



## CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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Director of Finance

EXECUTIVE DIRECTOR  
Reneé Webster-Hawkins

July 11, 2017

### **California Pollution Control Financing Authority The California Capital Access Program Notice of Emergency Regulations**

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

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, the Office of Administrative Law will have ten (10) calendar days to review and make a decision on the proposed emergency regulations. If approved by the Office of Administrative Law, the emergency regulations will become effective immediately upon filing with the Secretary of State for one hundred and eighty (180) days. Within the 180-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during the regular rulemaking action.

CPCFA proposes to adopt the emergency regulations in accordance with its authority under Health and Safety Code Section 44520(b). The proposed emergency regulations amends Article 7 Sections §8070-8078 and adds Sections §8078.22-8078.35 of and to Title 4 of the California Code of Regulations concerning the California Capital Access Program. Attached to this notice are the Finding of Emergency and proposed text of the emergency regulations. You may also review the Finding of Emergency and proposed text of the emergency regulations on CPCFA's website at the following address: <http://www.treasurer.ca.gov/cpcf/index.asp>. If you prefer to receive a hard copy of the proposed emergency regulations, please contact Lauren Ross at (916) 653-9249.

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Prior to submittal to the Office of Administrative Law, the proposed emergency regulations will be presented to the Authority for approval at a public meeting on July 18, 2017 at 10:30 A.M. in Room 105 at 801 Capitol Mall, Sacramento, California 95814.

Sincerely,



Renee Webster-Hawkins  
Executive Director

Enclosures: Finding of Emergency  
Proposed Text of Regulations

cc: Deborah Yang, CPCFA Legal Counsel  
Patricia Crowson, Treasury Program Manager II  
Doreen Smith, CalCAP Program Manager  
Bianca Smith, CalCAP Program Manager

RWH: ds/bs

# **FINDING OF EMERGENCY**

## **CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

Title 4, Division 11

### **Finding of Emergency**

Pursuant to Sections 44520 and of the Health and Safety Code, the California Pollution Control Financing Authority (the “Authority”) proposes to adopt emergency regulations (the “Emergency Regulations”), which are by legislative mandate necessary for the immediate preservation of the public peace, health and safety, and general welfare.

### **Necessity**

These Emergency Regulations are necessary to implement, interpret, and make specific the California Pollution Control Financing Authority Act (the “Act”).<sup>1</sup> The reason for the changes to the Authority’s California Capital Access Program (“CalCAP”) regulations is to refine and clarify program features, and to adopt the recapture mechanism to recycle older contributions to support future enrollments in the CalCAP program. In addition, the Emergency Regulations are necessary to implement and administer the CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP / ARB”). The Authority is also amending the regulations to incorporate program rules from the Authority’s allocation agreement with the U.S. Treasury Department to ensure clarity for CalCAP’s Participating Financial Institutions. The implementation of the recapture mechanism is essential for the continuation of the CalCAP programs, as the fund balances for these programs are anticipated to be exhausted by the end of this year.

### **Authority and Reference**

Authority: Sections 44520, 44559.5, and 44559.11, Health and Safety Code.

Reference: Sections 39601, 39650, and 44559-44559.12, Health and Safety Code; and Section 1798.17, Civil Code.

### **Informative Digest**

Existing law establishes the California Capital Access Program (“CalCAP”) and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital. (Health and Safety Code, § 44559.2)

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<sup>1</sup> The Act is codified in Health and Safety Code section 44500 et seq.

The proposed amendments to the regulations allow the Authority to include provisions specific to CalCAP. The regulations will refine and clarify some definitions and program requirements, adopt the recapture mechanism to recycle older contributions to support future loan enrollments, and delete sections that are no longer applicable.

The proposed amendments to the regulations allow the Authority to implement and administer the CalCAP / ARB. The CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP / ARB”) assists owners and operators of small fleets of heavy-duty diesel trucks achieve early compliance with ARB’s Statewide Truck and Bus Regulations designed to reduce diesel particulate matter emissions.

The proposed amendments to the regulations allow the Authority to include provisions specific to the Collateral Support Program within CalCAP’s existing Small Business Loan Program. The proposed regulations will clarify rules and procedures for the program participation.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

### **The Proposed Amendments and Objectives for Each Section are as Follows:**

#### **§ 8070. Definitions.**

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Section 8070(b). Adds the term “Change in Terms” defined as any change in material terms of an enrolled loan.

Section 8070(c). Clarifies the term “Contribution” as funds deposited in the loan loss reserve account by the Authority or an Independent Contributor.

Section 8070(e). Eliminates the word “Premium” or “Premiums” from the definition. This change simplifies the reference to lenders or borrower’s contribution.

Section 8070(j). Eliminates the term “Matching Contributions” from the definition. This change is needed because the programs do not allow for matching contributions. The Program only distinguishes between contributions or fees.

Section 8070(o). Adds the term “Outstanding Principal Balance”.

Section 8070(t). Updates the definition of “Qualified Loan” to add more specificity to the businesses that are excluded from participation in the program.

Section 8070(u). Adds the term “Quarterly Report”.

Section 8070(v). Adds the term “Recapture”.

Section 8070(t). Adds the term “Refinance”.

Section 8070(t). Updates the term “Severely Affected Community”.

Necessity. The proposed amendments are necessary to include definitions specific to the Capital Access Program for Small Businesses.

#### **§ 8071. Application by Financial Institution.**

This section describes how financial institutions may apply to participate in the Capital Access Program for Small Businesses.

Section 8071(a)(9). Adds the requirement for the Financial Institution to provide annual audited statements upon the Authority’s request.

Section 8071(b). Specifies the authority of the Executive Director to determine at enrollment in the program whether to establish the Loss Reserve Account at the Program Trustee or at the Participating Financial Institution.

Section 8071(c). Eliminates the option for the Participating Financial institution to request the establishment of two or more Loss Reserve Accounts. This will eliminate confusion and corrections for transferred funds.

Necessity. The proposed amendments are necessary to include definitions specific to the Capital Access Program for Small Businesses.

#### **§ 8072. Loan Enrollment.**

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the Capital Access Program for Small Businesses Financing Program’s policies and regulations.

Section 8072(c). Adds the Census Tract Number associated to the Borrower’s business address, and the location of the facilities being financed if different from the borrower’s business, as information needed for the loan enrollment.

Sections 8072(c)(1), 8072(c)(2), 8072(c)(5), 8072(c)(7), 8072(c)(13). Add clarifications as to the information needed for the loan enrollment.

Section 8072(c)(17). Adds and makes clarifications to the certification requirements of the Participating Financial Institutions.

Section 8072(i). Adds clarifications to the reporting requirements of the Change in Terms and specifies the process.

Section 8072(k). Specifies that loan enrollments submitted after the effective date of the adoption of the regulations will be subject to the Recapture.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the Capital Access Program for Small Businesses Financing Program.

### **§ 8073. Loss Reserve Accounts.**

These sections describe the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Section 8073(b). Adds clarity to the reporting requirement for Loss Reserve Accounts held by the Participating Institutions and the due date for submission.

Section 8073(c)(3). Adds the timely submission of the Quarterly Report to the funding conditions in the Loss Reserve Account.

Section 8073(d). Prohibits withdrawal from the Loss Reserve Accounts held by the Participating Institution without express, written instruction from the Authority.

Section 8073(e). Adds clarification to the process of loans enrolled in the program who are assigned, transferred, pledged or securitized to another entity. This process requires prior written approval of the Executive Director.

Section 8073(f). Adds clarification to the data needed to be included in reports if requested by the Authority and introduces suspension for failure to submit the Quarterly reports.

Section 8073(g). Provides a full description of the recapture process and the voluntary election process of the lenders to participate in this process.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

### **§ 8074. Claim for Reimbursement.**

These sections describe how participating financial institutions are to make claims for reimbursement for loans enrolled in the Capital Access Program for Small Businesses.

Section 8074(c). Clarifies that the Authority may reasonably request additional information from the Borrower's loan file to substantiate the eligibility and the reasonableness of the costs claimed.

Section 8074(e)(6). Specifies the required documentation that needs to be submitted with the claim reimbursement request.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

#### **§ 8076. Termination and Withdrawal from Program.**

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts in case of termination or withdrawal from the program.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

#### **§ 8078.1. Preferred Lenders.**

This section is eliminated as periodic evaluation of the regulations determined that there is no need for this section.

Necessity. The proposed elimination of an unnecessary section of the regulation is necessary for simplification.

#### **§ 8078.2. Federal Capital Access Program and Funding.**

This section is eliminated as the allocation agreement with the United States Treasury ended March 31, 2017.

Necessity. The proposed elimination of this section of the regulation is necessary because this program ended.

#### **§ 8078.3. Definitions.**

This section is amended to adjust references throughout the definitions.

Necessity. The proposed amendments are necessary to correct references to the definitions specific to the Capital Access Program for Small Businesses.

#### **§ 8078.22. Definitions.**

This section defines the terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the CalCAP / ARB Program.

#### **§ 8078.23. Application by Financial Institution.**

This section describes how financial institutions may apply to participate in the Air Resources Board Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the CalCAP / ARB Program.

#### **§ 8078.24. Loan Enrollment.**

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the ARB's Program policies and regulations.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the CalCAP / ARB Program.

#### **§ 8078.25. Loss Reserve Accounts.**

This section describes the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

#### **§ 8078.26. Claim for Reimbursement.**

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the CalCAP / ARB Program.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

#### **§ 8078.27. Subrogation.**

This section describes the procedure for the Authority's right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated will help the Authority enforce its rights.

#### **§ 8078.28. Termination and Withdrawal from Program**



This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

#### **§ 8078.29. Definitions.**

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the Collateral Support Financing Programs.

#### **§ 8078.30. Application by Financial Institution.**

This section describes how financial institutions may apply to participate in the Collateral Support Financing Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the Collateral Support Financing Program.

#### **§ 8078.31. Loan Enrollment.**

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the Collateral Support Financing Program policies and regulations.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the Collateral Support Financing Program.

#### **§ 8078.32. Loss Reserve Accounts.**

This section describes the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

#### **§ 8078.33. Claim for Reimbursement.**

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the Collateral Support Financing Program.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

#### **§ 8078.34. Subrogation.**

This section describes the procedure for the Authority's right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated will help the Authority enforce its rights.

#### **§ 8078.35. Termination and Withdrawal from Program.**

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

### **Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters prescribed by statute are applicable to the Authority or to any specific regulation or class of regulations.

### **Mandate on Local Agencies or School Districts**

The Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

### **Fiscal Impact**

The Authority has determined that the Emergency Regulations do not impose any additional cost or savings to any state agency, any cost to any local agency or school district that is required to be reimbursed under Government Code section 17500 et seq., any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

**CURRENT TEXT OF REGULATIONS**  
**(DRAFT July 6, 2017)**

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) “CalCAP” means California Capital Access Program.

(c) “Change in Terms” means any change in material terms of an enrolled loan, including changes to the name(s) of the borrower or co-borrowers, the total loan amount, the maturity date, or the interest rate.

~~(b)~~(d) “Contribution” means any or all eligible funds deposited by the Authority or Independent Contributor to a Loss Reserve Account.

~~(e)~~(e) “Executive Director” means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.

~~(d)~~(f) “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)~~(g) “Financial Institution” means an institution as set forth in Health and Safety Code Section 44559.1(d). Financial Institution also includes microbusiness lenders, as defined in Section 13997.2 of the Government Code that make small business loans and require a minimum of four hours of preloan business technical and/or credit assistance to borrowers and a minimum of two hours of postloan assistance each year, and are subject to an audit requirement by its Federal or State regulated funding source.

~~(f)~~(h) “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, deposits Contributions to a Loss Reserve Account.

~~(g)~~(i) “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)~~(j) “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)~~(k) “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 Sections 8073, 8078.6, 8078.11, 8078.18, and ~~Section 8078.25~~8078.2.

~~(j)~~ “Matching Contribution” means a contribution to a Loss Reserve Account as set forth in Health and Safety Code Section 44559.4(d).

~~(k)~~(l) “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)~~(m) “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)~~(n) “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)~~(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.

(p) “Outstanding Principal Balance” means the amount due and owing to satisfy the payoff of the underlying loan, less interest and other charges.

~~(q)~~(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

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

~~(r)~~(r) “Program” means the Capital Access Loan Program for Small Businesses established pursuant to the Law.

~~(s)~~(s) “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.

~~(t)~~(t) “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.

~~(u)~~(u) “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) ~~(A)~~ to provide any of the following businesses or facilities, regardless of the source of

funds used for the Authority's ~~matching~~ eContribution:

(i) massage parlor, sauna or hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, liquor store, bar, 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, a store or other facility whose principal business is religious, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, or shooting range or gallery.

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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 permits illegal prostitution on its premises;

(vi) businesses that may be restricted by federal law;

(vii) 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;

(viii) financing a non-business purpose;

(ix) covering the unguaranteed portions of an Small Business Administration loan unless the Authority receives prior written consent of the U.S. Treasury; or

(x) supporting existing extension of credit, including prior loans, lines of credit or other borrowings that were previously made available as part of a substantially similar governmental small business credit enhancement program.

(B) to provide any of the following facilities when the Authority's ~~matching~~ eContribution will be paid for with fees from the issuance of tax-exempt bond sales, all items listed in (A) and: a store whose principal business is the sale of alcoholic beverages for consumption off premises,

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.

(v) “Quarterly Report” means the mandatory report on the status of loans enrolled submitted to the Authority by each Participating Financial Institution on a quarterly basis, no later than the 15th of the month following the end of each quarter.

(w) “Recapture” means the withdrawal of the Authority’s Contributions pursuant to each program’s rules set forth in Sections 8073, 8078.11, 8078.18, and 8078.25.

(x) “Refinance” means the revision or repayment of an existing debt obligation with a new debt obligation with different terms and conditions, including a Change in Terms, a restructure, an extension on a line of credit, or a lease assumption.

~~(t)(y)~~ “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)(z)~~ “Small Business Assistance Fund” means a fund of that name created by the Authority.

~~(v)(aa)~~ “Standards” means the criteria to be used by an Independent Contributor in assisting businesses through the Program.

~~(w)(bb)~~ “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, 44559.9 and

44559.12, 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 provide its annual audited financial statements upon the Authority's request, and 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, and whether to establish the Loss Reserve Account at the Program Trustee or at the Participating Financial Institution, 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.~~

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 15 business days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and

(2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower, or the Contribution 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 or Contributions 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, which includes the Borrower's legal name and the name by which the Borrower does business, if any~~D/B/A (if any)~~, and the business address.

(2) Brief description of the Borrower's business and regular activities, Census Tract Number associated to the Borrower's business address, and the location of the facilities being financed if different, either the SIC Code(s) or the NAICS Code(s) applicable to Borrower's~~such~~ business, and the amount of its annual revenues.

(3) Whether this business 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~~ Participating Financial Institution loan number.

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

(7) Date of the Qualified Loan, based on the first disbursement of proceeds to the Borrower.

(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 ~~Refinance~~refinancing, and if so, the name of the prior lender if different than the Participating Financial Institution, whether the prior loan was enrolled under the Program or any other government lending program, and whether the amount of the loan was increased as part of the ~~Refinance~~refinancing.

(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 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 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 by the Participating Financial Institution that:

~~(17)(A) Certification that~~ t The loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.

~~(17)(B) Certification that~~ t The Qualified Loan is for a business activity that has its Primary economic effect in California.

~~(17)(C) Certification that~~ u Upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, including

documents validating the Borrower's establishment of a business entity, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.

~~(20)(D) 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 Contribution.

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

~~(22)(F) 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)(G) 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)(H) Certification that~~ The Participating Financial Institution has validated ~~obtained~~ a written representation from the Borrower that the Borrower it has secured or made application for all applicable licenses or permits needed to conduct business.

~~(25)(I) Certification from~~ The Participating Financial Institution that it has not, and will not, enroll any portion of the same loan ~~or portion thereof~~ in any other government program substantially similar to the Program.

(K) The Qualified Loan is not a Refinance of a loan previously made to the Borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution and not enrolled in the Program.

(L) The Participating Financial Institution has provided the Borrower the Authority's Privacy Notice for the CalCAP for Small Business Loan Program, which provides the notice required under the California Information Practices Act (Civil Code section 1798.17). The Privacy Notice informs the Borrower that personal information protected by the California Information Practices Act may be disclosed under the following circumstances:

(i) To consultants, auditors or contractors retained by the Authority where disclosure is required to fulfill Program requirements and subject to a nondisclosure agreement;

(ii) To another governmental entity where required by state or federal law; or

(iii) As otherwise required by law.

(M) The Participating Financial Institution will make available to the Authority all records related to the use of the funds in the Loss Reserve Account.

The Participating Financial Institution shall be authorized to rely on representations made to the Participating Financial Institution by the Borrower for the information requested in subdivisions (c)(4), (c)(16), (c)(17)(A), (c)(17)(B) and (c)(17)(D); 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. All other certifications shall be based upon the Participating Financial Institution's established due diligence and underwriting standards applied in the regular course of business, and the Participating Financial Institution shall maintain substantiating documentation in the Borrower's loan file.

(18) The Participating Financial Institution must obtain written certification from the Borrower that:

(A) The loan will be used solely for a business purpose;

(B) 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;

(C) The loan will not be used to repay taxes held in trust or escrow;

(D) The loan will not be used to refinance or reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(E) The loan will not be used to purchase any portion of the ownership interest of any owner of the business;

(F) The loan will not be used to finance ineligible businesses or facilities identified in Section 8070;

(G) The Borrower is not:

(i) an executive officer, director, or principal shareholder of the Participating Financial Institution;

(ii) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or

(iii) a related interest of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.

(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 may pre-qualify with the Authority any qualified loan. Pre-qualifications do not necessarily guarantee that funds for Contributions will be available at the time of final enrollment, unless the funding source requires it. 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 15 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 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) The Participating Financial Institution must notify the Authority whenever a Change in Terms occurs on a currently enrolled loan prior to maturity, within fifteen (15) business days after such change. 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. If any of the terms other than the interest rate have changed, then the Participating Financial Institution shall also submit a new loan enrollment application for the loan and deposit Fees (if applicable) pursuant to Section 8072 for any increase to the total loan amount. If the Authority determines that the Change in Terms constitutes an ineligible Refinance as defined in Section 8070, neither the original nor the refinanced loan will continue to be enrolled in the Program.

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

(k) Loan enrollments submitted after the effective date of this rulemaking will be subject to Recapture as specified in Section 8073.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.12, Division 27, Health and Safety Code; and Section 1798.17, Civil 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 ~~the~~ Program Trustee. For each Loss Reserve Account held by a Participating Financial Institution, the Participating Financial Institution shall submit to the Authority a monthly statement of the account activities and balance, no later than the 15<sup>th</sup> of the following month.

(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 if approved in writing 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.

(3) the Participating Financial Institution has not timely submitted its Quarterly Report described in Section 8073, and, for accounts held at the Participating Financial Institution, the monthly statements described in Section 8078.

(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), and any Contributions subject to Recapture as provided in Section 8073. The Executive Director shall be authorized to return to a Participating Financial Institution any Fees improperly deposited in a Loss Reserve Account. No Participating Financial Institution holding its Loss Reserve Account shall make any withdrawal from the account without written instruction from the Authority.

(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. Any loan enrolled in the program or portion thereof which is subsequently assigned, transferred, pledged or securitized without the advance written approval of the Executive Director shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account. If a Participating Financial Institution desires to assign, transfer, pledge or securitize all or a portion of any enrolled loan or Loss Reserve Account, it shall submit a written request to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of loans and the amount of the Loss Reserve Account subject to the request, and a draft of the legal document specifying the assignment, transfer, pledge or securitization.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims and recoveries upon request, including timely Quarterly Reports of the data regarding: Outstanding Principal Balance of all enrolled loans; all loans in default and charged off, and claim amounts; and deposits made to replenish the Loss Reserve Account pursuant to Section 8074, in the form provided by the Authority. Failure to submit timely and complete Quarterly Reports will result in the suspension of any pending loan enrollments or claim applications from that Participating Financial Institution, and transfer of any Loss Reserve Accounts held by the Participating Financial Institution to the Program Trustee.

(g) The Executive Director is authorized to Recapture from each Loss Reserve Account the Authority's Contribution for each enrolled loan when the corresponding Qualified Loan matures or upon five years from the date of enrollment, whichever occurs first, and subject to each of the following conditions:

(1) Recapture shall be conducted on an annual basis following the end of each fiscal year based on the data reported in the Quarterly Reports submitted for the term ending June 30<sup>th</sup>.

(2) The Executive Director shall limit the amount of the annual Recapture of Contributions from each Loss Reserve Account if necessary to ensure that the balance remaining in that Loss Reserve Account immediately following Recapture is greater than a minimum threshold set as a percentage of the Outstanding Principal Balance of loans enrolled in the 60 months prior to each annual Recapture. Beginning in 2017, the minimum threshold will be fifteen percent (15%), and the minimum threshold will decrease by one percent (1%) for each successive year until it reaches the permanent minimum threshold of ten percent (10%).

(3) Recapture shall apply to each new Loss Reserve Account established on or after August



15, 2017.

(4) For Loss Reserve Accounts established before August 15, 2017, each Participating Financial Institution shall affirm in writing its election to continue enrolling loans in the Program subject to Recapture applicable to Contributions for all past and future Qualified Loans. This election may not later be withdrawn by the Participating Financial Institution. Any Participating Financial Institution that does not affirm this election in writing will be deemed ineligible to submit loan enrollments on or after August 15, 2017. Nevertheless, Qualified Loans enrolled before August 15, 2017 will be supported by the Loss Reserve Account and the Participating Financial Institution will be eligible for claim reimbursement pursuant to Section 8074 for the previously enrolled Qualified Loans until maturity.

(h) The Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution at least ten (10) business days prior to the effective date of the suspension. Causes for suspension may include violations of applicable statutes or regulations. If the violations are not corrected within thirty (30) business days from the effective date of the suspension the Executive Director is authorized to terminate participation of a Participating Financial Institution in the Program. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans.

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 120 days after it has charged off all or part of a Qualified Loan as a result of a default.

(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 120 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 certifications, representations and warranties provided by the Participating Financial Institution or Borrower 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. The Authority may request any and all information from the Borrower's loan file to substantiate the eligibility of the Borrower's business and the enrolled loan, and the reasonableness of the costs claimed.

(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 and amount of default.

(6) ~~Amount of default~~ A description of the facts and circumstances of the default, efforts to settle or cure the default, efforts to liquidate collateral or collect from other sources, and any other narrative information and documentation necessary to demonstrate that the claim is eligible under Health and Safety Code Section 44559.5, and that any out-of-pocket expenses sought are reasonable.

(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 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).

(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 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:

(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 until such loans mature or are charged off.

(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, "Participating Financial Institution Share" ~~"Authority Share"~~ means the ratio of the total amount of contributions made by the Participating Financial Institution Fees made ~~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 Authority Contributions and Borrower and Participating Financial Institution Fees made to such Loss Reserve Account during that period; and ~~"Participating Financial Institution Authority Share"~~ means 100 minus the Authority-Participating Financial Institution 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 Principal 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 Principal 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 Contributions in connection with Qualified Loans, or receives a written waiver from the Executive Director of this requirement.

(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 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 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 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, to the extent allowed by the Small Business Jobs Act (H.R. 5297, Public Law No. 111-240) (Small Business Jobs Act):~~

~~(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;~~

~~(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~~

~~(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 Participating Financial Institution, unless another amount is allowed by the Small Business Jobs Act.~~

~~(h) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds, unless another amount is allowed by the Small Business Jobs Act.~~

~~(i) Any Borrower or Participating Financial Institution fees assessed by the Authority as allowed by the Small Business Job Act may be deposited in a Loss Reserve Account.~~

~~(j) Claims for reimbursement may be processed according to the requirements of the Small Business Jobs Act.~~

~~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.~~

### **§ 8078.3. Definitions.**

In addition to the definitions in Section 8070, the following definitions shall apply only to the Electric Vehicle Charging Station Financing Program.

(a) “Borrower Rebate” means a payment made to a Borrower from the Participating Financial Institution’s Loan Loss Reserve Account upon a valid claim made pursuant to Section 8078.7.

- (b) “CEC” and “Energy Commission” means the California Energy Commission.
  - (c) “Disadvantaged Communities” means the top twenty five (25) percent of communities that are disproportionately affected by environmental pollution and socioeconomic characteristics as described by CalEnviroScreen 2.0 Tool1.
  - (d) “Electric Vehicle Charging Station” or “EVCS” means an element in an infrastructure that supplies electric energy for the recharging of plug-in electric vehicles.
  - (e) “EVCS supply equipment” means equipment which meets the minimum technical requirements set by the Energy Commission as follows:
    - (1) Direct current fast chargers shall utilize:
      - (A) Either the CHAdeMO standard, or SAE combination standard, or a combination of both; and
      - (B) An open standard protocol for purposes of network interoperability.
    - (2) Level 2 charging equipment shall utilize:
      - (A) The SAE J1772 standard; and
      - (B) An open standard protocol for purposes of network interoperability.
    - (3) Open standard protocol is waived for medium- and heavy-duty EVCS supply equipment.
  - (f) “Eligible Project Costs” means the amount to pay for acquisitions and services necessary and allocable to the installation and operation of one or more EVCSs in the State of California as allowed by the Energy Commission, specifically:
    - (1) The design and development of EVCS in locations accessible to either the Borrower’s employees, the Borrower’s tenants if in an Multi-Unit Dwelling (MUD), or the public generally;
    - (2) The acquisition of EVCS supply equipment, electric panel or grid improvements, materials and supplies (including conduit and construction materials), signage, and hardware and software necessary and allocable for fully operational charging station(s);
    - (3) Labor necessary and allocable to install fully operational charging station(s); and
    - (4) The costs for operating, servicing and maintaining the EVCS during the term of the loan, if the Borrower’s primary business is not EVCS installation, operation or manufacturing.
  - (g) “Multi-Unit Dwelling” or “MUD” means a classification of housing where multiple housing units are contained within one building or multiple buildings within a complex or community. Common types of MUDs include duplexes, townhomes, and apartments, mobile homes and manufactured-home parks.
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(h) “Program” means the Electric Vehicle Charging Station Financing Program established pursuant to the Interagency Agreement between the Authority and the Energy Commission. Where the term “Program” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p).

(i) “Qualified Business” means any entity eligible under section Health and Safety Code section 44559.1(i) and (m) that together with its affiliates has 1,000 or fewer employees, and that is not dominant in its field of operation. Where the term “Qualified Business” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070~~(r)~~(s).

(j) “Qualified Loan” means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business where the loan proceeds are for Eligible Project Costs for the installation and operation of one or more EVCS. “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) Any loan, the proceeds of which will be used to install EVCS at any of the facilities described in Section 8070~~(s)~~(t)(4)(A);

(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; and

(6) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$500,000.

Where the term “Qualified Loan” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070~~(s)~~(t).

(k) “Trustee” means a bank or trust company, or the State Treasurer, chosen by CPCFA from time to time to hold or administer some or all of the Program Accounts.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code.  
Reference: Sections 44559.1, 44559.3, 44559.5 and 44559.11, Health and Safety Code.

#### **§ 8078.4 Application by Financial Institution.**

Financial Institutions shall follow the procedures set forth in Section 8071 in making application to become Participating Financial Institutions in the Electric Vehicle Charging Station Financing Program.

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

Reference: Section 44559.2, Health and Safety Code.

**§ 8078.5 Loan Enrollment.**

(a) A Participating Financial Institution may enroll all or any portion of a Qualified Loan by submitting an EVCS Loan Enrollment Application which shall include the following information:

- (1) The official business name of the Borrower, including a D/B/A if any, and the business address.
- (2) The name and title of the individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower.
- (3) 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 over the last three years.
- (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Project Costs.
- (5) Location(s) of the project(s) to be installed.
- (6) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled) and the Participating Financial Institution loan number.
- (7) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
- (8) Date of the Qualified Loan.
- (9) Interest rate applicable to the Qualified Loan.
- (10) Term or maturity date of the Qualified Loan.
- (11) Whether the loan is for the installation of EVCS in a Disadvantaged Community.
- (12) Whether the loan is for the installation of EVCS at a Multi-Unit Dwelling.
- (13) Number of persons currently employed by the Borrower, and number of jobs expected to be created and retained by the Qualified Loan.
- (14) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (15) The Participating Financial Institution's certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.

(16) The certification that the Participating Financial Institution has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the Contribution.

(17) The Participating Financial Institution's certification that the total amount of loans enrolled by the Borrower in the Program does not exceed \$500,000.

(18) The Participating Financial Institution's certification that the Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS.

(19) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.

(20) The Participating Financial Institution shall be authorized to base the information requested by subsections (14) and (18) 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.

(21) 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.

(22) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:

(A) That it satisfies the definitions in Sections 8078.3(e), 8078.3(f), 8078.3(i), and 8078.3(j) of the EVCS Financing Program Regulations;

(B) The EVCS installation is compliant with Section 8078.3(c) or 8078.3(g) of the EVCS Program Regulations, if applicable;

(C) The EVCS installation is located within the boundaries of the State of California;

(D) The Borrower has legal control of the EVCS installation site for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;

(E) The Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA;

(F) The Borrower has no legal, beneficial, or equitable interest in the ~~matching~~ eContribution;

(G) If the EVCS installation financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the loan in this Program is the portion of costs of the total project as reasonably allocated to the installation and operation of the EVCS, as documented by the master contractor and/or installer of the EVCS;

(H) The Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS to be procured with the Qualified Loan;

(I) The Borrower agrees to allow California Energy Commission staff or its designee to inspect the EVCS and EVCS installation site;

(J) The Borrower acknowledges awareness of potential regulations from the California Department of Food and Agriculture, Division of Measurement Standards, governing the retail sale of electricity from EVCS. Once effective, installed EVCS may be required to adhere to adopted regulation requirements; and

(K) The Borrower is aware of the Borrower Rebate if it complies with Section 8078.7 of the EVCS Financing Regulations.

(23) Certification from the Participating Financial Institution that it has provided the Borrower CPCFA's Privacy Notice for the EVCS Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the EVCS Financing Program informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:

(A) To consultants, auditors or contractors retained by the CPCFA where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement;

(B) To another governmental entity where required by state or federal law; or

(C) As otherwise required by law.

Information related to this loan not including personally identifying information may be disclosed to the California Energy Commission for statistical reporting.

(b) Upon enrollment of a Qualified Loan, CPCFA shall direct the Trustee to transfer a Contribution for deposit in the Participating Financial Institution's established Loan Loss Reserve Account, and the Trustee shall notify the Participating Financial Institution of the transfer.

(c) The Contribution for each Qualified Loan shall be calculated as follows:

(1) All Qualified Loans shall receive a Contribution in the amount of 20 percent of the enrolled loan amount.

(2) All Qualified Loans that support installation of Electric Vehicle Charging Stations in Disadvantaged Communities or in a Multi-Unit Dwelling shall receive an additional Contribution in the amount of 10 percent of the enrolled loan amount (total Contribution of 30 percent).

(d) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed forty-eight (48) months from the date of first disbursement of the Qualified Loan.



Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code.  
Reference: Sections 44559.2, 44559.4, and 44559.11, Health and Safety Code; and Section 1798.17, Civil Code.

#### **§ 8078.6 Loan Loss Reserve Accounts**

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loan Loss Reserve Trust Account for that Participating Financial Institution for the following purposes:

- (1) To receive all Contributions deposited from the EVCS Financing Program;
- (2) To pay claims in accordance with the Claim for Reimbursement Section 8074; and
- (3) To pay Borrower Rebates in accordance with Section 8078.7.

(b) All moneys in a Loan Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided in the Interagency Agreement with the Energy Commission and these regulations. Interest or income earned on moneys credited to the Loan Loss Reserve Account shall be deemed to be part of the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loan Loss Reserve Trust Account all interest and income that has been credited to the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw contributions improperly deposited in a Loan Loss Reserve Account. The Executive Director shall be authorized to direct that funds be withdrawn from Loan Loss Reserve Accounts to fund qualifying Borrower Rebates.

(c) Moneys in a Participating Financing Institution's Loan Loss Reserve Account shall not exceed the outstanding principal of its enrolled loans. From time to time, the Executive Director may withdraw from the Loan Loss Reserve Account all Loan Loss Reserve contributions that exceed the amount of outstanding principal.

(d) If any Loan Loss Reserve Account is held at a Participating Financial Institution, the Participating Financing Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loan Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.

(e) The Participating Financial Institution shall provide reports on the quarterly basis to CPCFA no later than the 15 days after the end of the quarter, listing all enrolled loans which are in default whether or not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code.  
Reference: Section 44559.3, Health and Safety Code.

#### **§ 8078.7. Borrower Rebate**

(a) A Borrower shall be eligible for a Borrower Rebate of fifty (50) percent of the Contribution if the following conditions are met:

- (1) The Borrower provides the Participating Financial Institution with a copy of an Electric Vehicle Charging Station Certificate of Commissioning relative to the EVCS financed;
- (2) The Borrower has no more than one 30-day late payment on the Qualified Loan;
- (3) The Qualified Loan has been paid off or forty-eight months have elapsed from the date of first disbursement of the Qualified Loan, whichever is sooner; and
- (4) The Borrower certifies that any outstanding balance of the loan repaid at the time of application for the Borrower Rebate was not refinanced into another credit structure with any Participating Financial Institution.

(b) A Participating Financial Institution shall make the request for a Borrower Rebate as specified in subdivision (c) of this section to CPCFA within 90 calendar days after the conditions in subdivision (a) of this section have been satisfied.

(c) To make a request for a Borrower Rebate, the Participating Financial Institution shall submit a Request for Borrower Rebate form to CPCFA which shall include the following information:

- (1) Name of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person for the Participating Financial Institution.
- (3) Name, telephone number and address of the Qualified Business requesting the Borrower Rebate.
- (4) Amount, date of first disbursement of the Qualified Loan and loan number.
- (5) Amount of Contribution.
- (6) Amount of Borrower Rebate.
- (7) Date Borrower qualified for Borrower Rebate.
- (8) Participating Financial Institution certification of other evidence that the conditions in subdivision (a) of this section have been satisfied.

(d) CPCFA shall authorize the payment of a Borrower Rebate within 30 calendar days of receipt of a completed request for Borrower Rebate; provided, however, that the Executive Director shall be authorized to reject a request for Borrower Rebate if he or she determines that the certifications provided by the Participating Financial Institution and Borrower at the time of enrolling the Qualified Loan were false or unsubstantiated. CPCFA shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of a Borrower Rebate up to an additional 30 calendar days if CPCFA requires more information in order to validate the payment of the Borrower Rebate.

(e) Upon approval of a claim for Borrower Rebate, CPCFA shall instruct the Trustee to withdraw the appropriate amount from the Loan Loss Reserve Account and disburse the Borrower Rebate to the Borrower.

(f) CPCFA may, in its sole determination, authorize a Borrower Rebate upon independent verification that the Borrower has satisfied the requirements of subdivision (a) of this section in the event the Participating Financial Institution is unable or unwilling to supply the documentation needed for Borrower Rebate authorization.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code.  
Reference: Sections 44559.3, and 44559.11, Health and Safety Code.

## **§ 8078.22 Definitions.**

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Capital Access Program Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program, Sections 8078.22 to 8078.28 inclusive. To the extent the definitions contained herein conflict with definitions contained in Section 8070, the definitions in this section shall control for purposes of the California Capital Access Program Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program.

(a) “ARB” means the California Air Resources Board.

(b) “Eligible Cost” or “Eligible Purchase” means the amount of loan proceeds used for the acquisition of heavy duty diesel vehicles or equipment necessary to become compliant with the ARB’s Statewide In-Use Truck and Bus Regulations defined in section 2025, title 13, of the California Code of Regulations. In addition, heavy duty vehicles fueled by electric, natural gas, or hybrid engines in compliance with the emissions standards set by ARB may be considered an Eligible Purchase.

(c) “Interagency Agreement” means the agreement between ARB and the Authority, as may be amended from time to time.

(d) “On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation” means the Statewide In-Use Truck and Bus Regulations defined in section 2025, title 13, of the California Code of Regulations.

(e) “Program” and “CalCAP ARB Financing Program” and “CalCAP ARB Program” and “CalCAP ARB” and “CalCAP ARB On-Road HDV Air Quality Loan Program” means the California Capital Access Program Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program, established pursuant to an the Interagency Agreement between the Authority and the Air Resources Board.

(f) “Qualified Business” means a either a Truck Owner Operator or a business referred to in subdivisions (i) and (m) of Section 44559.1 of the Health and Safety Code, that meets the following additional criteria:

(1) Less than one hundred (100) employees;

(2) The maximum fleet size prior to enrollment in the Program does not exceed ten (10) vehicles consistent with fleet reporting requirements in ARB’s Statewide In-Use Truck and Bus Regulations;

(3) Less than ten million dollars (\$10,000,000) in total gross annual income from all sources over the prior three (3) fiscal years; and

(4) The Primary economic effect of the business activity must be in California.

(g) “Qualified Loan” means a loan or portion of a loan as defined in Section 44559.1(j)(1) of the Health and Safety Code, and Section 8070 in this Article, where the loan or portion of the loan enrolled does not exceed two million five hundred thousand dollars (\$2,500,000), and where the term of loss coverage for each qualified loan is no more than five (5) years. A Qualified Loan may be made in the form of a TRAC Lease when the Loss Reserve Account is funded by an Independent Contributor. “Qualified Loan” does not include any of the following:

(1) Any portion of a loan to the extent the same portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.

(2) 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.

(3) Any loan that exceeds the maximum interest rate of twenty (20) percent annual percentage yield.

(4) Any loan or portion of a loan which is a Refinance of an existing loan.

(5) Any loan for which the loan proceeds are used solely for a trailer purchase(s).

(6) Any loan where any portion of the loan proceeds are used for a purchase or expenditure not subject to ARB’s Statewide In-Use Truck and Bus Regulation.

(h) “Truck Owner Operator” means a driver who owns and operates his or her own trucking business or who leases his or her own truck to a trucking company to transport freight or haul loads for various companies, and such activities have a Primary economic effect of the business activity is in California.

Note: Authority cited: Sections 39601(a), 39650, 44520, 44559.5(f) and 44559.11(b), Health and Safety Code.

Reference: Sections 39650, 43013, 44274, 44559.1, 44559.3, 44559.5, 44559.11, Health and Safety Code; and 42 U.S.C. Section 7401.

### **§ 8078.23 Application by Financial Institution.**

Financial Institutions shall follow the procedures set forth in Section 8071 to apply to become Participating Financial Institutions in the Program.

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

### **§ 8078.24 Loan Enrollment.**

(a) The terms and conditions of the Qualified Loans, including rates, and fees, shall be determined solely by agreement between 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 by notifying the Authority in writing, within 15 business days after the Qualified Loan is made, that the Participating Institution 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.

(c) The notification to the Authority shall include at least the following information:

(1) Borrower name, which includes the Borrower's legal name and the name by which the Borrower does business, if any, and the business address.

(2) Brief description of the Borrower's business and regular activities, Census Tract Number associated to the Borrower's business address, and the location of the facilities being financed if different, the NAICS Code(s) applicable to Borrower's business, and the amount of its average annual revenue for the past three (3) years.

(3) Whether this business has been open for two (2) 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 consistent with Eligible Purchases, including the tractor model, engine model and fuel type of each vehicle, the model of each trailer or diesel particulate filter, and the number of each Eligible Purchase.

(5) Amount of the Qualified Loan being enrolled in the Program, the total amount of loan, and the Participating Financial Institution loan number.

(6) Whether the Qualified Loan is secured or unsecured, and whether it is a term loan or TRAC lease.

(7) Date of the Qualified Loan, based on the first disbursement of proceeds to the Borrower.

(8) Interest rate applicable to the Qualified Loan.

(9) Term or maturity date of the Qualified Loan.

(10) Certification by the Participating Financial Institution of the following:

(A) The Borrower has validated the number of employees currently employed by the Borrower.

(B) The loan is a Qualified Loan for Eligible Costs, and that the business receiving the Qualified Loan is a Qualified Business.

(C) The Borrower's business activity has its Primary economic effect in California.

(D) Upon request by the Executive Director, the Participating Financial Institution shall provide information from the financial records of the Borrower, including documents validating the Borrower's establishment of a business entity, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.

(E) The total amount of loans for the borrower enrolled in the CalCAP/ARB Program does not exceed \$2,500,000 over a three year period.

(F) The Participating Financial Institution has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the CalCAP/ARB Contribution.

(G) The Participating Financial Institution has validated that the Borrower has secured all applicable licenses and permits to conduct its business.

(H) The lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.

(I) The Participating Financial Institution has not, and will not, enroll the Qualified Loan, or any portion thereof, in any other government program substantially similar to the Program.

(J) No portion of the loan is a Refinance.

(K) The Participating Financial Institution has provided the Borrower the Authority's Privacy Notice for the CalCAP/ARB On-Road HDV Air Quality Loan Program, which provides the notice required under the California Information Practices Act (Civil Code section 1798.17). The Privacy Notice informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:

(i) To consultants, auditors or contractors retained by the Authority or ARB where disclosure is required to fulfill CalCAP/ARB Program requirements and subject to a nondisclosure agreement;

(ii) To another governmental entity where required by state or federal law; or

(iii) As otherwise required by law.

(L) The Participating Financial Institution will make available to the Authority all books and records related to the use of the funds in the Loss Reserve Account;

(M) The Participating Financial Institution shall be authorized to certify to the information requested under subdivisions (c)(10)(A), (B), (C), (D), (F), (G), and (H) based upon the Participating Financial Institution's established due diligence and underwriting standards applied in the regular course of business, and shall maintain substantiating documentation in the Borrower's loan file.

(11) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies that:

(A) The Borrower is using the proceeds to purchase on-road heavy duty diesel vehicle(s) or other Eligible Purchases to comply with ARB's Statewide In-Use Truck and Bus Regulation as defined in Section 2025, Title 13, of the California Code of Regulations;

(B) The Borrower's business activities has a Primary economic effect in California;

(C) The Borrower agrees to allow the Participating Financial Institution to provide information from financial records of the Borrower upon request of the Executive Director;

(D) The Borrower has no legal, beneficial, or equitable interest in the CalCAP/ARB Contribution;

(E) The Borrower meets state and federal requirements to operate in California and that the Borrower has secured all applicable licenses and permits needed to conduct business;

(F) The enrolled amount of the loan in this Program is limited to Eligible Purchases;

(G) The Borrower agrees to allow the Authority or its designee to review all information in the loan file maintained by the Participating Financial Institution;

(H) The Borrower either has or has not received any grants or vouchers through the ARB's Proposition 1B Goods Movement Emission Reduction program, the ARB's Carl Moyer On-Road Heavy Duty Vehicle Voucher Incentive program or the ARB's Hybrid and Zero-Emission Truck and Bus Voucher Incentive project for the financed vehicle(s);

(I) The Borrower agrees to allow ARB staff or its designee to inspect the affected vehicle(s);

(J) The Borrower does not have a total enrolled principal amount in excess of \$2,500,000 at any CalCAP Participating Financial Institution over a three (3) year period;

(K) The Borrower has received CPCFA's CalCAP/ARB Privacy Notice and that the Borrower is not any of the following: an executive officer, director, or principal shareholder of the Participating Financial Institution; a member of the immediate family of any of those individuals; or a related interest of those individuals; and

(L) The accuracy of specific information regarding the fleet size, the vehicle, and equipment, including: truck(s) gross vehicle weight rating, engine manufacturer, model year, and horsepower, replacement truck(s), device(s) manufacturer, and model and technology type.

(12) Loan enrollments submitted after August 15, 2017 will be subject to Recapture as specified in Section 8078.25.

Note: Authority cited: Sections 44520, 44559.5(f) and 44559.11(b), Health and Safety Code. Reference: Section 44559.2, Health and Safety Code; and Section 1798.17, Civil Code.

## **§ 8078.25 Loss Reserve Accounts**

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution under the CalCAP ARB Financing Program for the following purposes:

(1) To receive all Contributions deposited by the Authority from funds provided by ARB based on the Contribution rates authorized by ARB in the Interagency Agreement as follows:

(A) for each new and existing Participating Financial Institution whose total Contributions in the Loss Reserve Account has not yet reached \$500,000, the Contribution for each Qualified Loan is equal to 14 percent of the enrolled loan amount.

(B) for each Participating Financial Institution whose total Contributions in the Loss Reserve Account exceeds \$500,000, but are less than \$1.5 million, the Contribution for each Qualified Loan is equal to 7 percent of the enrolled amount;

(C) for each Participating Financial Institution whose total Contributions in the Loss Reserve Account exceeds \$1.5 million, the Contribution for each Qualified Loan is equal to 4 percent of the enrolled amount.

(2) To pay claims in accordance with Section 8078.26.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by the Program Trustee. For each Loss Reserve Account held by a Participating Financial Institution, the Participating Financial Institution shall submit to the Authority a monthly statement of the account activities and balance, no later than the 15<sup>th</sup> of the following month.

(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 if approved in writing 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;

(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, the Participating Financial Institution 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 the Participating Financial Institution has a rating of "C" or below from LACE Financial Corp; or the Participating Financial Institution has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director; or



(3) the Participating Financial Institution has not timely submitted a Quarterly Report described in Section 8078.25(f), and, for accounts held at the Participating Financial Institution, the monthly statements described in Section 8078.25(b).

(d) All moneys in a Loss Reserve Account are property of the ARB held in trust to be administered by the Authority and used only for the valid and lawful purposes of the Program as provided by these Regulations. Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. Contributions to the Loss Reserve Account shall be subject to Recapture as provided in Section 8078.25(g). The Executive Director shall be authorized to withdraw from the Loss Reserve Account all interest and income that has been credited to the Loss Reserve Account. The Executive Director shall be authorized to withdraw Contributions improperly deposited in a Loss Reserve Account.

(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. Any loan enrolled in the program or portion thereof which is subsequently assigned, transferred, pledged, or securitized without the advance written approval of the Executive Director shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account. If a Participating Financial Institution desires to assign, transfer, pledge, or securitize all or a portion of any enrolled loan or Loss Reserve Account, the Participating Financial Institution shall submit a written request to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of loans and the amount of the Loss Reserve Account subject to the request, and a draft of the legal document describing the assignment, transfer, pledge, or securitization.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status of accounts, enrolled loans, claims, and recoveries upon request, including timely Quarterly Reports of the data regarding: Outstanding Principal Balance of all enrolled loans; all loans in default and charged off, and claim amounts; and deposits made to replenish the Loss Reserve Account pursuant to Section 8074(h), in the form provided by the Authority. Failure to submit timely and complete Quarterly Reports will result in the suspension of any pending loan enrollments or claim applications from that Participating Financial Institution, and transfer of any Loss Reserve Accounts held by the Participating Financial Institution to the Program Trustee.

(g) The Executive Director is authorized to Recapture from each Loss Reserve Account the Contribution for each enrolled loan when the corresponding Qualified Loan matures or upon five (5) years from the date of enrollment, whichever occurs first, and subject to each of the following conditions:

(1) Recapture shall be conducted on an annual basis following the end of each fiscal year based on the data reported in the Quarterly Reports submitted for the term ending June 30<sup>th</sup>.

(2) The Executive Director shall limit the amount of the annual Recapture of Contributions from each Loss Reserve Account, if necessary, to ensure that the balance remaining in that

Loss Reserve Account immediately following Recapture is greater than a minimum threshold set as a percentage of the Outstanding Principal Balance of loans enrolled in the 60 months prior to each annual Recapture. Beginning in 2017, the minimum threshold will be fifteen percent (15%), and the minimum threshold will decrease by one percent (1%) for each successive year until it reaches the permanent minimum threshold of ten percent (10%).

(3) Recapture shall apply to each new Loss Reserve Account established on or after August 15, 2017.

(4) For Loss Reserve Accounts existing before August 15, 2017, each corresponding Participating Financial Institution shall affirm in writing its election to continue enrolling loans in the Program subject to Recapture being applied to the Contributions for all past and future Qualified Loans. This election may not later be withdrawn by the Participating Financial Institution. Any such Participating Financial Institution which does not affirm this election in writing will not be subject to Recapture and will be deemed ineligible to submit loan enrollments after the effective date of this rulemaking, however its previously enrolled Qualified Loans will be supported by the Loss Reserve Account and eligible for claim reimbursement pursuant to Section 8078.26 until all previously enrolled Qualified Loans mature.

(h) The Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution providing the specific reasons at least ten (10) business days prior to the effective date of the suspension. Reasons for suspension may include: violations of applicable statutes, regulations or Authority policies and procedures. If the violations are not corrected within thirty (30) business days from the effective date of the suspension the Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program. 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).

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

#### **§ 8078.26 Claim for Reimbursement.**

a) Participating Financial Institutions shall follow the procedures set forth in Section 8074 to submit claims for reimbursement for loans enrolled in the CalCAP ARB Financing Program. Any references to Section 8072 in Section 8074 shall be replaced with Section 8078.24.

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

#### **§ 8078.27 Subrogation.**

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the CalCAP ARB Financing Program.

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

### **§ 8078.28 Termination and Withdrawal from Program.**

The procedures for termination and withdrawal from the program set forth in Section 8076 shall be followed for loans enrolled in the CalCAP ARB Financing Program.

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

### **§ 8078.29. Definitions**

In addition to the definitions in Section 8070, the following definitions shall apply only to the Collateral Support Program, Sections 8078.28 to 8078.35 inclusive. To the extent the definitions contained herein conflict with definitions contained in Section 8070, the definitions in this section shall control for purposes of the Collateral Support Program.

(a) “Annual Fee” means the fee charged by the Authority for annual renewals of Collateral Support for lines of credit up to a total of 48 months.

(b) “Annual Recapture” means the percentage of the original Collateral Support Contribution repaid to the Authority on an annual basis.

(c) “Bridge Loan” means a loan needed prior to obtaining permanent financing or support, including Small Business Administration, 504 bridge loans, where the Participating Financial Institution is at increased risk pending future take-out financing or guarantee.

(d) “Collateral Support” or “Collateral Support Contribution” means an amount of cash deposit covering a collateral shortfall of a Qualifying Loan.

(e) “Collateral Support Program Approval” means the Authority’s approval of Collateral Support for a Qualified Loan.

(f) “Collateral Support Program Request” means the request that a Participating Financial Institution must submit to the Authority to apply for Collateral Support.

(g) “Closing Fee” means the fee charged to the Borrower to participate in the Collateral Support Program when the Qualified Loan closes, based on the original amount and term of support, and type of Qualified Loan.

(h) “Default Notification” means the written notice that a Participating Financial Institution must submit to the Authority upon the default of an enrolled loan.

(i) “Green & Manufacturing Loans” means (1) loans used primarily for supporting new or expanded business processes, products, services, and tenant improvements consistent with specific state policy goals or regulations furthering energy and water conservation, alternative

energy, and environmental protection; (2) loans to provide working capital to contractors and other businesses providing specific services furthering energy and water conservation, alternative energy, and environmental protection; (3) loans to be used primarily for new or expanded production of materials and products for use or sale using labor and machines, tools, chemical and biological processing, assembly or formulation.

(j) “Program” means the Collateral Support Program.

(k) “Qualified Business” means the same as specified in Section 8070, except that, together with affiliates, the Qualified Business may have 750 or fewer employees.

(l) “Qualified Loan” means the same as specified in Section 8070, and any Small Business Loan, except that it may not be any loan that exceeds \$20,000,000.

(m) “Principal Loan Amount” means the Qualified Loan disbursed to an eligible Borrower with a minimum amount of \$50,000 and a maximum amount of \$20 million.

(n) “Risk Assessment” means the valuation made by the Participating Financial Institution consistent with its usual credit policy, which must include: the value of the collateral based on the industry standard of measurement, such as through an appraisal; the Participating Financial institution’s valuation of the collateral; the Borrower’s risk rating; summary of the relationship and history of the business; the Borrower’s cash flow; and financial analysis of the Borrower.

(o) “Small Business Loans” means a Qualified Loan.

(p) “Severely Affected Community (SAC) Contribution” means the additional support for which the Borrower may qualify when the Qualified Business is located in a Severely Affected Community.

(q) “Term of Support” means the amount of time a loan is enrolled in the Collateral Support Program, up to a maximum of 48 months from the date of the first disbursement of the loan.

Note: Authority cited: Sections 39601(a), 39650, 44520, 44559.5(f) and 44559.11(b), Health and Safety Code.

Reference: Sections 44559.1, 44559.3, 44559.5, 44559.11, Health and Safety Code.

### **§ 8078.30. Application by Financial Institution**

Financial Institutions shall follow the procedures set forth in Section 8071 to apply to become Participating Financial Institutions in the Program.

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

Reference: Section 44559.2, Health and Safety Code.

### **§ 8078.31. Loan Enrollment**

In addition to the terms and conditions set forth in Section 8072, the following additional provisions shall apply to the Collateral Support Program:

(a) Participating Financial Institutions must submit to the Authority a Collateral Support Program Request prior to the funding of the loan, that includes all of the information required in Section 8072, in addition to the following:

(1) The type of the Qualified Loan, including whether the Qualified Loan is:

(A) A term loan, a bridge loan, or a line of credit; and

(B) A Green & Manufacturing Loan or a Small Business Loan.

(2) The term of support, which shall be up to a maximum of 48 months.

(3) The requested amount of Collateral Support, subject to the limits in this Section.

(4) The anticipated date of loan disbursement.

(5) Risk Assessment of the Borrower that shall include the following:

(A) Collateral Support Contribution, based on the Participating Financial Institution's usual credit policy;

(B) Any appraisals applicable to the use of the proceeds or collateral;

(C) An evaluation demonstrating the need for the Collateral Support;

(D) Description of all other available collateral, including that of any co-guarantors; and

(E) Confirmation that such other available collateral shall be liquidated first in the event of a default, work-out or charge-off; and the order in which it shall be liquidated prior to making a claim against the Collateral

(b) The Authority shall, upon receipt of a Collateral Support Program Request from the Participating Financial Institution, provide an Initial Approval if the Executive Director determines that the Qualified Loan meets the requirements of the Collateral Support Program.

(1) The Authority shall review each Collateral Support Program Request for completeness and for consistency with the terms and conditions for a Qualified Business and a Qualified Loan.

(2) The Executive Director shall notify the Participating Financial Institution of the Executive Director's determination within 15 business days after receipt by the Authority of all documentation required to make such determination. The Executive Director's determination shall be final.

(3) At the time of Initial Approval, the Executive Director shall also be authorized to require reasonable conditions or contingencies on any subsequent Final Approval to ensure the eligibility of the loan or Borrower.

(4) The Initial Approval will include confirmation of the following:

(A) The total anticipated amount of the Qualified Loan.

(B) The term of enrollment of the Qualified Loan.

(C) The total amount of the Collateral Support, including severely affected community incentives

if applicable.

(D) The applicable Closing Fee.

(E) Any conditions or contingencies deemed reasonable by the Executive Director.

(5) Upon the Initial Approval of the Collateral Support Program Request, the Authority will issue notice of such approval with instructions for the Participating Financial Institution to open a Loss Reserve Account pursuant to Section 8078.32 and deposit the Borrower's Closing Fee prior to the disbursement of the loan.

(6) The Initial Approval of the Collateral Support Program Request is valid for ninety (90) days.

(c) Within fifteen (15) business days of the closing of a Qualified Loan with Initial Approval, the Participating Financial Institution shall complete and submit to the Authority the following for Final Enrollment:

(1) Changes, if any, to the total amount of the Qualified Loan.

(2) Changes, if any, to the term of enrollment of the Qualified Loan.

(3) Revisions, if any, to the Risk Assessment of the Borrower.

(4) Documentation responsive to any conditions or contingencies placed on the Collateral Support Program Request.

(5) All certifications and representations required by the Participating Financial Institution and Borrower.

(6) Proof of Closing Fee deposit and Loss Reserve Account opening.

(7) The date of the disbursement of loan proceeds to the Borrower.

(d) Collateral Support shall be determined based on the type of loan, amount of loan, and term of loan enrollment as follows:

(1) Green & Manufacturing Loans are eligible to receive up to 40% of the loan value, up to a maximum Contribution of \$2,500,000.

(2) Small Business Loans are eligible to receive up to a maximum Contribution of \$500,000 as follows:

(A) Total loan values in the amount of \$50,000 to \$250,000 are eligible to receive Collateral Support up to 40% of the loan value.

(B) Total loan values in the amount of \$250,000 to \$20,000,000 are eligible to receive Collateral Support up to 20% of the loan value for loans with a 4-year term of support, or Collateral Support up to 30% of the loan value for loans with a 3-year term of support.

(3) All loans are eligible for an additional Severely Affected Community (SAC) Contribution if the Qualifying Business is located in a Severely Affected Community, in an amount not to exceed 25% of the Collateral Support, as long as the total amount of the Collateral Support in addition to the Severely Affected Community (SAC) Contribution does not exceed the maximum Contribution permitted for the type of loan.

(e) Closing Fees shall be calculated based on the amount of Collateral Support (exclusive of the additional Severely Affected Community (SAC) Contribution), the type of loan, and the term of loan enrollment as follows:

(1) For all loan types, there shall be a minimum Closing Fee of 0.50% of the Collateral Support, or \$500, whichever is greater.

(2) All loan types will be subject to Closing Fees based on the Term of Support as follows:

(A) If Term of Support is less than or equal to 12 months, the fee will be 0.5% of the Collateral Support.

(B) If Term of Support is greater than 12 months, but does not exceed 24 months, the fee will be 0.75% of the Collateral Support, unless the loan is for a Bridge Loan, in which case the fee will be 0.50% of the Collateral Support.

(C) If Term of Support is greater than 24 months, but does not exceed 36 months, the fee will be 2.00% of the Collateral Support.

(D) If Term of Support is greater than 36 months, but does not exceed 48 months, the fee will be 2.75% of the Collateral Support.

(3) For lines of credit, the fee will be calculated based on the Collateral Support amount as provided subdivision (e)(2). Prior to the expiration of the original Term of Enrollment, the Participating Financial Institution may request an extension, contingent upon current underwriting and subject to a 1.0% fee per year for each annual renewal up to a maximum of 48 months.

(4) For Bridge Loans, prior to the expiration of the original Term of Enrollment, the Participating Financial Institution may request an extension in writing. There is no fee associated with an approved extension as long as the total Term of Support as extended does not exceed 24 months. If the effect of any extension or series of extensions would increase the total Term of Support for the Bridge Loan into a tier associated with a higher Closing Fee, then any difference between the fees paid at closing and the newly calculated fees associated with the amended Term of Support would be charged to the Participating Financial Institution upon approval of the extension.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.  
Reference: Sections 44559.2, 44559.4 and 44559.12, Division 27, Health and Safety Code; and  
Section 1798.17, Civil Code.

### **§ 8078.32. Loss Reserve Accounts**

In addition to the requirements and procedures applicable to Loss Reserve Accounts provided in  
Section 8073, the following requirements and procedures shall apply only to the Collateral  
Support Program.

(a) A Loss Reserve Account shall be created for each Qualified Loan enrolled in the Collateral  
Support Program.

(b) Except for Bridge Loans and lines of credit, in conjunction with the loan anniversary for each  
Qualified Loan, the Authority shall recapture from each Loss Reserve Account a percentage of  
the Collateral Support according to an incremental recapture schedule, for use for future  
Collateral Support Program cash deposits, Contributions, and administrative expenditures. The  
percentage to be returned for each Annual Recapture will be based on the original Term of  
Support. The entire amount of Collateral Support for Bridge Loans and lines of credit will be  
recaptured at the expiration of the Term of Support.

(c) Annual Recapture is based on the Term of Support as follows:

(1) If Term of Support is less than or equal to 12 months, then 100% of the Collateral Support  
and Severely Affected Community (SAC) Contribution is recaptured at the expiration of the term  
of support.

(2) If Term of Support is greater than 12 months, but does not exceed 24 months, then 50% of  
the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon  
the Annual Recapture date and at the expiration of the term of support

(3) If Term of Support is greater than 24 months, but does not exceed 36 months, then 33.3% of  
the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon  
each Annual Recapture date and at the expiration of the term of support.

(4) If Term of Support is greater than 36 months, but does not exceed 48 months, then 25% of  
the Collateral Support and Severely Affected Community (SAC) Contribution is recaptured upon  
each Annual Recapture date and at the expiration of the term of support.

(d) Upon receipt of a Default Notification from the Participating Financial Institution, the Annual  
Recapture is suspended. Submittal of Default Notification does not suspend the Authority's  
withdrawal of interest and other income from the Loss Reserve Account. If the default or  
delinquency affecting the Qualifying Loan is subsequently resolved through a Change in Terms,  
settlement, or other workout which avoids charge-off of the loan, the Participating Financial



Institution shall promptly withdraw the Default Notification, and the Annual Recapture will resume according to the original schedule and loan anniversary date.

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.

### **§ 8078.33 Claim for Reimbursement**

(a) Upon the default of an enrolled loan, the Participating Financial Institution must submit a written Default Notification, or prior to the expiration of the Term of Support, in order to suspend further Annual Recapture.

(b) For a loan in default, the Participating Financial Institution shall provide in each Quarterly Report a short report of the status of the loan, including a short narrative of the loan collection history, and the status of the attempt to work out the default including the sale of proceeds or attempts to liquidate collateral.

(c) If the default or delinquency affecting the Qualifying Loan is subsequently resolved through a Change in Terms, settlement or other workout which avoids charge-off and collateral liquidation of the loan, the Participating Financial Institution shall promptly withdraw the Default Notification, and the Annual Recapture will resume according to the original schedule and loan anniversary date.

(d) Within thirty (30) calendar days following charge-off and collateral liquidation, whichever is later, the lender will submit a written claim for Collateral Support Payment, including: a history of the account payments, the date of charge-off, the complete loan collection history, any attempts to work out the default prior to charge off, the sale of proceeds, and the success of attempts to liquidate collateral and guarantees pledged at closing in advance of the Collateral Support.

(e) The Collateral Support shall not be claimed by a Participating Financial Institution in lieu of pursuing and liquidating pledged collateral. All pledged collateral must be liquidated consistent with the participating financial institution's usual method for loans not enrolled in the Collateral Support Program.

(f) After liquidation of all pledged collateral for a charged-off loan, a Participating Financial Institution may be reimbursed for: the amount of loan principal charged-off net liquidated collateral; reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including the preservation of collateral, and other related costs; and accrued and unpaid interest. Proper documentation of any claimed expenses shall be presented at the time of the claim. The amount paid on a claim will never exceed the present amount in the Collateral Support Loss Reserve account.

(g) If, in the attempt to work out a default or charge-off, a Participating Financial Institution seeks to have an amended or new loan or debt structure with the Borrower covered by Collateral

Support, the Participating Financial Institution shall submit a Collateral Support Program Request pursuant to Section 8078.31 and the Authority shall review it as a new loan or Refinance subject to all Program requirements, including fees if applicable to comport with any Change in Terms from the original Qualified Loan.

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.

#### **§ 8078.34 Subrogation**

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the Collateral Support Program.

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

#### **§ 8078.35 Termination and Withdrawal from the Program**

The procedures for termination and withdrawal from the program set forth in Section 8076 shall be followed for loans enrolled in the Collateral Support Program.

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