

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

### **§ 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. 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 subdivision (b)(2) of Section 44559.14 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.

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

- (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” or “CalCAP/Seismic Safety Financing Program” or “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 Health and Safety Code 18613.
- (h) “Qualified Loan” means a loan or portion of a loan as defined in subdivision (j) of Section 44559.1 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 that owns and occupies, or intends to occupy, a Qualified building for the operation of the business.
- (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.

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

- (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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.3, 44559.5, and 44559.11, Division 27, Health and Safety Code, and Sections 18613, 18613.4, 18613.5, and 18613.7, Division 13, Health and Safety Code; Sections 13340, 11340 and 11349.6, 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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, 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:

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

- (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(s).
  - (3) If a small business owner, brief description of the Borrower's business and regular activities, 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) Type of Qualified building, residential or commercial property, and the number of dwelling units.
  - (7) Amount of the Qualified Loan being enrolled in the Program, and total loan amount if different, and the Participating Financial Institution loan number.
  - (8) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
  - (9) Date of the Qualified Loan.
  - (10) Interest rate applicable to the Qualified Loan.
  - (11) Term or maturity date of the Qualified Loan.
  - (12) Whether the loan is for alteration(s) or retrofit(s) of a Qualified building located in a Severely Affected Community.
  - (13) If a Qualified small business, number of full-time equivalent employees currently

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

employed by the Borrower.

- (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 a lien 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 or permits needed for the Seismic retrofit construction and satisfy the local building enforcement agency or 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

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

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 (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.
- (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 it satisfies the definitions in Sections 8078.15(d), 8078.15(e), 8078.15(g), 8078.15(h), 8078.15(i), 8078.15(j) and 8078.15(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;

## Proposed Regulations Implementing the CalCAP/ Seismic Safety Program

- (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 or 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 8078.15.
- (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

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

the amount of one time 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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, and Section 18613, Division 13, 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 Loan 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

## **Proposed Regulations Implementing the CalCAP/ Seismic Safety Program**

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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, 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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, 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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, 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(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.