

# CalCAP Collateral Support Program

## Borrower Certification

Capital Programs & Climate Financing Authority (CPCFA)

California Capital Access Program (CalCAP)

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**Your loan is being enrolled in the CalCAP Collateral Support Program. You are the “Borrower”.**

**By signing this document below, you certify to the following:**

- Borrower is a qualified business as defined in 4 CCR §8078.29 of the California Code of Regulations which state:
  - (n) “Qualified Business” means a business as specified in Section §8070,
    - except that, together with affiliates, the Qualified Business may have 750 or fewer employees.
    - Borrower is also a small business concern as defined in 4 CCR §8070 of the California Code of Regulations which state:
  - (o) “Primary business location in California” means that a business will be deemed to be located in California if either:
    - (1) a majority of the employees of the business are located in California; or
    - (2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.
- Borrower obtained a loan that is for a business activity that has its primary economic effect in California as defined in 4 CCR §8070 of the California Code of Regulations which state:
  - (q) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:
    - (1) At least 51 percent of the total revenues of the business activity are generated in California; or

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

- Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of the CPCFA.
- Borrower has no legal, beneficial or equitable, interest in the support or fees.
- The maximum loan amount is \$20,000,000 per Borrower with a maximum Collateral Support contribution of \$10,000,000.
- Borrower has secured or made application for all applicable licenses or permits needed to conduct its business.
- Borrower has received the CPCFA CalCAP Privacy Notice.

### **Whenever your loan is related to Federal Funds, the following Borrower assurances apply:**

The loan or investment proceeds will be used solely for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).

### **The loan proceeds will not be used to:**

- Repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority.
- Repay taxes held in trust or escrow, e.g. payroll or sales taxes.
- Reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance.
- Purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other

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employee-owned entity holding a majority interest (on a fully diluted basis) in the business.

### **The borrower is not:**

- An executive officer, director, or principal shareholder of the lender.
- A member of the immediate family of an executive officer, director, or principal shareholder of the lenders.
- A related interest of an executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three restrictions, the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” refer to the same relationship to a lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

### **The borrower is not:**

- A business engaged in speculative activities that that profit from fluctuations in price, 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 a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through normal course of trade.
- A business that earns more than half of its annual net revenue from lending activities; unless the business is (1) a Community Development Financial Institution that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company.
- A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants.
- A business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted. (This includes businesses that make, sell, service, or distribute products or services used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution). This category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 6.

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- A business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business<sup>21</sup>; “gaming activities” for purposes of Tribal SSBCI programs is defined as Class II and Class III gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.
- No Principals 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)). For the purposes of this Certification, Principal means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner; and if a corporation, limited liability company, association or a development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

Business Name (Please print):

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Lender Loan #:

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Legal Name of Borrower or Investee (Please print):

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Individual Title (As it pertains to the business):

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Signature of the above individual:

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Date:

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When complete, please send to: [CalCAP@treasurer.ca.gov](mailto:CalCAP@treasurer.ca.gov)