

# **CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

## **TITLE 4, DIVISION 11, ARTICLE 7**

### **INITIAL STATEMENT OF REASONS**

#### **Introduction**

Pursuant to Article 8, Section 44520(b) of the Health and Safety Code, the California Pollution Control Financing Authority (the “Authority” or “CPCFA”) is authorized to adopt these regulations which are necessary for the immediate preservation of the public peace, health and safety, and general welfare.

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)

The proposed additions to the regulations allow the Authority to include provisions specific to the CalCAP Financing Program ensure program clarity and program continuity, and to refine and clarify program features in the Collateral Support Program and CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP/ARB”).

#### **Statement of Benefits**

The proposed regulations help ensure program continuity to meet California’s goals associated with promoting and protecting public health, welfare, and ecological resources through the effective and efficient reduction of air pollutants while recognizing and considering the effects on the economy of the State.

The reason for the changes to the Authority’s California Capital Access Program (“CalCAP”) regulations are to ensure program continuity for the specialty programs which are anticipated to run out of funds, and to refine and clarify program features in the Collateral Support Program and CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP/ARB”), which were formerly defined by interagency agreements with federal and state agencies. The primary change is to adopt a voluntary recapture mechanism to recycle older contributions to support future enrollments in the CalCAP for Small Business and CalCAP/ARB programs. The Regulations are necessary to implement and administer the CalCAP/ARB per the direction of the Air Resources Board. The Authority is also amending the regulations to incorporate program rules from the Authority’s allocation agreement with the U.S. Treasury Department, which expired March 31, 2017, to ensure clarity for the Participating Financial Institutions participating in the program. 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.

All numerical dollar amounts, percentages, time-frames, and similar figures were determined to be necessary in the exercise of judgment of the Authority, balancing the needs of the program, lenders, and borrowers.

## Section Analysis

### **§ 8070. Definitions**

Section 8070(c). Adds the term “Change in Terms” defined as the process to report any change in material terms of an enrolled loan. This term is needed to distinguish between a new loan established through a Refinance and an existing loan with revisions to the terms. The Authority will be able to determine if the changes in terms affect the eligibility of the original loan enrolled under the program.

Section 8070(d). Clarifies the term “Contribution” as funds deposited in the loan loss reserve account by the Authority or an Independent Contributor. This distinction is needed to eliminate confusion between the funds deposited in the Loss Reserve Account by the Authority or Independent Contributor and funds deposited by the Participating Financial Institution or Borrower.

Section 8070(f). Eliminates the word “Premium” or “Premiums” from the definition. This change simplifies the reference to lenders or borrower’s contribution, and eliminates confusion of the CalCAP program with an insurance program. It adds clarity by limiting the reference to the lender and borrower’s contribution to one single word “fee”. The fees are clearly non-refundable as compared to the term “premium” which might be associated with regular insurance provisions that allow for refunds.

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

Section 8070(p). Adds the term “Outstanding Principal Balance” in order to clarify how the balance amount will be calculated. The Outstanding Principal Balance is part of the Recapture calculation and is a term that needs to be updated every quarter and reported in the Quarterly Report. Different Financial Institutions calculate the outstanding principal balance with minor discrepancies, as it relates to the specific categories included in the calculation. This definition provides a standard calculation for all Participating Financial Institutions.

Section 8070(u). Updates the definition of “Qualified Loan” to add more specificity to the businesses that are excluded from participation in the program. The updates are necessary to provide clarification for the Participating Financial Institutions what type of businesses are not qualified to participate in the CalCAP program. The update is aligning the definition with state statute and federal regulations.

Section 8070(v). Adds the term “Quarterly Report”. This term is needed to assign a name for the report and clarify the exact due date for the submission of the report to the Authority. The data required to be provided in the Quarterly Report is an essential part of the Recapture calculation. Defining the term and specifying the exact data that has to be provided in the report, will ensure that all the Participating Financial Institution provide the same uniform data, allowing for a more efficient validation and reconciliation of the data.

Section 8070(w). Adds the term “Recapture”. The adoption of the recapture mechanism is necessary in order to recycle older contributions for enrolled loans to support future loan enrollments. Recapture of older contribution is a necessary tool for the sustainability of the CalCAP program, as it allows for recycling of funds under specified terms. The recycled funds will be used as contribution for future loan enrollments. The recycling of funds 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.

Section 8070(x). Adds the term “Refinance”. This is necessary to refine Program enrollment eligibility for specific types of financing. This term is needed to distinguish between a new loan established through a Refinance and an existing loan with revisions to the terms. The Authority will be able to determine if the Refinance of the original loan is eligible under the terms and conditions of each specific program.

Section 8070(y). Updates the term “Severely Affected Community” in order to eliminate unnecessary and outdated language.

#### **§ 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. This section is necessary to assess whether the applicant is financially stable and to ensure that the Loss Reserve Account is appropriately reflected on the balance sheet of the Participating Financial Institution.

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. Specific financial and banking industry guidelines provide the determining criteria for the Loss reserve Account.

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

#### **§ 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 and for the Authority to understand the scope of the project.

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 by specifying exact terms for the requested information, and editing the sections with newly defined terms. In case of a Refinance, it is essential to have the name of the prior loan lender to ensure that the prior lender is qualified under the program. Refinances of loans originated by the same lender that were not enrolled in the Program at the time of origination are not eligible for CalCAP enrollment.

Section 8072(c)(17). Adds and makes clarifications to the certification requirements of the Participating Financial Institutions by combining and eliminating repetitive language.

Section 8072(c)(17)(J). Adds the requirement in the certification submitted to the Authority regarding the refinancing of loans. Clarifies that refinancing by the Participating Financial Institution of an existing loan originated by the lender and not enrolled in the Program is not eligible.

Section 8072(c)(17)(K). Specifies the necessity of the Participating Financial Institution to provide the borrower with the Authority's Privacy Notice for the CalCAP for Small Business Loan Program. The Authority's Privacy Notice informs the borrower of the circumstances under which personal information may be disclosed. The notice is required under the California Information Practices Act (Civil Code section 1798.17).

Section 8072(c)(17)(L). Adds the requirements that the Participating Financial Institution certifies to providing the Authority with records related to the use of funds in the Loss Reserve Account. This provides the Authority with access to documentation needed for reconciliation of funds.

Section 8072(c)(18). Specifies conditions to which the borrower must certify in writing and the Participating Financial Institution must submit this certification with the application for loan enrollments. The certification assures the Authority that the borrower is committed and will abide by the conditions for loan eligibility, and confirms to the Authority the accuracy of the information.

Section 8072(i). Provides the time frame for the Participating Financial Institution to notify the Authority regarding a Change in Terms for enrolled loans and describes the process for submitting such notification. This provision eliminates the time spent by the Authority for reconciliation of accounts, Recapture of Contributions for loans with extended terms, and enrollment coverage for non-eligible loans. The provision also helps the Authority to ensure that the loan continues to remain an eligible Refinance.

Section 8072(k). Specifies that loan enrollments submitted after August 15, 2017, will be automatically subject to Recapture. This provision is necessary because funds from the Recapture will be used to support future loan enrollments. It provides clarity that all loans enrolled on or after

August 15, 2017 are subject to the Recapture, according to the procedure explained in the subsequent section.

### **§ 8073. 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.

Section 8073(b). Adds clarity to the reporting requirement for Loss Reserve Accounts held by the Participating Financial Institutions and the due date for submission. The submission of monthly statements for lender held Loss Reserve Accounts is critical for the reconciliation of funds which is performed on a monthly basis by the Authority.

Section 8073(c)(3). Adds the timely submission of the Quarterly Report to the funding conditions in the Loss Reserve Account. The Quarterly Report is essential for the Recapture calculation and non-compliance with program requirements provides the Executive Director with remedies.

Section 8073(d). Prohibits withdrawal from the Loss Reserve Accounts held by the Participating Financial Institution without express, written instruction from the Authority and includes authorization for Recapture withdrawal. This provision is necessary to prevent withdrawal from Loss Reserve Accounts held by Participating Financial Institutions without informing the Authority of such transactions.

Section 8073(e). Adds clarification to the process of loans enrolled in the Program that are assigned, transferred, pledged or securitized to another entity. This process requires prior written approval of the Executive Director to ensure that the third party is an entity qualified to participate in the Program. If the entity is not qualified to participate in the program, it cannot have any interest in the CalCAP enrollment.

Section 8073(f). Adds clarification to the data needed to be included in the Quarterly Reports if requested by the Authority and introduces suspension for failure to submit the Quarterly Reports. This provision is providing the Participating Financial Institution with the exact information required for compliance and assures consistency of the data collected and used for Recapture calculations. The suspension provision is an enforcement mechanism needed to ensure compliance with the Program, short of immediate termination.

Section 8073(g). Provides a full description of the Recapture process and the voluntary election process of the lenders to participate in this process. A threshold of 10% of the outstanding enrolled loan balance is a reasonable reserve in the Loss Reserve Account to provide loss protection. Recapture is necessary to recycle funds for Program sustainability. Contributions for loans that are charged off and have a pending or approved claim are excluded in order to offset funds that were used towards a loss. The opt-in provision permits Participating Financial Institutions to rely on original Program rules and their current portfolio can remain fully supported by the Loss Reserve Account. The recaptured funds will be used for the same Program providing sustainability of the Program.

Section 8073(h). Describes the process and timelines to be followed by the Authority prior to suspension and termination of a Participating Financial Institution from the Program, if the Participating Financial Institutions does not comply with the regulations. It provides the Authority with a remedy enforcement mechanism needed to ensure compliance with the Program.

#### **§ 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. The Program permits submission of reimbursement requests prior to exhaustion of collection efforts.

Section 8074(e)(6). Specifies the required documentation that needs to be submitted with the claim reimbursement request. This is necessary to ensure that the collection efforts for loans enrolled in the program are similar to regular procedures followed by the Participating Financial institution in the regular course of business.

#### **§ 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 so that the Loss Reserve Account can be closed. It distinguishes between the share of the Participating Financial Institution at the time of Termination and Withdrawal from the Program based upon the Participating Financial Institution participation in the Recapture.

#### **§ 8078.1. Preferred Lenders.**

This section is eliminated as periodic evaluation of the regulations determined that there is no need for this section. In order to simplify the regulation, this section is being eliminated because a Preferred Lender status was not requested or granted since this term was introduced.

#### **§ 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.

### **§ 8078.3. Definitions.**

This section is amended to adjust references throughout the definitions. 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. The numerical figures are based on the Interagency Agreement between the Authority and the Air Resources Board. This definitions are used specifically for the CalCAP/ARB Program.

Section 8078.22(a). This section defines “ARB”. It is needed in order to clarify who the independent contributor is since the Authority administers the financing program for the Independent Contributor.

Section 8078.22(b). This section defines “Eligible Cost” or “Eligible Purchase” as it relates to the ARB Program. This is necessary so that borrowers, lenders, and stakeholders understand what types of costs are eligible to be enrolled in the Program. The proceeds from the loan can be used to purchase specific types of vehicles and equipment that is in compliance with ARB’s Statewide Truck and Bus Regulations.

Section 8078.22(c). This section defines “Interagency Agreement”. The CalCAP ARB Program is administered based on the Interagency Agreement between the Authority and ARB. This Interagency Agreement is renewable each fiscal year and can be amended from time to time.

Section 8078.22(d). This section defines “On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation”. It is needed to clarify which act the California Code of Regulations is referencing when describing eligible costs.

Section 8078.22(e). This section defines the term “Program”, and is necessary to provide clarity throughout the regulations and other program materials since the Authority administers many similar financing programs. It is also necessary to identify the governing agreement of this Program.

Section 8078.22(f). This section provides a definition for “Qualified Business”. This is necessary because it imposes restrictions on which types of businesses are eligible borrowers in terms of the number of employees and number of trucks owned, the business’ total gross annual income from all sources and whether or not the business have a primary economic effect in California.

Section 8078.22(g). This section provides a definition for “Qualified Loan”. This is necessary to establish the maximum enrollment amount per borrower, the maximum interest rate annual percentage yield and the maximum term of the loan. This definition further serves to prohibit refinance of an existing loan, restricts loan proceeds for purchase of a trailer only or equipment not subject to On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. The criteria for program eligibility is determined by ARB based on the Statewide In-Use Truck and Bus Regulations.

Section 8078.22(h). This section provides a definition for “Truck Owner Operator”. For purposes of the ARB Program eligibility is extended from small businesses to include also driver who own and operate their own trucks to enable industry specific features. It also emphasizes that the eligible business has to have more than 51% of its business activity in California.

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

This section describes how financial institutions may apply to participate in the Air Resources Board Program. The content of the application has already been established in section 8071 of the regulations, but is restated in this section for clarity and continuity of the ARB Program.

### **§ 8078.24. Loan Enrollment.**

Section 8078.24 (a). This section clarifies that the Participating Financial Institution sets the terms and conditions of the Qualified Loans, which is necessary to ensure that the Authority is not involved in the underwriting process.

Section 8078.24(b). This section describes the circumstances under which a Participating Financial Institution may enroll a Qualified Loan under the Program. This is necessary in order to set a standard by which the Authority may reject applications for enrollment if a lender fails to submit the application to the Authority in a timely manner.

Section 8078.24(c). These describe content required for the loan enrollment application, and have already been established in section 8072(c) of the regulations, but are restated in this section for clarity and continuity of the CalCAP/ARB Program. 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. 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, pursuant to the terms of the Interagency Agreement with ARB administered by the Authority.

Section 8078.24(d). This section specifies that all loan enrollments submitted after August 15, 2017 will be automatically subject to Recapture. Each existing and future Participating Financial Institution is hereby informed that all loan enrollments submitted after August 15, 2017, will be subject to the Recapture process, with no exceptions.

### **§ 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. A description of how loss reserve funds are to be utilized and managed is will ensure accountability and transparency.



Section 8078.25(a). This section describes the purpose of establishing a Loss Reserve Account for a Participating Financial Institution and is already established in a substantially similar form in existing regulation Section 8073(a). The section provides the thresholds for the three tier Contribution rates that determine the percentage of Contribution a Participating Financial Institution Loss Reserve Account will receive from the Authority if a loan is enrolled. The thresholds are determined by the amount of Contributions deposited into the Lender's Loss Reserve account and not by the enrolled Loan volume. For lenders who have not reached \$500,000 in contributions yet, the percentage of funding for each loan enrolled shall be 14 percent. For lenders who have reached \$500,000 in contributions but less than \$1.5 million in contributions, the percentage of funding for each loan enrolled shall be 7 percent. For lenders who have exceeded \$1.5 million in contributions, the funding percentage for each loan shall be 4 percent. The Loss Reserve Account also allows the lender to receive claim reimbursements for defaulted loan enrollments in accordance with Section 8078.26.

Section 8078.25(b). The section establishes that the Executive Director has the Authority to determine if the lender's Loss Reserve Account will be held by the Participating Financial Institution or the Program Trustee. This section states that lenders that hold Loss Reserve Accounts at their own institution must provide a monthly bank statement to CPCFA no later than the 15<sup>th</sup> of each month. This is necessary to allow CPCFA to reconcile and monitor the Loss Reserve Account to ensure funds are not being withdrawn without CPCFA's authorization. CPCFA believes 15 days into the month is ample time for the lender to provide a bank statement balanced with CPCFA's need to timely monitor Loss Reserve Accounts held outside of the trustee.

Section 8078.25(c). This section describes the requirements for the Loss Reserve Account held by a Participating Financial Institution. It also provides the conditions under which the Authority will not deposit any Contributions into the Loss Reserve Account. This provides a remedy in case of non-compliance with account establishment and maintenance charges, and non-timely submission of monthly statements, which would prevent the Authority from proper reconciliation of funds. It also establishes the risk rating a Participating Financial institution needs in order to be able to maintain the Loss Reserve Account at its own institution.

Section 8078.25(d). This section establishes ARB as the owner of all of the funds in the loss reserve account and the Authority as the administrator of these funds. It provides the Executive Director's the authority to withdraw improperly deposited funds and accrued interest that has been credited to the account, as well as funds subject to recapture. This section is necessary to ensure there is no misunderstanding among participating lenders regarding whether they own any of the funding placed into their reserve account and to notify them in advance of the circumstances under which the Executive Director may withdraw funds from the account.

Section 8078.25(e). Adds clarification to the process of loans enrolled in the Program that are assigned, transferred, pledged or securitized to another entity. This process requires prior written approval of the Executive Director to ensure that the third party is an entity qualified to participate in the Program. If the entity is not qualified to participate in the program, it cannot have any interest in the CalCAP enrollment.

Section 8078.25(f). Adds clarification to the data needed to be included in the Quarterly Reports if requested by the Authority and introduces suspension for failure to submit the Quarterly Reports. The data necessary to allow CPCFA to monitor loans that are in default to ensure funds are available for claim reimbursements. This provision is providing the Participating Financial Institution with the exact information required for compliance and assures consistency of the data collected and used for Recapture calculations. The suspension provision is an enforcement mechanism needed to ensure compliance with the Program, short of immediate termination.

Section 8078.25(g). This section states the Executive Director's authority to withdraw the Authority's contribution from the lenders' Loss Reserve Accounts when the loan matures or upon the termination of loan coverage, whichever is earlier. This is necessary to ensure there is no misunderstanding between CPCFA and the Participating Financial Institutions regarding the funds subject to the Recapture. Provides a full description of the Recapture process and the voluntary election process of the lenders to participate in this process. A threshold of 10% of the outstanding enrolled loan balance is a reasonable reserve in the Loss Reserve Account to provide loss protection. Recapture is necessary to recycle funds for Program sustainability. Contributions for loans that are charged off and have a pending or approved claim are excluded in order to offset funds that were used towards a loss.

The opt-in provision permits Participating Financial Institutions to rely on original Program rules and their current portfolio can remain fully supported by the Loss Reserve Account. The recaptured funds will be used for the same Program providing sustainability of the Program.

This section also describes the measures CPCFA will take to notify Participating Financial Institutions of the dollar amounts which will be withdrawn from the Loan Loss Reserve Accounts due to the loans' eligibility for recapture. This is necessary in order to avoid misunderstandings with the lenders related to how much remains in the lender's Loan Loss Reserve Account for potential claims. The recaptured funds will be used for future program enrollments and the Interagency Agreement with ARB provides for seven percent

Section 8078.25(h). Describes the process and timelines to be followed by the Authority prior to suspension and termination of a Participating Financial Institution from the Program, if the Participating Financial Institutions does not comply with the regulations. It provides the Authority with a remedy enforcement mechanism needed to ensure compliance with the Program.

#### **§ 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. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans. This section describes how financial institutions may file claims for reimbursement with CPCFA in the CalCAP ARB Financing Program. The content of the claim application and claim procedure have already been established in Section 8074 of the regulations but is restated in this section for clarity and continuity of the CalCAP ARB Financing Program. The additional provision to this section is necessary if potential compliance issues may

arise regarding eligibility of the loan or use of loan proceeds which the claim was based on. § 8078.27. Subrogation.

This section describes the procedures for subrogation in the CalCAP ARB Program. The content of the subrogation procedures has already been established in Section 8075 of the regulations but is restated in this section for clarity and continuity of the CalCAP ARB Program.

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. 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 the procedures for termination and withdrawal from the CalCAP ARB Financing Program. The content of the termination and withdrawal procedures has already been established in Section 8076 of the regulations but is restated in this section for clarity and continuity of the CalCAP ARB Financing 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. This is necessary to provide a description on how a Participating Financial Institution can withdraw from the Program. It also describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

#### **§ 8078.29 Definitions.**

Section 8078.29(a). This section defines "Annual Fee" as it relates to the Collateral Support Program. This is necessary so that borrowers, lenders, and stakeholders understand that the Authority charges fees annually for lines of credit for a total of 48 months.

Section 8078.29(b). This section defines "Annual Recapture" as it relates to the Collateral Support Program. This is necessary so that borrowers, lenders, and stakeholders understand that a percentage of the original Collateral Support Contribution is repaid to the Authority on an annual basis. Recapture is necessary to recycle funds for Program sustainability.

Section 8078.29(c). This section defines "Bridge Loan" as it relates to the Collateral Support Program. This is necessary so that borrowers, lenders, and stakeholders understand what types of loans are eligible to be enrolled in the Program.

Section 8078.29(d). This section defines "Collateral Support" or "Collateral Support Contribution" as a cash deposit offered and underwritten by the Authority covering a collateral shortfall of a Qualifying Loan of an otherwise credit-worthy Borrower. This is necessary to distinguish between the funds deposited in the Loss Reserve account by the Authority and funds deposited by the Participating Financial Institution or Borrower.

Section 8078.29(e). This section defines “Collateral Support Program Approval” which is necessary for borrowers, lenders, and stakeholders to understand that the Authority must approve all Collateral Support Requests for a Qualified Loan.

Section 8078.29(f). This section defines “Collateral Support Program Request” which is necessary to borrowers, lenders, and stakeholders to understand what must be submitted to the Authority to apply for Collateral Support. This is necessary so that borrowers, lenders, and stakeholders understand that the Collateral Support Request must be submitted to the Authority to apply for Collateral Support.

Section 8078.29(g). This section defines “Closing Fee” which is necessary so that borrowers, lenders, and stakeholders understand that a fee is charged prior to the disbursement of the Qualified Loan based on the original amount, term of support, and type of Qualified Loan.

Section 8078.29(h). This section defines “Default Notification” which is necessary in order to halt Recapture of an enrolled loan.

Section 8078.29(i). This section defines “Final Approval” which is necessary so that borrowers, lenders, and stakeholders understand that this is a discretionary approval of the Collateral Support offered and underwritten by the Authority after the submission of the final loan documents and payment of the Closing Fee by the Participating Financial Institution.

Section 8078.29(j). This section defines “Final Enrollment” which is necessary so that borrowers, lenders, and stakeholders understand that this is a discretionary approval of the Collateral Support offered and underwritten by the Authority after the submission of final loan documents and payment of the Closing Fee by the Participating Financial Institution.

Section 8078.29(k). This section defines “Green & Manufacturing Loans”. This is necessary so that borrowers, lenders, and stakeholders understand what types of loans are eligible for an additional contribution of Collateral Support.

Section 8078.29(l). This section defines “Initial Approval” which is necessary for borrowers, lenders, and stakeholders to understand that this discretionary and preliminary approval by the Authority of a Collateral Support Program Request submitted to the Authority, including any conditions, contingencies or additional parameters specified by the Authority necessary for the Final Approval of the Collateral Support offered and underwritten by the Authority must be received.

Section 8078.29(m). This section defines “Program”, and is necessary to provide clarity throughout the regulations and other program materials since the Authority administers many similar financing programs.

Section 8078.29(n). This section defines “Qualified Business”. This is necessary because it imposes restrictions on which types of businesses are eligible borrowers in terms of number of employees.

Section 8078.29(o). This section defines “Qualified Loan”. This is necessary to establish the maximum enrollment amount per borrower, clarification that the proceeds of the loan may not be disbursed to the Borrower prior to the Authority’s Initial Approval, and certification that the loan being made by Participating Financial Institution is to a credit-worthy Borrower for a Collateral shortfall in order to be eligible for the Program.

Section 8078.29(p). This section defines “Principal Loan Amount”. This is necessary to establish the minimum and maximum Qualified Loan disbursed to an eligible borrower in order to be eligible for the Program.

Section 8078.29(q). This section defines “Risk Assessment” which is necessary so that borrowers, lenders, and stakeholders understand what type of documents lenders are expected to collect and borrowers are expected to furnish.

Section 8078.29(r). This section defines “Small Business Loans” as the same definition as a Qualified Loan. This is necessary to clarify the term because it can be used interchangeable.

Section 8078.29(s). This section defines “Severely Affected Community (SAC) Contribution”. This is necessary because the Authority will deposit an additional Collateral Support contribution when the borrower is located in a Severely Affected Community. The Authority provides this incentive to assist those communities that suffer from areas of high unemployment.

Section 8078.29(t). This section defines “Term of Support” which is necessary for borrowers, lenders, and stakeholders to understand that the maximum amount of time a loan is enrolled in the Program is 48 months from the date of the first disbursement of the loan.

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

This section describes how financial institutions may apply to participate in the Collateral Support Financing Program. The description of the documents needed for a Financial Institution to enroll in the Collateral Support Financing Program, provides the Authority with the information needed to evaluate whether the Financial Institutions qualifies for participation in the Program and aligns the regulations with the state and federal program rules that provided the initial allocations. The content has already been established in section 8071 of the regulations, but is restated in this section for clarity and continuity of the Collateral Support 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 specific information concerning the borrower and the project, and submit a lender certification that the application meets the Collateral Support Financing Program policies and regulations. The requested application provides the Authority with the information needed to evaluate whether the loan is qualified for enrollment in the Collateral Support Financing Program, and aligns the regulations with the state and federal program rules that provided the initial allocations.

Section 8078.31(a)(1-5) These sections describe what information is needed for the loan enrollment by specifying the type of loan, term of support, requested amount of Collateral Support, anticipated date of loan disbursement, and the requirements for the risk assessment. This section also clarifies that an Initial Approval from the Authority is necessary in order for the Authority to determine if the Collateral Support Request is eligible for the Program.

Section 8078.31(b)(1-5) These sections describe how the Authority will review and process each Collateral Support Request within the specified timeframe of 15 business days after receipt by the Authority of all required documentation. These sections also describes the process of issuing an initial Approval of the Collateral Support Program Request that is valid for 90 days of issuance with instructions to open a Loss Reserve Account and Deposit the Borrower's Closing Fee prior to the disbursement of the loan. These sections are necessary to inform lenders that Executive Directors determination of the Collateral Support Request is final.

Section 8078.31(c)(1-7) These sections describe what information is needed within 15 business days of the closing of the Qualified Loan for Final Enrollment for Participating Financial Institutions that have received an Initial Approval. This section is necessary in order for the Authority to determine if the Collateral Support Request is eligible for the Program and in which the date of disbursement must be after the date of the Initial Approval, and prior to the Final Enrollment.

Section 8078.31(d)(1-3) These sections determines how much Collateral Support shall be provided based on type of loan, total loan amount, and whether or not the loan is eligible for an additional Contribution based on the Severely Affected Community (SAC). This is necessary because the Authority provides this incentive to assist those communities that suffer from areas of high unemployment.

Section 8078.31(e)(1-2) This section describes how the closing fee will be calculated based on the amount of the Collateral Support (not including the Severely Affected Community (SAC) Contribution), the type of loan, and tem of the enrollment. This section is necessary to inform borrowers and lenders that a minimum fee in the amount of 0.50% of the Collateral Support or \$1,000 whichever is greater is required in order to be eligible for the Program.

Section 8078.31(e)(3) This section describes how fess will be calculated on lines of credit and gives Participating Financial institutions the option to renew lines of credit prior to the expiration of the original Term of Enrollment for up to 48 months. This section is necessary because a 1% fee is required for each renewal.

Section 8078.31(e)(4) This section describes how Participating Financial Institutions may request an extension for bridge loans prior to the expiration of the original Term of Enrollment. This is necessary because fees are associated with an approved extension has long as the total Term of Support does not exceed 24 months.

## **§ 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. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency, and to align the regulations with the state and federal program rules that provided the initial allocations.

Section 8078.32(a) This section describes that Participating Financial Institutions must establish a Loss Reserve Account for each loan enrolled in the Collateral Support Program.

Section 8078.32(b). This section determines the requirement of annual recapture based on the loan anniversary, loan type, and term of support. A percentage of the Collateral Support will be recaptured according to the incremental recapture schedule. Recapture is necessary to recycle funds for Program sustainability for the use of future Collateral Support Program Contributions and administrative expenditures.

Section 8078.32(c)(1-4) These sections clarify the percentage of Annual Recapture based on the Term of Support. If the 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. If the 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. If the Term of Support is greater than 24 months, but does not exceed 36 month, then 33% of the Collateral Support and Severely Affected Community (SAC) is recaptured upon each Annual Recapture date and at the expiration of the term of support. If the 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 dated and at the expiration of the term of support.

Section 8078.32(5) This section states that the Authority shall deposit all recaptured funds in the CalCAP Collateral Support Program Fund dedicated solely for future program and administrative expenditures for the Collateral Support Program. This section also states that the Authority may set aside up to 7 percent of all Recaptured funds for reasonably direct and indirect administrative costs of the Program.

Section 8078.32(d) This section describes how the Authority will respond to Default Notifications received from Participating Financial Institutions. If the Authority receives a Default Notification, the Annual Recapture is suspended, but the Authority is still authorized to withdraw interest and other income from the Loss Reserve Account. If the default or delinquency affecting the Qualifying Loan is 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.

### **§ 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.

Section 8078.33(a) This section describes the first step in filling a claim for reimbursement in that a 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.

Section 8078.33(b) This section describes what is required in Quarterly Reports for Collateral Support loans in default.

Section 8078.33(c) This section describes how the Authority will handle a default or delinquency of loans that are 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.

Section 8078.33(d) This section specifies the required documentation that needs to be submitted with the claim reimbursement request.

Section 8078.33(e) This section clarifies that Collateral Support shall not be claimed by a Participating Financial Institution in lieu of pursuing and liquidating pledged collateral. This is necessary to ensure that the collection efforts for loans enrolled in the program are similar to regular procedures followed by the Participating Financial institution in the regular course of business.

Section 8078.33(f) This section specifies what Participating Financial Institutions may be reimbursed for in submitting a Collateral Support Claim for Reimbursement and the amount of the reimbursement. This is necessary because the Authority will never pay a claim exceeding the present amount in the Collateral Support Loss Reserve account.

Section 8078.33(g) This section describes the process in the event that a Participating Financial Institution attempts to work out a default or charge-off. This is necessary to inform lenders what is required if a loan will be amended, new loan, or new debt structure with the Borrower covered by Collateral Support. The Authority shall review the 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.

### **§ 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. 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. The content has



already been established in section 8075 of the regulations, but is restated in this section for clarity and continuity of the Collateral Support Program.

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

This section is necessary to provide a description on how a Participating Financial Institution 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. The content has already been established in section 8076 of the regulations, but is restated in this section for clarity and continuity of the Collateral Support Program.

#### **Reliance**

The proposed regulations are the result of collaborative effort between the Authority, the California Air Resources Board and interested parties through public workshops.

#### **Alternatives Considered**

The Authority has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed regulations.

#### **Mandated Technology or Equipment**

The Authority has determined the proposed regulations do not mandate the use of specific technologies or equipment.

#### **Economic Impact Statement**

The Authority has determined that the proposed regulations will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons, because they do not impose any kind of restrictions or burdens on businesses or persons. The program is voluntary and the regulations provide financial incentives to lenders to make loans to small businesses for expansion, property acquisition or working capital and for compliance with the State's On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. Furthermore, the Authority has determined that the amended regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) of the Government Code.

**The creation or elimination of jobs within California:** The revisions and adoption of Sections 8070 through 8078.35 of the CPCFA Regulations are not expected to have a direct impact on the creation or elimination of jobs within the State of California, due to the limited amount of funding available to support small businesses and due to the nature of the uses of loan proceeds. The revisions and adoption of Sections 8070 through 8078.35 do not implement a new program, but rather, just clarifies aspects of already existing programs.

**The creation of new businesses or the elimination of existing businesses within the State of California:** The proposed amendment to sections 8070 through 8078.35 of the CPCFA Regulations is not expected to have a direct impact on creating new businesses, as these programs are in place already. However, the Authority anticipates the proposed amendment will help prevent the elimination of some existing businesses within the State of California because the Authority expects it will help small business owners obtain financing and capital necessary to purchase diesel exhaust retrofits and compliant heavy-duty trucks.

**The expansion of businesses currently doing business within the State of California:** The adoption of Sections 8078 -8078.35 of the CPCFA Regulations are not expected to have an impact on the expansion of businesses within the State of California. The program is designed to increase access to capital for small businesses and for small businesses and owner operators that seek to be compliant with On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation.

**The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:** The broad objective of the regulations is to provide access to financing for small businesses and to enable small businesses which have difficulty obtaining financing to purchase diesel exhaust retrofits and compliant heavy-duty trucks for compliance with the On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. It is anticipated that the increase in compliant equipment purchases will help meet California's goals associated with improving air quality and increasing the general well-being of California residents. The Authority anticipates that the proposed regulations will have some worker safety benefits, including reducing the equipment operator's health risk exposure to diesel particulate matter as well as the health risk exposure of California residents and the climate. The Authority expects that the proposed regulations will impact the state's environment, by improving the air quality through reduction in diesel particulate matter.

#### **Documents Relied Upon**

CPCFA did not rely upon any documents when preparing the proposed regulations.