

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA CAPITAL ACCESS PROGRAM (CalCAP)
Meeting Date: October 25, 2011**

Consideration and Approval of Emergency and Permanent Rulemaking Process

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Summary. The California Capital Access Program (CalCAP or the “Program”) is the subject of legislation [SB 225 (Simitian), Ch. 492 of Statutes of 2011] that allows Terminal Rental Adjustment Clause (TRAC) Leases to be added to CalCAP. The approval of this bill by the Governor requires modifications to the CalCAP regulations and the urgency status of this bill allows for immediate implementation on October 6, 2011. Staff requests approval to file emergency regulations amending the existing CalCAP regulations to include TRAC Leases as another funding instrument available to lenders participating in CalCAP’s Independent Contributor Program.

In addition, staff proposes adopting the following changes to the regulations:

- clarify the maximum enrollment amount of \$2.5 million per borrower is for a three year period
- remove restrictions on non-profit businesses and religious organizations so they may be included as a qualified borrower
- clarify required information regarding the term of an enrolled loan
- remove language addressing required certification from the lender that the enrolled loan did not meet their normal underwriting criteria
- change the notification requirement of a claim from 30 days to 120 days
- clarify defaulted loans do not have to be the result of borrower default
- clarify earned/unpaid interest and reasonable out-of-pocket expenses be paid in proportion to the enrolled loan amount
- remove language that adds restrictions to multiple claims made on the first \$1 million of loans made by lenders

Upon approval staff will proceed concurrently with the emergency and permanent rulemaking process.

Background.

Business Model. CalCAP is designed to encourage lending to small businesses throughout California. To accomplish this, CalCAP establishes loan loss reserve accounts in which borrowers and lenders or an Independent Contributor are required to deposit a percentage based on the loan enrollment to help insure against losses. This program is a way to encourage banks to lend money to many small businesses.

Need for regulation changes. In response to SB 225 passing, CalCAP is proposing changes to the regulations to allow TRAC Leases to be considered as Qualified Loans in the Program. TRAC Leases will be considered an additional type of lending instrument for CalCAP Independent Contributor Programs. TRAC Leases will offer borrowers an additional option for receiving loans for trucks. This is a common type of lease for borrowers who would like the option to purchase the vehicle at a pre-determined price at the end of the lease. By adding TRAC Leases and allowing lenders to enroll up to \$2.5 million in loans per borrower every three years, CalCAP can help more borrowers in California.

Stating the method in which claims are paid when only a portion of the loan was enrolled is necessary to clarify existing practice. The proposed amendments to the existing regulations are the result of conversations with lenders and staff recommendations. CalCAP would also like to amend current regulations to allow a greater number qualified businesses to benefit from the Program.

After receiving Federal funding to expand the program, it is necessary to distribute the funds to many qualified business throughout the State. Based on input from lenders, CalCAP is making several changes to streamline and clarify the Program. With amendments to current regulations, loans will be more accessible to borrowers and Program expectations will be obtained.

Stakeholder Involvement. On September 9, 2011 staff held a *Lender Roundtable Conference Call* to provide an open forum for staff to discuss the upcoming addition of TRAC Leases to the program and to explain the proposed changes to the regulations. Another *Lender Roundtable Conference Call* was held of October 11, 2011 to discuss additional regulation changes. Staff received positive feedback on both conference calls about the upcoming changes and opportunities in the Program.

Summary of Changes. The proposed amendments to the existing regulations were circulated to all CalCAP participating lenders before both the September 9th and October 11th *Lender Roundtable Conference Calls* and each item was discussed at length. The proposed amendments are outlined below.

Substantive Regulation Changes

1. **Section 8070(j).** *Remove (1) from the reference to the Health and Safety Code Section 44559.4(d).* The definition of “Matching Contribution” is adequately described in the Health and Safety Section 44559.4(d). By not specifying the subsection, it makes clear that CalCAP’s matching contribution would apply to d(1) or d(2).
2. **Section 8070(s).** *Revise the definition of “Qualified Loan” to include TRAC Leases when Loan Loss Reserve contributions come from Independent Contributor Programs and clarify the types of loan enrollments that are eligible for enrollment in CalCAP.* Staff recognizes that a TRAC Lease is a lending instrument and will be treated as any other Qualified Loan type that is allowable in the Program. Enrollments of TRAC Leases will not differ from other enrollments in Independent Contributor Programs. Contributions into a lender’s loan loss reserve will be made from the same funds that are already available through Independent Contributor Programs.
3. **Section 8070(s)(4)(A).** *Remove “any religious facility or organization” to allow enrollment for this type of loan.* Federal guidelines allow Federal SSBCI funds to be used for religious facilities and organizations. By removing language, CalCAP may contribute Federal funds to pay premiums for religious facility and organization loan enrollments. CalCAP will confer with the State Treasurer’s Legal Office before approving loan enrollment applications for this type of business to assure consistency other California state and federal law.
4. **Section 8070(s)(7).** *Add “over a three-year period” to clarify the time limit for additional enrollments for borrowers who already have \$2.5 million enrolled.* This language clarifies the maximum of \$2.5 million the lender will be able to enroll per borrower over a three year period.
5. **Section 8070(w).** *Add a definition for TRAC Lease.* With the passing of SB 225, defining language has been added to the statute.
6. **Section 8072(c)(3).** *Remove “a non-profit” from information that must be provided about a business.* As a result of the first set of Federal guidelines not allowing non-profits to receive funding through CalCAP, this information requirement was added to the regulations to determine whether State or Federal Funds should be used. The second set of Federal guidelines allowed non-profit borrower eligibility, so we no longer need to verify.
7. **Section 8072(c)(6).** *Add TRAC Lease as an example of a Qualified Loan.* This revision corresponds to the changes made in 8070(s).
8. **Section 8072(c)(9).** *Add “or maturity date” to clarify the length of the loan.* This additional language is a practice that CalCAP currently follows and adding it to the regulations will help clarify.
9. **Section 8072(c)(26).** *Remove certification that “the borrower does not meet the Participating Financial Institution’s normal underwriting criteria” in order to make CalCAP easier to understand and easier for our lenders to understand.* The Authority is removing this certification after input from participating lenders. The Fees associated with the Program make

it clear that the borrower is in need of capital and would not otherwise get a loan without assistance from CalCAP.

- 10. Section 8073(f).** *Adding information needed.* The Participating Financial Institution shall regularly provide information to the Authority regarding the status of enrolled loans, claims and recoveries.
- 11. Section 8074(a).** *Change “30 days” to “120 days” and remove “by the Borrower” at the end of the section.* Increasing the number of days that the lender has to inform the Authority that a claim will be made helps ensure that the lender has more time to liquidate assets prior to filing for claim reimbursement. Removing “by the Borrower” allows a claim to be filed on a defaulted loan in which the default is other than the default of the borrower.
- 12. Section 8074(b).** *Change “30 days” to “120 days”.* Modifying this time frame corresponds to the changes made in Section 8074(a).
- 13. 8074(d).** *Improve the explanation of a claim reimbursement.* Additional language clarifies how reimbursements of interest and out-of-pockets expenses will be paid when only a portion of the loan has been enrolled in CalCAP.
- 14. Section 8074(e)(8).** *Change “30 days” to “120 days”.* Modifying this time frame corresponds to the changes made in Section 8074(a).
- 15. Section 8074(e)(12).** *Remove entire section.* This certification is no longer required with the addition of the change to Section 8073(f) that allows the Authority to obtain this information through regularly provided information from the Lender.
- 16. Section 8074(g).** *Remove “(or any part of it) is among the first one million dollars of Qualified Loans made by a Participating Financial Institution and it” to simplify this section.* Removing this language allows the lender to file multiple claims when a claim exhausts the loan loss reserve fund before reimbursing the entire claim. Once the funds in the loan loss reserve are replenished, additional claims to complete the eligible reimbursement can be filed. This will no longer be restricted to just the first one million of a lenders enrolled loans.

Attachment A is a redline version of those portions of the CalCAP regulations that highlights the proposed amendments in double underline and double strike through.

Regulatory Process. After Authority approval to amend the existing regulations, emergency and permanent rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the permanent rulemaking process. The permanent rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the permanent rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to our participating lenders and interested persons, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a permanent rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

October 17, 2011	5-day Notice posted on CalCAP site and sent to Lenders.
October 25, 2011	The Board approves the emergency regulations.
October 27, 2011	Emergency regulations filed with OAL.
November 1, 2011	Public comment period ends.
November 7, 2011	OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect.
May 4, 2012	Emergency regulations expire.

Permanent Regulations

November 15, 2011	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
November 25, 2011	OAL publishes Notice and 45-day public comment period begins.
January 9, 2012	Public comment period regarding proposed regulations ends.
January 10, 2012	Public Hearing Scheduled.
January 13, 2012	Deliver permanent regulation package to OAL for 30-day review*
February 13, 2012	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.
February 14, 2012	Permanent regulations become effective.

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*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

January 16, 12	Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period.
January 31, 2012	15-day comment period ends.
February 1, 2012	Deliver permanent regulation package to OAL for 30-day review.
March 2, 2012	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.
March 3, 2012	Permanent regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations for the CalCAP Program and authorize staff to undertake emergency and permanent rulemaking proceedings and other actions related to CalCAP regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING
EMERGENCY AND PERMANENT RULEMAKING PROCEEDINGS AND
OTHER ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE
AND COMMENT PROCEDURES**

October 25, 2011

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) and 44559.5(f) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its Capital Access Program for Small Businesses (the "Program") set forth in Article 7 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the October 25, 2011, meeting are hereby approved in substantially the form submitted. The Chair, Executive Director, or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with the public notice and comment procedures and file such regulations, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as permanent regulations.

Section 2. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required to address comments made after the date of this resolution and to execute and deliver any and all documents with the Office of Administrative Law for the purposes of adopting any such changes in the form of emergency regulations and later as permanent regulations.

Section 4. This resolution shall take effect immediately upon its approval.

**CURRENT TEXT OF REGULATIONS
(October 25, 2011)**

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) “Early Stage Loan” means each of the first \$500,000 of Qualified Loan made by a Participating Financial Institution.
- (c) “Executive Director” means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.
- (d) “Fees” or “Fee” and “Premiums” or “Premium” means a non-refundable fees or fee as set forth in Health and Safety Code Section 44559.4(c).
- (e) “Financial Institution” means an institution as set forth in Health and Safety Code Section 44559.1(d).
- (f) “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, pays to a Loss Reserve Account the Matching Contribution and/or Fees payable by the Borrower and/or the Financial Institution.
- (g) “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.
- (h) “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.
- (i) “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 Section 8073.
- (j) “Matching Contribution” means a contribution to a Loss Reserve Account as set forth in Health and Safety Code Section 44559.4(d)(~~+~~).

(k) “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.

(l) “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.

(m) “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.

(n) “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.

(o) “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.

(p) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the Law.

(q) "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.

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

(s) "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. A Qualified Loan may be made in the form of a TRAC Lease when the Loan Loss Reserve Account is funded from an Independent Contributor. "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 facilities, regardless of the source of funds used for the Authority's matching contribution: massage parlor, hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises, bars, 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, ~~any religious facility or organization~~, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, shooting range or gallery.

(B) to provide any of the following facilities when the Authority's matching contributions will be paid for with fees from the issuance of tax-exempt bond sales, all items listed in (A) and: 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.

(t) “Severely Affected Community” means any area classified as an enterprise zone pursuant to the Enterprise Zone Act, Chapter 12.8 (commencing at Section 7070) of Division 7 of Title 1 of the California Government Code; 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.

(u) “Small Business Assistance Fund” means a fund of that name created by the Authority.

(v) “Standards” means the criteria, limited to geographical area and/or type of business, to be used by an Independent Contributor in selecting businesses to assist through the Program.

(w) “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 and 44559.9, 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 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 shall be final.

(c) A Participating Financial Institution shall be authorized to request the Authority to establish two or more Loss Reserve Accounts for such institution, so that the institution shall be able to allocate any Qualified Loan enrolled under Section 8072 to whichever Loss Reserve Account it designates. In such case, the definition of Early Stage Loan and Section 8074(f) shall be applied in the aggregate to all the Loss Reserve Accounts for each Participating Financial Institution.

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 10 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 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 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, D/B/A (if any), and the business address.

(2) 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.

(3) Whether this business ~~is: a non-profit~~, 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 lender loan number.

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

(7) Date of the Qualified Loan.

(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 refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing.

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(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 Matching 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 Matching 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 that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.

(18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.

(19) 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.

(20) Certification that 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 Matching Contribution.

(21) Certification that the enrolled amount of the loan does not exceed \$2,500,000.

(22) Certification that 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.

(23) Acknowledgment that 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.

The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17), (18) and (21) 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.

(24) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has secured or made application for all applicable licenses or permits needed to conduct business.

(25) 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.

~~(26) Certification that the Borrower does not meet the Participating Financial Institution's normal underwriting criteria for making loans of the type sought to be enrolled and that without enrollment, the Participating Financial Institution would not make a loan.~~

(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 shall pre-qualify with the Authority any qualified loan with a principal amount of \$500,000 or more. 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 10 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 Matching 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) If the amount is increased, or previously enrolled CalCAP loans are combined, a new loan enrollment form shall be submitted, and Fees (if applicable) shall be transmitted or deposited pursuant to Section 8072(b)(2) based on the increased amount.

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

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44559.2 and 44559.4, Division 27, Health and Safety 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 Matching 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 a Program Trustee.

(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 approved 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.

(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). The Executive Director shall be authorized to return to a Participating Financial Institution any fees 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.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims and recoveries upon request.

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 30120 days after it has charged off all or part of a Qualified Loan as a result of a default ~~by the Borrower~~.

(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 30120 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 representations and warranties provided by the Participating Financial Institution 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.

(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 of default.
- (6) Amount of default.

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(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 ~~30~~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).

~~(12) Certification that the Participating Financial Institution has given notice to the Authority of the initial enrollment of the loan and certification that either (A) the Participating Financial Institution has given notice to the Authority of any renewals or extensions of the loan, or (B) the loan was continuously renewed or extended within the Participating Financial Institution since the date of its initial enrollment.~~

(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 ~~(or any part of it) is among the first one million dollars of Qualified Loans made by a Participating Financial Institution and it~~ 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:

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(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.

(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 with respect to moneys deposited in the Loss Reserve Account after January 1, 1999 (and assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date), 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, "Authority Share" means the ratio of the contributions made by the Authority (or any Independent Contributor on behalf of the Authority) to the Loss Reserve Account in question from January 1, 1999 to the date of calculation, to the total amount of contributions made to such Loss Reserve Account during that period, and "Participating Financial Institution Share" means 100 minus the Authority 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 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 balance, in the following manner: (i) first, distributions shall be made to the Authority up to an amount allocable to the moneys on deposit in the Loss Reserve Account on January 1, 1999 (assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date) and (ii) further 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 Matching Contributions in connection with Qualified Loans, or receives a written waiver from the Executive Director of this requirement.

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(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 matching 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.

§ 8078.1. Preferred Lenders.

(a) Where an Independent Contributor elects to pay the matching contribution and the borrower's fee or the matching contribution and all fees and funds are available, designated Participating Financial Institutions can participate as preferred lenders and process, close, service, and liquidate California Capital Access Program guaranteed loans with reduced requirements for documentation to and prior approval by the Authority.

(b) Before it can operate as a preferred lender, the Participating Financial Institution must:

(1) Submit for review and approval by the Authority a preferred lender supplemental lender enrollment agreement, which will specify a term not to exceed two years. The application shall include the following information:

(A) name of applicant Financial Institution.

(B) name, address and telephone number of contact person.

(C) combined capital and surplus as of the end of the Financial Institution's most recent fiscal year.

(D) number of lending branches.

(E) 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.

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

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

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

(I) the Financial Institution's agreement to 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.

(J) 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.

(2) Demonstrate a satisfactory performance history with the California Capital Access Program.

(3) Provide the Authority with a plan which clearly outlines how the Participating Financial Institution will train individuals authorized to submit loans for enrollment in the Program.

(c) 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 Financial Institution to participate. The Executive Director's decision whether an application is sufficient shall be final.

(d) When the supplemental lender enrollment agreement expires, the Authority may recertify a Participating Financial Institution for an additional term not to exceed two years. Prior to recertification, the Authority will review a Participating Financial Institution's loans, policies and procedures.

(e) Except as specified in this paragraph and paragraph (f), section 8072 shall not apply to the enrollment of a Qualified Loan by a preferred lender. A Participating Financial Institution is required to notify the Authority within ten (10) business days of its approval of a preferred lender's loan by submitting to the Authority loan appropriate documentation, as set forth in California Code of Regulations Title 4, Division 11, Section 8072(a), (b)(1), (c), (d), (e), (g), (h), and (i) signed by the Participating Financial Institution authorized representatives. Upon receipt of the appropriate documentation for a Qualified Loan by the Authority and Trustee, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and the source of funds from which the transfer was made.

(f) The Authority shall, upon receipt of documentation from the Participating Financial

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Institution, verify the enrollment of and provide a California Capital Access Program loan number for 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 10 business days after receipt by the Authority of all documentation 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.

(g) If the Executive Director determines that the Qualified Loan does not meet the requirements of the Law and this Article the Authority will notify the Participating Financial Institution detailing the issue and requesting reimbursement of the contribution related to the Qualified Loan.

(h) The Participating Financial Institution is responsible for all loan decisions regarding creditworthiness. The Participating Financial Institution is also responsible for confirming that all loan closing decisions are correct, and that it has complied with all requirements of the Law and Program regulations.

(i) The Authority may review the performance of a Participating Financial Institution with respect to its preferred lender status.

(j) The Authority may suspend or revoke a preferred lender status upon written notice to the Participating Financial Institution providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation include lender violations of applicable statutes, regulations or Authority policies and procedures.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Sections 44559, 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7 and 44559.9, Division 27, Health and Safety Code.

§ 8078.2. Federal Capital Access Program and Funding.

(a) Where the Matching Contribution comes from funds provided under the State Small Business Credit Initiative enacted pursuant to the Small Business Jobs Act (H.R. 5297, Public Law No. 111-240) the following shall apply, notwithstanding any other provision of this article:

(b) "Participating Financial Institution" also includes all those listed in Health and Safety Code Section 44559.1(d) and all certified community development financial institutions whether or not organized for profit.

(c) The Participating Financial Institution must obtain written assurance from the Borrower that:

(1) the loan will be used for a business purpose;

(2) 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;

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- (3) the loan will not be used to repay taxes held in trust or escrow;
- (4) the loan will not be used to reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;
- (5) the loan will not be used to purchase any portion of the ownership interest of any owner of the business;
- (6) the loan will not be used for business purposes prohibited by the U.S. Treasury;
- (7) the loan will not be used to finance ineligible businesses;
- (8) no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act 42 U.S.C. §16911); and
- (9) the Borrower is not:
 - (A) an executive officer, director, or principal shareholder of the Participating Financial Institution;
 - (B) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or
 - (C) a related interest of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.
- (d) Ineligible businesses include, but are not limited to, the following business types:
 - (1) 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;
 - (2) 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;
 - (3) 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;
 - (4) 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 knowingly permits illegal prostitution; or

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(5) a business engaged in gambling enterprises, unless the business earns less than one-third of its annual net revenue from lottery sales.

(6) other businesses that may be restricted by federal fund law or the Department of Treasury.

(e) The Participating Financial Institution must provide written assurance affirming the following:

(1) the Qualified Loan has not been made in order to place under the protection of the CalCAP prior debt that is not covered under CalCAP and that is or was owed by the Borrower to the Participating Financial Institution or to an affiliate of the Participating Financial Institution;

(2) the Qualified Loan is not a refinancing of a loan previously made to the borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution;

(3) no principal of the Participating Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. §16911));

(4) the Participating Financial Institution will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right of Financial Privacy Act (12 U.S.C. §3401 et seq.) as applicable; and

(5) the Participating Financial Institution is in compliance with the requirements of 31 C.F.R. §103.121.

(f) Federal capital access funds shall not be used for the following:

(1) 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;

(2) financing a non-business purpose;

(3) covering the unguaranteed portions of an SBA loan unless CalCAP receives prior written consent of the U.S. Treasury;

(4) supporting existing extension of credit, including but not limited to prior loans, lines of credit or other borrowings that were previously made available as part of a state small business credit enhancement program.

(g) The federal Matching Contribution shall be equal to the sum of the fees paid by the Borrower and Lender.

(h) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds.

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