

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

The California Pollution Control Financing Authority (CPCFA and the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code, proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Proposed Regulatory Action

The Authority 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 California Capital Access Program for Small Businesses (the “Program” and CalCAP). These regulations were readopted on an emergency basis in June 2012. The current rulemaking action would make these changes permanent.

Authority and Reference

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the California Capital Access Loan Program (CalCAP) established by the Act.

Reference: Sections 44559-44559.12 of the Health and Safety Code. These amended regulations implement, interpret, and make specific Sections of the Act by amending Sections 8070, 8071, 8072, 8078 and 8078.2 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

Existing law establishes the California Capital Access Loan Program and authorizes the Authority 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 loans to the lender’s loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid by the lender to the Loss Reserve Account at 150 percent or 200 percent, 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 the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments allow CalCAP the flexibility to include additional programs in conjunction with the Federal State Small Business Credit Initiative (SSBCI). The allocation of funds from U.S. Treasury allows CalCAP to expand and administer various programs, all under the CalCAP umbrella. These amendments are necessary to clarify the differences between the

current program and the Collateral Support Program. There are clear guidelines established by the Small Business Jobs Act (H.R. 5297, Public Law No. 111-240) that are clarified with the amendments.

By including rules for a Collateral Support Program within the current CalCAP regulations, the Program will be able to assist more borrowers throughout California. This Collateral Support Program will make financing for certain types of loans more easily available to small businesses and will allow those businesses to continue to expand and remain viable during these difficult economic times.

The proposed amendments to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

The proposed amendments to the CalCAP Regulations are consistent and compatible with the existing state statute and regulations, and the objective is as follows:

Section 8070(b). Early Stage Loan was removed from regulation because it no longer applies to the Program. The definition of Contribution was added to clarify what deposits can be made into Loss Reserve Accounts and how these Contributions differ from Matching Contributions.

Section 8070(f). The definition of “Independent Contributor” has been simplified by including language to allow Contributions as defined in Section 8070(b). This added language allows all acceptable deposits eligible for any program to be deposited into the lenders’ Loss Reserve Accounts.

Section 8070(i). Language has been added to help clarify the definition of a Loss Reserve Account and how these accounts can be used as they pertain to CalCAP. Contributions deposited to Loss Reserve Accounts may be made from State, Local or Federal funding sources and the regulations must clearly reference the section that addresses Federal funds.

Section 8070(v). Changing the definition of “Standards” does not limit Independent Contributors to assisting businesses based on their geographical location or the type of business. Instead, Standards now means any approved criteria used by Independent Contributors that assists borrowers through the Program.

Section 8071(c). An Early Stage Loan no longer applies to the Program; therefore it is no longer necessary to define in regulations. “Early Stage Loan” has also been removed from Section 8070(b) as referenced above.

Section 8072(c)(15). The word “Matching” has been removed from the explanation of Contributions made by the Independent Contributor. Contributions are not required to be a matching amount if that has been established in a contract between CPCFA and the agency acting as an Independent Contributor.

Section 8072(c)(20). The Participating Financial Institution must certify that the Borrower has no interest in the Fees and Contributions made to the Loss Reserve Account. This applies to all Contributions, whether they are matching or not.

Section 8072(h). The word “Matching” has been removed from the explanation of transfers once a Qualified Loan is enrolled. Contributions transferred into the Loss Reserve Account are not required to be matching.

Section 8078(a)(5). To be consistent with changes made in Section 8072(c)(15), “matching” has been removed from the explanation of what the Independent Contributor’s funds will be used for. CalCAP statute allows Independent Contributors to deposit funds for uses deemed appropriate by CPCFA.

Section 8078(e). In order to remain consistent with Section 8078(a)(5) and the CalCAP statute, “matching” has been removed from this section. An Independent Contributor is not subject to the maximums set forth in the CalCAP statute.

Section 8078.2(a). The State Small Business Credit Initiative (SSBCI) is governed by the Small Business Jobs Act which allows Federal funding to be used for purposes other than those defined in the Health and Safety Code. 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. 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). The word “lender” has been changed to “Participating Financial Institution” to keep the regulations consistent throughout and use a defined term for clarification. The language “unless another amount is allowed by the Small Business Jobs Act” was added to this section to explain that when Federal funds are used, the amount of the contribution to the Loss Reserve Account can be established by SSBCI.

Section 8078.2(h). Adding this language “unless another amount is allowed by the Small Business Jobs Act” is consistent with the language in Section 8078.2(g). Also, SSBCI is permitted to set amounts according to the Small Business Jobs Act.

Section 8078.2(i). The United States Treasury, under the Small Business Jobs Act, allows the Authority to assess fees upon the Borrower. The language added to this section places the authorization of assessing fees into CalCAP regulation. In addition, the added language in this section clarifies the types of deposits into the Loss Reserve Accounts when SSBCI funds are used. Section 8078.2 of the CalCAP regulations refers to the Federal aspects of CalCAP and it was necessary to clarify the difference between other funding sources in the Program. In the emergency regulations that were adopted in June 2012, Section 8078.2 had the information from this section split into two separate regulations sections which were 8078.2(i) and 8078.2(j). These two sections have been combined into one section in order to streamline the explanation of the fees assessed by the Authority and the types of contributions being made into Loss Reserve Accounts.

Section 8078.2(j). CalCAP will pay claims for collateral support in the manner consistent with the requirements of the Small Business Jobs Act when SSBCI funds were used for enrollment, therefore an explanation of this practice was necessary in the regulations. This was initially section 8078.2(k) when the emergency regulations were adopted, but the section letter changed to (j) with the grouping of the two sections above into one.

Disclosures Regarding the Proposed Action: The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations.

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative, private person, or business would necessarily incur with reasonable compliance with the proposed action.

Small Business: The amended CalCAP Regulations will not have an adverse impact on small business in California. The proposed regulations will not significantly affect small businesses because they do not impose additional costs on small businesses.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the amended CalCAP Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

Assessment regarding effect on jobs/businesses: The amended CalCAP Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

Benefits of the health and welfare of California residents, worker safety, and the state's environment: The proposed amendments to the CalCAP Regulations will assist California small businesses that may have difficulty obtaining capital. The Collateral Support Program will allow more borrowers access to the type of loans they need to start or grow their businesses.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the amended CalCAP Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the amended CalCAP Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested persons to present statements with respect to alternatives to the amended CalCAP Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries and any questions regarding the substance of the amended CalCAP Regulations shall be submitted or directed to:

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915 Capitol Mall, Room 457
Sacramento, California 95814
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Or:

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the amended CalCAP Regulations to the Authority. The written comment period on the amended CalCAP Regulations ends at **5:00 p.m on December 17, 2012**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantive changes are made to the amended CalCAP Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified amended CalCAP Regulations for fifteen (15) calendar days after the date on which such amended CalCAP Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Availability of Initial Statement of Reasons and Text of the Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the amended CalCAP Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

Public Hearing

CalCAP does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the amended CalCAP Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed amended CalCAP Regulations, as modified. Inquiries about and requests for copies of any changed or modified

regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/cpcfa/index.asp>.