on a quarterly basis to CPCFA no later than 15 days after the end of each quarter, listing the status of all enrolled loans, claims and recoveries whether or not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.14, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code.

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

Participating Financial Institutions shall follow the procedures set forth in Section 8074 in making claims for reimbursement for Qualified Loans enrolled in the California Seismic Safety Capital Access Financing Program. Any references to Section 8072 shall be replaced with Section 8078.17.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.14, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code.

#### **§ 8078.20. Subrogation.**

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the California Seismic Safety Capital Access Financing Program.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.14, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code.

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

The procedures for termination and withdrawal from the CalCAP program set forth in Section 8076 shall be followed for loans enrolled in the California Seismic Safety Capital Access Loan Program.



Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.14, Health and Safety Code.  
Reference: Section 44559.2, Health and Safety Code.

### **§ 8078.22. Definitions.**

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Capital Access Program Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program, Sections 8078.22 to 8078.28 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 California Capital Access Program Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program.

- (a) "ARB" means the California Air Resources Board.
- (b) "Eligible Cost" or "Eligible Purchase" means the amount of loan proceeds used for the acquisition of heavy duty diesel vehicles or equipment necessary to become compliant with the ARB's Statewide In-Use Truck and Bus Regulations defined in section 2025, title 13, of the California Code of Regulations. In addition, heavy duty vehicles fueled by electric, natural gas, or hybrid engines in compliance with the emissions standards set by ARB may be considered an Eligible Purchase.
- (c) "Interagency Agreement" means the agreement between ARB and the Authority, as may be amended from time to time.
- (d) "On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation" means the Statewide In-Use Truck and Bus Regulations defined in section 2025, title 13, of the California Code of Regulations.
- (e) "Program" and "CalCAP ARB Financing Program" and "CalCAP ARB Program" and "CalCAP ARB" and "CalCAP ARB On-Road HDV Air Quality Loan Program" means the California Capital Access Program Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program, established pursuant to an the Interagency Agreement between the Authority and the Air Resources Board.
- (f) "Qualified Business" means a either a Truck Owner Operator or a business referred to in subdivisions (i) and (m) of Section 44559.1 of the Health and Safety Code, that meets the following additional criteria:
  - (1) Less than one hundred (100) employees;
  - (2) The maximum fleet size prior to enrollment in the Program does not exceed ten (10) vehicles consistent with fleet reporting requirements in ARB's Statewide In-Use Truck and Bus Regulations;
  - (3) Less than ten million dollars (\$10,000,000) in total gross annual income from all sources over the prior three (3) fiscal years; and
  - (4) The Primary economic effect of the Borrower's business activity must be in California.
- (g) "Qualified Loan" means a loan or portion of a loan as defined in Section 44559.1(j)(1) of the Health and Safety Code, and Section 8070 in this Article, where the loan or portion of the loan enrolled does not exceed two million five hundred thousand dollars (\$2,500,000), and where the term of loss coverage

for each qualified loan is no more than five (5) years. A Qualified Loan may be made in the form of a TRAC Lease when the Loss Reserve Account is funded by an Independent Contributor. "Qualified Loan" does not include any of the following:

- (1) Any portion of a loan to the extent the same portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.
- (2) Any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower, including all related entities among which a common enterprise exists, to have a total enrolled principal amount in excess of \$2,500,000 at any Participating Financial Institution over a three-year period.
- (3) Any loan that exceeds the maximum interest rate of twenty (20) percent annual percentage yield.
- (4) Any loan or portion of a loan which is a Refinance of an existing loan.
- (5) Any loan for which the loan proceeds are used solely for a trailer purchase(s).
- (6) Any loan where any portion of the loan proceeds are used for a purchase or expenditure not subject to ARB's Statewide In-Use Truck and Bus Regulation.

(h) "Truck Owner Operator" means a driver who owns and operates his or her own trucking business or who leases his or her own truck to a trucking company to transport freight or haul loads for various companies, and such activities have a Primary economic effect of the business activity is in California.

Note: Authority cited: Sections 39601(a), 39650, 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Sections 39650, 43013, 44274, 44559.1, 44559.3, 44559.5 and 44559.11, Health and Safety Code; and 42 U.S.C. Section 7401.

#### **§ 8078.23. 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.

#### **§ 8078.24. Loan Enrollment.**

(a) The terms and conditions of the Qualified Loans, including rates, and fees, shall be determined solely by agreement between the Participating Financial Institution and the Borrower.

(b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan by notifying the Authority in writing, within 15 business days after the Qualified Loan is made, that the Participating Institution 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.

(c) The notification to the Authority shall include at least the following information:

(1) Borrower name, which includes the Borrower's legal name and the name by which the Borrower does business, if any, and the business address.

(2) Brief description of the Borrower's business and regular activities, Census Tract Number associated to the Borrower's business address, and the location of the facilities being financed if different, the NAICS Code(s) applicable to Borrower's business, and the amount of its average annual revenue for the past three (3) years.

(3) Whether this business has been open for two (2) years or more, and is owned by one of the following: a woman, minority, or veteran.

(4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with Eligible Purchases, including the tractor model, engine model and fuel type of each vehicle, the model of each trailer or diesel particulate filter, and the number of each Eligible Purchase.

(5) Amount of the Qualified Loan being enrolled in the Program, the total amount of loan, and the Participating Financial Institution loan number.

(6) Whether the Qualified Loan is secured or unsecured, and whether it is a term loan or TRAC lease.

(7) Date of the Qualified Loan, based on the first disbursement of proceeds to the Borrower.

(8) Interest rate applicable to the Qualified Loan.

(9) Term or maturity date of the Qualified Loan.

(10) Certification by the Participating Financial Institution of the following:

(A) The Borrower has validated the number of employees currently employed by the Borrower.

(B) The loan is a Qualified Loan for Eligible Costs, and that the business receiving the Qualified Loan is a Qualified Business.

(C) The Borrower's business activity has its Primary economic effect in California.

(D) Upon request by the Executive Director, the Participating Financial Institution shall provide information from the financial records of the Borrower, including documents validating the Borrower's establishment of a business entity, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.

(E) The total amount of loans for the borrower enrolled in the CalCAP/ARB Program does not exceed \$2,500,000 over a three year period.

(F) The Participating Financial Institution has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the CalCAP/ARB Contribution.

(G) The Participating Financial Institution has validated that the Borrower has secured all applicable licenses and permits to conduct its business.

(H) The lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.

(I) The Participating Financial Institution has not, and will not, enroll the Qualified Loan, or any portion thereof, in any other government program substantially similar to the Program.

(J) No portion of the loan is a Refinance.

(K) The Participating Financial Institution has provided the Borrower the Authority's Privacy Notice for the CalCAP/ARB On-Road HDV Air Quality Loan Program, which provides the notice required under the California Information Practices Act (Civil Code section 1798.17). The Privacy Notice informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:

- (i) To consultants, auditors or contractors retained by the Authority or ARB where disclosure is required to fulfill CalCAP/ARB Program requirements and subject to a nondisclosure agreement;
- (ii) To another governmental entity where required by state or federal law; or
- (iii) As otherwise required by law.

(L) The Participating Financial Institution will make available to the Authority all books and records related to the use of the funds in the Loss Reserve Account;

(M) The Participating Financial Institution shall be authorized to certify to the information requested under subdivisions (c)(10)(A), (B), (C), (D), (F), (G), and (H) based upon the Participating Financial Institution's established due diligence and underwriting standards applied in the regular course of business, and shall maintain substantiating documentation in the Borrower's loan file.

(11) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies that:

(A) The Borrower is using the proceeds to purchase on-road heavy duty diesel vehicle(s) or other Eligible Purchases to comply with ARB's Statewide In-Use Truck and Bus Regulation as defined in Section 2025, Title 13, of the California Code of Regulations;

(B) The Borrower's business activities have a Primary economic effect in California;

(C) The Borrower agrees to allow the Participating Financial Institution to provide information from financial records of the Borrower upon request of the Executive Director;

(D) The Borrower has no legal, beneficial, or equitable interest in the CalCAP/ARB Contribution;

(E) The Borrower meets state and federal requirements to operate in California and that the Borrower has secured all applicable licenses and permits needed to conduct business;

- (F) The enrolled amount of the loan in this Program is limited to Eligible Purchases;
- (G) The Borrower agrees to allow the Authority or its designee to review all information in the loan file maintained by the Participating Financial Institution;
- (H) The Borrower either has or has not received any grants or vouchers through the ARB's Proposition 1B Goods Movement Emission Reduction program, the ARB's Carl Moyer On-Road Heavy Duty Vehicle Voucher Incentive program or the ARB's Hybrid and Zero-Emission Truck and Bus Voucher Incentive project for the financed vehicle(s);
- (I) The Borrower agrees to allow ARB staff or its designee to inspect the affected vehicle(s);
- (J) The Borrower does not have a total enrolled principal amount in excess of \$2,500,000 at any CalCAP Participating Financial Institution over a three (3) year period;
- (K) The Borrower has received CPCFA's CalCAP/ARB Privacy Notice and that the Borrower is not any of the following: an executive officer, director, or principal shareholder of the Participating Financial Institution; a member of the immediate family of any of those individuals; or a related interest of those individuals; and
- (L) The accuracy of specific information regarding the fleet size, the vehicle, and equipment, including: truck(s) gross vehicle weight rating, engine manufacturer, model year, and horsepower, replacement truck(s), device(s) manufacturer, and model and technology type.

(12) Loan enrollments submitted after August 15, 2017 will be subject to Recapture as specified in Section 8078.25.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Section 44559.2, Health and Safety Code; and Section 1798.17, Civil Code.

#### **§ 8078.25. Loss Reserve Accounts.**

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution under the CalCAP ARB Financing Program for the following purposes:

(1) To receive all Contributions deposited by the Authority from funds provided by ARB based on the Contribution rates authorized by ARB in the Interagency Agreement as follows:

(A) for each new and existing Participating Financial Institution whose total Contributions in the Loss Reserve Account has not yet reached \$500,000, the Contribution for each Qualified Loan is equal to 14 percent of the enrolled loan amount.

(B) for each Participating Financial Institution whose total Contributions in the Loss Reserve Account exceeds \$500,000, but are less than \$1.5 million, the Contribution for each Qualified Loan is equal to 7 percent of the enrolled amount;

(C) for each Participating Financial Institution whose total Contributions in the Loss Reserve Account exceeds \$1.5 million, the Contribution for each Qualified Loan is equal to 4 percent of the enrolled amount.

(2) To pay claims in accordance with Section 8078.26.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by the Program Trustee. For each Loss Reserve Account held by a Participating Financial Institution, the Participating Financial Institution shall submit to the Authority a monthly statement of the account activities and balance, no later than the 15th of the following month.

(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing demand account or deposit account at a banking institution, or a Money Market Fund if approved in writing by the Executive Director, or a combination thereof, and earning a rate of interest that would be expected of accounts of similar type and size. The Loss Reserve Account shall be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Securities Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not deposit any Loss Reserve Account with a Participating Financial Institution if:

(1) there are any charges by the Participating Financial Institution for the establishment or maintenance of the Loss Reserve Account at such Financial Institution;

(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, the Participating Financial Institution has a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank Financial Quarterly, or Credit Union Financial Profiles; or the Participating Financial Institution has a rating of "C" or below from LACE Financial Corp; or the Participating Financial Institution has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director; or

(3) the Participating Financial Institution has not timely submitted a Quarterly Report described in Section 8078.25(f), and, for accounts held at the Participating Financial Institution, the monthly statements described in Section 8078.25(b).

(d) All moneys in a Loss Reserve Account are property of the ARB held in trust to be administered by the Authority and used only for the valid and lawful purposes of the Program as provided by these Regulations. Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. Contributions to the Loss Reserve Account shall be subject to Recapture as provided in Section 8078.25(g). The Executive Director shall be authorized to withdraw from the Loss Reserve Account all interest and income that has been credited to the Loss Reserve Account. The Executive Director shall be authorized to withdraw Contributions improperly deposited in a Loss Reserve Account.

(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with the approval of the applicable Participating Financial Institution, to assign, transfer, pledge, or create security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including a trustee of a securitization trust or trusts) in connection with the securitization of all or a portion of the

Participating Financial Institution's loans enrolled in the Program. Any loan enrolled in the program or portion thereof which is subsequently assigned, transferred, pledged, or securitized without the advance written approval of the Executive Director shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account. If a Participating Financial Institution desires to assign, transfer, pledge, or securitize all or a portion of any enrolled loan or Loss Reserve Account, the Participating Financial Institution shall submit a written request to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of loans and the amount of the Loss Reserve Account subject to the request, and a draft of the legal document describing the assignment, transfer, pledge, or securitization.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims, and recoveries upon request, including timely Quarterly Reports of the data regarding: Outstanding Principal Balance of all enrolled loans; all loans in default and charged off, and claim amounts; and deposits made to replenish the Loss Reserve Account pursuant to Section 8074(h), in the form provided by the Authority. Failure to submit timely and complete Quarterly Reports will result in the suspension of any pending loan enrollments or claim applications from that Participating Financial Institution, and transfer of any Loss Reserve Accounts held by the Participating Financial Institution to the Program Trustee.

(g) The Executive Director is authorized to Recapture from each Loss Reserve Account the Contribution for each enrolled loan when the corresponding Qualified Loan matures or upon five (5) years from the date of enrollment, whichever occurs first, and subject to each of the following conditions:

(1) Recapture shall be conducted on an annual basis following the end of each fiscal year based on the data reported in the Quarterly Reports submitted for the term ending June 30th.

(2) The Executive Director shall limit the amount of the annual Recapture of Contributions from each Loss Reserve Account, if necessary, to ensure that the balance remaining in that Loss Reserve Account immediately following Recapture is greater than a minimum threshold set as a percentage of the Outstanding Principal Balance of loans enrolled in the 60 months prior to each annual Recapture. Beginning in 2017, the minimum threshold will be fifteen percent (15%), and the minimum threshold will decrease by one percent (1%) for each successive year until it reaches the permanent minimum threshold of ten percent (10%).

(3) Recapture shall apply to each new Loss Reserve Account established on or after August 15, 2017.

(4) For Loss Reserve Accounts existing before August 15, 2017, each corresponding Participating Financial Institution shall affirm in writing its election to continue enrolling loans in the Program subject to Recapture being applied to the Contributions for all past and future Qualified Loans. This election may not later be withdrawn by the Participating Financial Institution. Loans enrolled on or after August 15, 2017 will be deemed ineligible if the Participating Financial Institution has not first submitted its election in writing. For any Participating Financial Institution that submits its election in writing after August 15, 2017, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to this subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments on or after the date of its written election. Nevertheless, Qualified Loans enrolled before August 15, 2017 will be supported by the Loss Reserve Account and the

Participating Financial Institution will be eligible for claim reimbursement pursuant to Section 8074 for the previously enrolled Qualified Loans until maturity.

(5) The Authority shall deposit all Recaptured funds in the CalCAP ARB Financing Program Fund dedicated solely for future program and administrative expenditures of the CalCAP ARB Financing Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct and indirect administrative costs of the Program.

(h) The Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution providing the specific reasons at least ten (10) business days prior to the effective date of the suspension. Reasons for suspension shall be for violations of applicable statutes, regulations or Authority policies and procedures. If the violations are not corrected within thirty (30) business days from the effective date of the suspension the Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans, but all previously enrolled Qualified Loans shall continue to be covered by the Loss Reserve Account until they are paid, claims are filed, or the Participating Financial Institution withdraws from the Program pursuant to Section 8076(a)(1).

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

#### **§ 8078.26. Claim for Reimbursement.**

(a) Participating Financial Institutions shall follow the procedures set forth in Section 8074 to submit claims for reimbursement for loans enrolled in the CalCAP ARB Financing Program. Any references to Section 8072 in Section 8074 shall be replaced with Section 8078.24.

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

#### **§ 8078.27. Subrogation.**

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the CalCAP ARB Financing 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.

#### **§ 8078.28. Termination and Withdrawal from Program.**

The procedures for termination and withdrawal from the program set forth in Section 8076 shall be followed for loans enrolled in the CalCAP ARB Financing 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.

### **§ 8078.29. Definitions.**

In addition to the definitions in Section 8070, the following definitions shall apply only to the Collateral Support Program, Sections 8078.28 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 48 months.
- (b) “Annual Recapture” means the percentage of the original Collateral Support Contribution repaid to the Authority on an annual basis.
- (c) “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.
- (d) “Collateral Support” or “Collateral Support Contribution” means an amount of cash deposit covering a collateral shortfall of a Qualifying Loan.
- (e) “Collateral Support Program Approval” means the Authority’s approval of Collateral Support for a Qualified Loan.
- (f) “Collateral Support Program Request” means the request that a Participating Financial Institution must submit to the Authority to apply for Collateral Support.
- (g) “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.
- (h) “Default Notification” means the written notice that a Participating Financial Institution must submit to the Authority upon the default of an enrolled loan.
- (i) “Green & Manufacturing Loans” means (1) loans used primarily for supporting new or expanded business processes, products, services, and tenant improvements consistent with specific state policy goals or regulations furthering energy and water conservation, alternative energy, and environmental protection; (2) loans to provide working capital to contractors and other businesses providing specific services furthering energy and water conservation, alternative energy, and environmental protection; (3) loans to be used primarily for new or expanded production of materials and products for use or sale using labor and machines, tools, chemical and biological processing, assembly or formulation.
- (j) “Program” means the Collateral Support Program.
- (k) “Qualified Business” means the same as specified in Section 8070, except that, together with affiliates, the Qualified Business may have 750 or fewer employees.

(l) "Qualified Loan" means the same as specified in Section 8070, and any Small Business Loan, except that it may not be any loan that exceeds \$20,000,000.

(m) "Principal Loan Amount" means the Qualified Loan disbursed to an eligible Borrower with a minimum amount of \$50,000 and a maximum amount of \$20 million.

(n) "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.

(o) "Small Business Loans" means a Qualified Loan.

(p) "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.

(q) "Term of Support" means the amount of time a loan is enrolled in the Collateral Support Program, up to a maximum of 48 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 prior to the funding of the loan, that includes 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; and

(B) A Green & Manufacturing Loan or a Small Business Loan.

- (2) The term of support, which shall be up to a maximum of 48 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;
  - (D) Description of all other available collateral, including that of any co-guarantors; and
  - (E) Confirmation that such other available collateral shall be 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.

(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 and for consistency with the terms and conditions for a Qualified Business and a Qualified Loan.
- (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 or contingencies on any subsequent Final Approval to ensure the eligibility of the loan or Borrower.
- (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 incentives if applicable.
  - (D) The applicable Closing Fee.
  - (E) Any conditions or contingencies 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 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 or contingencies 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.

(d) Collateral Support shall be determined based on the type of loan, amount of loan, and term of loan enrollment as follows:

(1) Green & Manufacturing Loans are eligible to receive up to 40% of the loan value, up to a maximum Contribution of \$2,500,000.

(2) Small Business Loans are eligible to receive up to a maximum Contribution of \$500,000 as follows:

(A) Total loan values in the amount of \$50,000 to \$250,000 are eligible to receive Collateral Support up to 40% of the loan value.

(B) Total loan values in the amount of \$250,000 to \$20,000,000 are eligible to receive Collateral Support up to 20% of the loan value for loans with a 4-year term of support, or Collateral Support up to 30% of the loan value for loans with a 3-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, in an amount not to exceed 25% of the Collateral Support, as long as the total amount of the Collateral Support in addition to the Severely Affected Community (SAC) Contribution does not exceed the maximum Contribution permitted for the type of loan.

(e) Closing Fees shall be calculated based on the amount of Collateral Support (exclusive of the additional Severely Affected Community (SAC) Contribution), the type of loan, and the term of loan enrollment as follows:

(1) For all loan types, there shall be a minimum Closing Fee of 0.50% of the Collateral Support, or \$500, whichever is greater.

(2) All loan types 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.

(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 48 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(f), 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) Except for Bridge Loans and lines of credit, in conjunction with the loan anniversary for each Qualified Loan, the Authority shall recapture from each Loss Reserve Account a percentage of the Collateral Support according to an incremental recapture schedule, for use for future Collateral Support Program cash deposits, Contributions, and administrative expenditures. The percentage to be returned for each Annual Recapture will be based on the original Term of Support. The entire amount of

Collateral Support for Bridge Loans and lines of credit will be recaptured at the expiration of the Term of Support.

(c) Annual Recapture is based on the Term of Support as follows:

(1) If Term of Support is less than or equal to 12 months, then 100% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured at the expiration of the term of support.

(2) If Term of Support is greater than 12 months, but does not exceed 24 months, then 50% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon the Annual Recapture date and at the expiration of the term of support.

(3) If Term of Support is greater than 24 months, but does not exceed 36 months, then 33.3% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon each Annual Recapture date and at the expiration of the term of support.

(4) If Term of Support is greater than 36 months, but does not exceed 48 months, then 25% of the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon each Annual Recapture date and at the expiration of the term of support.

(5) 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.

(d) Upon receipt of a Default Notification from the Participating Financial Institution, the Annual 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, and the Annual Recapture will resume according to the original schedule and loan anniversary date.

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, in order to suspend further Annual Recapture.

(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, and the Annual Recapture will resume according to the original schedule and loan anniversary date.

(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 to comport with any Change in Terms from the original Qualified Loan.

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.



## **B. California Health & Safety Code**

### **Division 27. California Pollution Control Financing Authority Act. Article 2. Organization of Authority**

**44520.** (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

The regulations shall be repealed

180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans and grants authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

### **Division 27. California Pollution Control Financing Authority Act. Article 8. Capital Access Loan Program for Small Businesses**

**44559.** (a) The Legislature finds and declares that small businesses are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to comply with environmental regulations, with regard to controlling emissions, preventing the creation of pollutants, contaminants, or waste products, and remediating contamination of properties with a reasonable potential for economically beneficial reuse. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with environmental mandates, and to remediate contamination of properties with a reasonable potential of economically beneficial reuse, and to succeed economically, generating additional revenue to state and local governments that can be used for environmental improvements, all to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for small business regardless of whether the operations of the small business affect the environment, and to permit business loans to be included in the program for small businesses whose operations do not, necessarily, affect the environment. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, assist in the recovery of neighborhoods and communities affected by contaminated properties that are not being used for economically beneficial purposes but which could be so used if the contamination was remediated, and help sustain and strengthen economic recovery in California.

**44559.1.** As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) (1) "Financial institution" means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2)(A) "Financial institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations, and a small business financial development corporation, as defined in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or microbusiness lender, as defined in Section 13997.2 of the Government Code, that meets standards that shall be established by the authority. For loans where all or part of the fees and matching

contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, "financial institution" also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

(B) A financial institution described in paragraph (2) shall be domiciled or have its principal office in the State of California.

(3) "Financial institution" also includes an insured depository institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.

(e) "Loss reserve account" means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

- (1) Depositing all required fees paid by the participating financial institution and the qualified business.
- (2) Depositing contributions made by the state and, if applicable, the federal government or other sources.
- (3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.
- (f) "Participating financial institution" means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.
- (g) "Passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:
- (1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.
- (2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.
- (h) "Program" means the Capital Access Loan Program created pursuant to this article. (i) "Qualified business" means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:
- (1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.
- (2) It has its primary business location within the boundaries of the state.
- (j) (1) "Qualified loan" means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.
- (2) "Qualified loan" does not include any of the following:
- (A) A loan for the construction or purchase of residential housing.
- (B) A loan to finance passive real estate ownership.
- (C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.
- (D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.
- (k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.
- (l) "Small Business Assistance Fund" means a fund created within the authority pursuant to Section 44548.
- (m) "Small business concern" has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

**44559.2.** (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete North American Industry Classification System (NAICS) for the qualified business, the number of jobs created, the number of jobs retained, and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

**44559.3.** (a) The authority shall establish a loss reserve account for each financial institution with which the authority makes a contract.

(b) The loss reserve account for a financial institution shall consist of moneys paid as fees by borrowers and the financial institution, moneys transferred to the account from a small business assistance fund, any matching federal moneys, and any other moneys provided by the authority or other source.

(c) Notwithstanding any other provision of law, the authority may establish and maintain loss reserve accounts with any financial institution under such policies as the authority may adopt.

(d) All moneys in a loss reserve account established pursuant to this article are the exclusive property of, and solely controlled by, the authority. Interest or income earned on moneys credited to the loss reserve account shall be deemed to be part of the loss reserve account. The authority may withdraw from the loss reserve account all interest or other income that has been credited to the loss reserve account. Any withdrawal made pursuant to this subdivision may be made prior to paying any claim and shall be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.

(e) The combined amount to be deposited by the participating financial institution into any individual loss reserve account over a three-year period, in connection with any single borrower or any group of borrowers among which a common enterprise exists, shall be not more than one hundred thousand dollars (\$100,000).

**44559.4.** (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 15 days after the date on which the loan is made, of all of the following:

- (1) The disbursement of the loan.
- (2) The dollar amount of the loan enrolled.
- (3) The interest rate applicable to, and the term of, the loan.
- (4) The amount of the agreed upon premium.

(b) The executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(d) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 1 percent of the principal amount of the loan, but not more than 3 1/2 percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement

of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(e) When depositing fees collected under subdivision (d) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount not less than 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

(f) This section shall remain in effect only until April 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2017, deletes or extends that date.

**44559.4.** (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 15 days after the date on which the loan is made, of all of the following:

(1) The disbursement of the loan.

(2) The dollar amount of the loan enrolled.

(3) The interest rate applicable to, and the term of, the loan.

(4) The amount of the agreed upon premium.

(b) The executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(d) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than 3 1/2 percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(e) When depositing fees collected under subdivision (d) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the

fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount not less than 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

(f) This section shall become operative on April 1, 2017.

**44559.5.** (a) The authority shall establish procedures under which financial institutions participating in the program established pursuant to this article may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. A participating financial institution that charges off all or part of an enrolled loan to the loss reserve account may file a claim for reimbursement with the authority if both of the following conditions are met:

(1) The claim occurs contemporaneously with the action of the participating financial institution to charge off all or part of the loan.

(2) The charge off on an enrolled loan is made in a manner that is consistent with the participating financial institution's usual method for making determinations on business loans that are not enrolled loans.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include the amount of loan principal charged off, accrued interest on the principal, reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral, and any other related costs. Proper documentation of the expenses shall be presented at the time of the claim.

(c) If a participating financial institution files two or more claims contemporaneously, and there are insufficient funds in the reserve fund at that time to cover the entire amount of such claims, the institution may designate the order of priority in which the claims shall be paid.

(d) A financial institution may seek reimbursement of loan losses prior to the liquidation of collateral from defaulted loans. The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted loan, less any reasonable out-of-pocket expenses incurred in collection of such amount.

(e) In any case in which the payment of a claim under this section has fully covered a participating financial institution's loss on an enrolled loan, the participating financial institution shall assign to the authority, and to any applicable federal agency in the event federal matching funds are involved, any right, title, or interest to any collateral, security, or other right of recovery in connection with a loan made under the program.

(f) The executive director may adopt necessary rules for the authority to carry out its duties, functions, and powers relating to the program established pursuant to this article.

**44559.6.** The authority shall annually prepare a report to the Governor and the Legislature that describes the financial condition and programmatic results of the capital access loan program for small businesses authorized under this article. Programmatic results shall include, but not be limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector for all new loans issued since the report for the prior year.

**44559.7.** The authority may enter into agreements with commercial banks or other financial institutions, or with other agencies of the state, to provide necessary assistance in carrying out the program authorized by this article, including origination and servicing of loans.

**44559.8.** Notwithstanding this article, the authority may facilitate the development of a secondary market for a loan enrolled in the capital access loan program by providing security for that loan, thereby increasing participation in the program by financial institutions and improving access to capital for small businesses. For purposes of this section, the actions that the authority may take include, but are not necessarily limited to, assigning all, or a portion of, any loss reserve account to any other entity in connection with providing security for a loan, including a trustee of a securitization trust, transferring an enrolled loan from a participating financial institution to a securitization trust, and assisting underwriters in marketing a loan to the secondary market.

**44559.9.** The authority shall expand the Capital Access Loan Program established by this article to include outreach to financial institutions that service agricultural interests in the state for the purpose of funding air pollution control measures.

**44559.11.** (a) It is the intent of the Legislature to ensure that the state, through the authority, may make maximum, efficient use of capital access programs enacted by all federal and state agencies, as well as funding available from any governmental program whose goals may be advanced by providing funding to the Capital Access Loan Program.

(b) In furtherance of this intent, and notwithstanding any other provision of this article, when the contributions required pursuant to Section 44559.4 are entirely funded by a source other than the authority, the authority may, by regulation adopted pursuant to subdivision (b) of Section 44520, establish alternate provisions as necessary to enable the authority to participate in the alternative funding source program.

**44559.12.** (a) Consistent with subdivision (b) of Section 44559.11, the authority may establish loss reserve accounts for the purposes of financing terminal rental adjustment clause leasing, if funds are available for contribution into the loss reserve account from any source other than the authority. The authority shall not contribute any funds into a loss reserve account created pursuant to this section. Funds provided by the federal government for the purposes of providing a loan loss reserve program shall not be contributed to an account created pursuant to this section.

(b) The executive director may establish conditions for terminal rental adjustment clause leasing loss reserve accounts created pursuant to this section.

(c) As used in this section, "terminal rental adjustment clause" means "terminal rental adjustment clause" as defined in Section 7701 (h)(3) of Title 26 of the United States Code.