

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

TITLE 4, DIVISION 11, ARTICLE 7

INITIAL STATEMENT OF REASONS

Introduction

Existing law establishes the California Capital Access Loan Program (CalCAP) and authorizes the California Pollution Control Financing Authority (CPCFA) to contract with specified financial institutions to make loans to eligible small businesses that are having trouble obtaining capital (Health and Safety Code, § 44559.2).

Under existing law, borrowers and lenders must pay a fee on CalCAP loan enrollments to the lender's loss reserve account (Health and Safety Code, § 44559.3). The fees paid to the loss reserve account are matched by CPCFA at 150 percent or 200 percent of the lenders contribution, depending on the funding source (Health and Safety Code, § 44559.4(d)). The funds held in the lender's loss reserve account are the sole property of CPCFA and are used to cover losses on any loan that the lender has enrolled in CalCAP (Health and Safety Code, § 44559.5).

A proposal has been submitted to The United States Department of the Treasury regarding the creation and implementation of a new Collateral Support Program. In response to this additional program and in an effort to clarify some of the current regulations, CPCFA proposes to amend Sections 8070, 8071, 8072, 8078 and 8078.2 of Title 4 of the California Code of Regulations concerning the administration of the program.

The proposed amendments clarify aspects of the Program and give additional information regarding new program that is in the process of being developed and approved by the United States Department of the Treasury. These amendments are the result of additional funding from U.S. Treasury that was allocated to CalCAP in 2011. As CalCAP continues to grow and participation increases, CalCAP regulations, policies, and procedures must be adjusted in order to have a more seamless and sustainable program. With those goals in mind, CPCFA staff has determined that the Collateral Support Program requires a more comprehensive explanation and that our regulations need to be amended for this to be accomplished.

Statement of Benefits

Adding a Collateral Support Program to CalCAP will give participating Financial Institutions another form of insurance as they attempt to provide financing to small businesses throughout the state. Many small businesses struggle to find financial institutions willing to make larger loans. Now that cash collateral is available as a form of support to these Participating Financial Institutions, they will be able to make these larger loans and have coverage on defaults. In turn, more small businesses will have a greater opportunity to receive the funding necessary to

develop or expand. The Authority is not aware of any benefits of the health and welfare of California residents, worker safety or the state's environment with the proposed amendment to the CalCAP Regulations.

Section Analysis

Section 8070(b). "Early Stage Loan" is being removed from regulation because it no longer applies to the Program and it is no longer necessary to define this term. The definition of "Contribution" is being added to the regulations to clarify that contributions can be any allowable amount of funds deposited into Loss Reserve Accounts. It is important to show that Contributions differ from Matching Contributions that were previously mentioned in the regulations.

Section 8070(f). We have changed the definition of "Independent Contributor" to include "deposits contributions" (as further defined in Section 8070(b)). This additional language will allow Independent Contributors to deposit matching contributions, collateral pledge contributions, fees and premiums paid by the lender and/or borrower into the lenders' Loss Reserve Accounts. We have removed language regarding Matching Contributions and Fees paid by the Borrower and Lender because those contributions and fees are encompassed within the definition of Contributions.

Section 8070(i). Language was added that references Section 8078.2 to help clarify the definition of a Loss Reserve Account and how these accounts can be used as they pertain to CalCAP. Because contributions deposited into this account can be made with Federal funds and may differ from the contributions being made with State funds and other government sources, the definition of a Loss Reserve Account must also refer to the Federal funding section of the Regulations.

Section 8070(v). It was important to change the definition of "Standards" because originally this definition limited Independent Contributors to assisting businesses based on their geographical location or the type of business. Standards will now be any approved criteria used by Independent Contributors that will allow these entities to assist borrowers through the Program. This will allow our lenders to reach more small businesses throughout the state.

Section 8071(c). The last sentence in Section 8071(c) is not necessary and has been removed because the definition of "Early Stage Loan" will be removed in Section 8070(b) as referenced above. The Program has matured and as a result Early Stage Loans have become obsolete. As an incentive to increase participation, we will allow participating lenders to file multiple claims on the same loan; therefore we are removing the language referencing section 8074(f).

Section 8072(c)(15). Contributions made by the Independent Contributor can be any amount that has been established in a contract between CPCFA and the agency acting as an Independent Contributor. With the addition of a definition for "Contributions", it is no longer logical to refer to deposits made by the Independent Contributor with the word "Matching" because that is not a requirement in the Program.

Section 8072(c)(20). This certification from the Participating Financial Institution regarding the Borrower’s interest in the Fees and Contributions refers to any Contributions made to the Loss Reserve Account, whether the contributions are matching or not. This being the case, it is more correct to remove “Matching” from the description of Contributions in this section.

Section 8072(h). Once a Qualified Loan is enrolled in the Program, any Contributions will be transferred into the Loss Reserve Account. Like Section 8072(c)(20) above, Contributions to Loss Reserve Accounts are not required to be matching and should not be classified this way in regulation.

Section 8078(a)(5). To remain consistent with changes made in Section 8072(c)(15) the explanation of what Independent Contributor funds will be used for will no longer be called “Matching Contributions”. CalCAP statute allows Independent Contributors to deposit funds for uses deemed appropriate by CPCFA and the definition of “Contributions” that was added in Section 8070 includes all eligible funds being deposited.

Section 8078(e). Because an Independent Contributor is not subject to the maximums set forth in the CalCAP statute, the amount an Independent Contributor chooses to deposit may exceed a matching amount. Removing the word “Matching” also helps the regulations remain consistent throughout the different sections.

Section 8078.2(a). Language was added to this section because Contributions made to a lender’s Loss Reserve Account are not required to be a matching amount and can be any amount allowable by the SSBCI when those funds are used and it was necessary to clarify this in regulations. The additional language makes it clear that when Federal SSBCI funds are used, the Small Business Jobs Act governs as allowed by CPCFA statute.

Section 8078.2(g). “Participating Financial Institution” is a defined term in Section 8078 and “lender” is not defined in the regulations. It is important to use our defined terms throughout the regulations and changing “lender” to “Participating Financial Institution” keeps the regulations consistent. In addition, it was necessary to add language into this section to explain that SSBCI can establish the amount of the contribution to the Loss Reserve Account when Federal funds are used.

Section 8078.2(h). Adding the language “unless another amount is allowed by the Small Business Jobs Act” will be consistent with the language in Section 8078.2(g). This Act allows borrowers to borrow more than \$5,000,000 for defined purposes, for example when loans are enrolled for collateral support. It is important to clarify that the Collateral Support Program differs from the current CalCAP Program in that way. This is also different than the amounts allowable when State funding is used and that must be noted.

Section 8078.2(i). The United States Treasury, under the Small Business Jobs Act, allows the Authority to assess fees upon the Borrower and/or the Participating Financial Institution. Because this practice is not currently a part of CalCAP, but will be used in the new Collateral Support Program, it is necessary to add this language to the regulations. This addition also explains that when SSBCI funds are used, deposits into the Loss Reserve Account can be

Contributions and fees. The contributions do not have to be a matching amount and the contributions, along with the fees can be an amount that is allowed pursuant to the Small Business Jobs Act. Currently, no fees are being deposited into the Loss Reserve Accounts. Therefore, this was added to the section regarding Federal funds because in the SSBCI Programs, Contributions and fees will both be deposited into Loss Reserve Accounts.

Section 8078.2(j). Claims for collateral support will be paid in the manner consistent with the requirements of the Small Business Jobs Act. For the specific program types, the Act requires claims to be paid in different ways. It is now stated in the regulations that the Small Business Jobs Act will dictate the payment of claims based on the Program.

After presenting our potential Collateral Support Program to many new and participating lenders, CPCFA hosted a public discussion regarding the addition of this Program. We received feedback from lenders and investors about how this type of program would work for their institutions and in their fields. The support from the participants in this discussion was evident. The United States Department of the Treasury has also encouraged CPCFA to incorporate new Programs into the existing CalCAP Program. Treasury believes that California has the ability to reach many small businesses and would like CalCAP to use different types of programs to appeal to the different lenders throughout the state.

Reliance

This regulatory amendment is the result of a change to the Allocation Agreement that CalCAP submitted to U.S. Treasury to use SSBCI funding. CalCAP is developing new programs that will allow us to disburse more of the SSBCI funding to lending institutions through the State. Staff began the process by applying to U.S. Treasury for permission to begin a Collateral Support Program. Staff also hosted a public discussion to gain feedback about the program and to determine whether lenders would find it beneficial. Staff also held a Lender Roundtable Conference Call to provide an open forum for staff to present the proposed changes to the regulations with the addition of the new program, discuss the details of the Program and to solicit feedback from the stakeholders. Of our 65 Lenders, 36 organizations participated in the Lender Roundtable Conference Call. Lenders were given several opportunities to ask questions and to comment on the proposed changes. All of the feedback we received was very positive and our lenders were excited about the potential of the new program.

Alternatives Considered

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affected persons or small businesses, than the proposed amended regulations.

Mandated Technology or Equipment

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

Economic Impact Statement

The CPCFA Executive Director has determined that the revisions will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons. Furthermore, the CPCFA Executive Director has determined that the amended regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

The creation or elimination of jobs within California: The amendments to sections 8070, 8071, 8072, 8078 and 8078.2 of the CalCAP Regulations are not expected to have a direct impact on the creation or elimination of jobs within the State of California because these amendments will only affect which types of financial institutions throughout the state that will be able to participate as Qualified Lenders in the Program.

The creation of new businesses or the elimination of existing businesses within the State of California: The proposed language in sections 8070, 8071, 8072, 8078 and 8078.2 of the CalCAP Regulations clarifies aspects of the current Program and notes differences with the addition of a Collateral Support Program. These regulations are not expected to have a direct impact on the creating of new businesses or the elimination of existing businesses within the State of California.

The expansion of businesses currently doing business within the State of California: The amendments to sections 8070, 8071, 8072, 8078 and 8078.2 of the CalCAP Regulations are not expected to have a direct impact on the on the expansion of businesses currently doing business within the State of California because these amendments will only allow for the addition of a new program under CalCAP.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The proposed language in sections 8070, 8071, 8072, 8078 and 8078.2 of the CalCAP Regulations allows a new type of financial institution to participate as a lender in CalCAP. These regulations are not expected to have a direct impact on the health and welfare of California residents, worker safety, or the state's environment.