

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Proposed Regulatory Action

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”) proposes to amend Sections 8072, 8073, 8078, 8078.22, 8078.24, 8078.25, and 8078.31 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the administration of the California Pollution Control Financing Authority’s California Capital Access Loan Program (“CalCAP”) for Small Business Program (“CalCAP/SB”), the Collateral Support Program (“CalCAP/CSP”) and the CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP/CARB”). These Proposed Regulations are necessary to ensure program clarity and continuity, and to refine and clarify program features of the California Pollution Control Financing Authority Act (the “Act”). The Proposed Regulations have been approved by the Office of Administrative Law (“OAL”) on an emergency basis, and this proposed rulemaking would make these changes permanent.

Authority and Reference

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

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

Informative Digest/Policy Statement Overview

Existing law establishes the 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 amendments to the regulations allow the Authority to include provisions specific to CalCAP. The regulations will refine and clarify some definitions, program requirements and features, and provide additional loan enrollment criteria pursuant to the contract with the California Air Resources Board (CARB).

The proposed amendments to the regulations allow the Authority to revise and update definitions and administrative procedures related to loan enrollment, and monitoring for the CalCAP/Small Business Program, the CalCAP/Collateral Support Program, and the CalCAP/CARB Program.

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.

Anticipated Benefits of the Proposed Regulations:

The broad objective of the amendments to the regulations is to refine and clarify some definitions and program requirements, to assist lenders and small business borrowers in response to the economic impact of the COVID-19 pandemic.

Determination of Inconsistency/Incompatibility with Existing State Regulations: Pursuant to California Code of Regulations, Title 1, Section 12(b), the proposed additions to the regulations repeat and

rephrase existing law to provide clarity to the CalCAP financing program's Participating Financial Institutions and qualified borrowers.

Government Code Section 11346.5(a)(3)(D) requires that the notice of proposed rulemaking shall include, "an evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations." CPCFA staff reviewed the California Code of Regulations and found that the only inconsistencies are those that are allowed by Health and Safety Code 44559.11(b), which authorizes the Authority to adopt regulations to establish alternate provisions as necessary to enable the authority to participate in the CalCAP Program. The seemingly inconsistent but statutorily compatible regulations are as follows:

- (a) Sections 8078.22, 8078.24, and 8078.25 define the terms and describes the program rules commonly used throughout the CalCAP/CARB. The numerical figures are based on the Interagency Agreement between the Authority and the Air Resources Board.

Changes to the Authority's CalCAP regulations are necessary to refine and clarify program features. In addition, the proposed regulations provide the necessary details for the implementation and administration of the CalCAP/CARB program. To ensure clarity for CalCAP's Participating Financial Institutions, these changes must be reflected in the regulations.

While these sections may initially seem inconsistent with existing regulation, Health and Safety Code section 44559.11(b) allows CPCFA to create alternate provisions in order to create sustainability for the program and to participate in a program with an alternate funding source, and in this instance, the sole funding source is recycled contributions and CARB funding.

§ 8072. Loan Enrollment

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

Section 8072(i)(4) Deletes the terms "a single" and adds the terms "an" and "eighteen (18) months" in relation to the Authority authorizing extensions of maturity dates for up to 18 months for loans.

Necessity. In consultation with Participating Financial Institutions and other stakeholders, it was determined that 180 days was not long enough to extend a loan and keep it out of default. One lender requested the extension be allowed up to three years, so after further discussion with the interested parties, it was agreed that 18 months would be beneficial to both the lenders and the borrowers, especially during the COVID-19 pandemic.

§ 8073. Loss Reserve Accounts

Section 8073(g)(3) Adds a specific minimum recapture threshold of 15% beginning in 2020.

Necessity. Several lenders proposed that we end the recapture process all together. This is not feasible at this time, because without additional funds being allocated to the program, recapture is necessary to sustain the program. As a compromise, and also due to the COVID-19 pandemic, we agreed to revert back to the 15% threshold indefinitely. Recapture is calculated after the close of the fiscal year on June 30. Recapture for all lenders beginning in 2020 will be at the 15% threshold.

§ 8078. Participation in the Program by Certain Public or Private Entities

Section 8078(a)(4) Deletes the term “and” to correct numerical formatting.

Section 8078(a)(5) Adds the term “and” to correct numerical formatting.

Necessity. The proposed amendment is necessary to correct formatting issues for consistency.

§ 8078.22 Definitions

Section 8078.22(g) Clarifies the term “Qualified Loan” by deleting part of the definition referencing the loss coverage for each qualified loan being no more than five (5) years.

Section 8078.22(h) Clarifies the term “Truck Owner Operator” to include Primary economic effect of the business activity in California and “the vehicle is registered in California”.

Necessity. The five year term was inadvertently added to the definition in a prior rulemaking. There is no requirement from the Air Resources Board or CalCAP that the loans in the CalCAP/CARB Program can only be enrolled for five years. With this removed, loans will be eligible to be enrolled for a maximum of ten years which is the same as our CalCAP for Small Business Program as defined in section 8072(j). It is a requirement of the Air Resources Board that vehicles enrolled in the program are registered in California.

§ 8078.24 Loan Enrollment

Section 8077.24(c)(10)(C) Adds “and the vehicle is registered in California, substantiated by the California Department of Motor Vehicles.” This is an added requirement of the Air Resources Board.

Section 8078.24(d)(3) Deletes the terms “a single” and “one hundred-eighty (180)” and adds the terms “an” and “eighteen (18) months” in relation to the Authority authorizing extensions of maturity dates for up to 18 months for loans.

Necessity. In consultation with the Participating Financial Institutions and other stakeholders, it was determined that the 180 days was not long enough to extend a loan and keep it out of default. One lender requested the extension be allowed up to three years, so after further discussion with the interested parties, it was agreed that 18 months would be beneficial to both the lenders and the borrowers, especially during the COVID-19 pandemic. It is a requirement of the Air Resources Board that vehicles enrolled in the program are registered in California.

§ 8078.25 Loss Reserve Accounts

Section 8078.25(a)(1)(B) Clarifies and updates the percentage of contributions in the Loan Loss Reserve account that exceeds \$500,000 to equal 10 percent of the enrolled amount.

Section 8078.25(a)(1)(C) Deletes this whole section because it no longer applies to the CalCAP/CARB Program.

Section 8078.25(g)(2) Adds the specific minimum recapture threshold of 15% beginning in 2020.

Necessity. The contribution amounts were revised per a directive memo from the Air Resources Board. This was in response to lender requests to increase the contribution amount for high volume lenders to encourage more loans, and due to the program receiving additional funding from the Air Resources Board to be able to increase the funding amounts. There was previously a three-tier structure outlining the contribution amount for each lender, based on the amount of funds in their loan loss reserve accounts. Now

there are two thresholds for contributions with the criteria being a balance below or equal to \$500,000 or a balance above \$500,000. The \$1.5 million threshold is no longer a criteria for determining the threshold. Several lenders proposed that we end the recapture process all together. This is not possible because recapture is a requirement in the CalCAP/CARB program per the Interagency Agreement with the Air Resources Board. In consultation with lenders and the Air Resources Board, we agreed to revert back to the 15% threshold indefinitely.

§ 8078.31 Loan Enrollment

Section 8078.31(d)(2)(B) Clarifies the percentage of support provided on loan amounts by deleting “20%” and adding “30%” for loans greater than “\$250,001 but no greater than” \$20,000,000.

Section 8078.31(d)(3) Adds this section to clarify that all loans enrolled in the Collateral Support Program are eligible for four (4) years of support.

Section 8078.31(e)(1) Updates the minimum closing fee by deleting “\$500” and adding “\$1,000”.

Necessity. This is a clarification to reflect the actual loans received and approved to make it specific to the two tiers of enrollment amounts. Loans have been enrolled for a maximum term of four years so this section is to clarify that it is the maximum for any size loan. The minimum fee was increased previously to account for costs of administering the program. Lenders were advised of the increase in the minimum fee during a lender roundtable webinar.

Disclosure Regarding the Proposed Action

The Authority has made the following determinations regarding the effect of the Proposed Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630: None.

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

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

Significant effect on housing costs: None.

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

Small Business: The proposed regulations will not have an effect on small business because the program is voluntary for any small business that seeks to apply for financial assistance in any of the CalCAP Programs.

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

directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

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

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 sustainable access to capital for small businesses that have difficulty obtaining financing. It is anticipated that the regulations implementing CalCAP/CARB will promote and protect public health and welfare of California residents, by replacing and upgrading older, polluting vehicles. More clean trucks on California's roads also boost the environment by reducing greenhouse gas emissions that contribute to global warming and climate change.

Consideration of Alternatives

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

The Authority invites interested parties to present statements with respect to alternatives to the Proposed Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries, and any questions regarding the substance of the Proposed Regulations must be submitted or directed to:

Doreen Smith, Program Manager
California Pollution Control Financing Authority
P.O. Box 942809
Sacramento, CA 94209-0001
Telephone: (916) 653-3993
Fax: (916) 589-2805
Email: Doreen.Smith@treasurer.ca.gov

Lauren Ross, Associate Treasury Program Officer
California Pollution Control Financing Authority
P.O. Box 942809
Sacramento, CA 94209-0001
Telephone: (916) 653-9249
Fax: (916) 589-2805
Email: Lauren.Ross@treasurer.ca.gov

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Regulations to the Authority. The written comment period on the Proposed Regulations ends at **5:00 p.m. (PT) on November 11, 2020**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time and day in order to be considered by the Authority.

Availability of Initial Statement of Reasons And Text of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Second Floor, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the California Regulatory Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Proposed Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

Public Hearing

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

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

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

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”) for Small Business Program (“CalCAP/SB”) 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 amendments to the regulations allow the Authority to include provisions specific to the CalCAP Finance Programs, ensure program clarity and program continuity, and to refine and clarify program features in the CalCAP Small Business Program (“CalCAP/SB”), CalCAP Collateral Support Program (“CalCAP/CSP”), and CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP/CARB”).

Statement of Benefits

The proposed amended 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 adoption of the regulations is beneficial by assisting Participating Financial Institutions and small business borrowers in response to the economic impact of Covid-19.

The reason for the changes to the Authority’s CalCAP regulations are to ensure program continuity. The primary changes in the proposed regulations is to revise and update definitions and administrative procedures related to loan enrollment and monitoring of the CalCAP for CalCAP Small Business Program (“CalCAP/SB”), CalCAP Collateral Support Program (“CalCAP/CSP”), and CalCAP Heavy-Duty Vehicle Air Quality Loan Program (“CalCAP/CARB”).

Section Analysis

§ 8072. Loan Enrollment

Section 8072(i)(4) Deletes the terms “a single” and adds the terms “an” and “eighteen (18) months” in relation to the Authority authorizing extensions of maturity dates for up to 18 months for loans. This change was needed with the determination that 180 days was not long enough to extend a loan and keep it out of default. Eighteen (18) months was deemed an acceptable length of time in consultation with Participating Financial Institutions and other stakeholders.

§ 8073. Loss Reserve Accounts

Section 8073(g)(3). Adds a minimum recapture threshold of 15% beginning in 2020. As a compromise with participating lenders to sustain the program, recapture will revert back to 15% threshold indefinitely due to the COVID-19 pandemic.

§ 8078. Participation in the Program by Certain Public or Private Entities

Section 8078(a)(4) Deletes the term “and” to correct numerical formatting deemed necessary for formatting consistency.

Section 8078(a)(5) Adds the term “and” to correct numerical formatting deemed necessary for formatting consistency.

§ 8078.22 Definitions

Section 8078.22(g) Clarifies the term “Qualified Loan” by deleting part of the definition in reference to the loss coverage for each qualified loan being no more than five (5) years. With this removed, loans will be eligible to be enrolled for a maximum of ten years which is the same as our CalCAP for Small Business Loan program as defined in section 8072(j).

Section 8078.22(h) Clarifies the term “Truck Owner Operator” to include Primary economic effect of the business activity in California and “the vehicle is registered in California” which is a requirement of the Air Resources Board.

§ 8078.24 Loan Enrollment

8078.24(c)(10)(C) Adds “and the vehicle is registered in California, substantiated by the California Department of Motor Vehicles.” This is an added requirement of the Air Resources Board.

Section 8078.24(d)(3) Deletes the terms “a single” and “one hundred-eighty (180)” and adds the terms “an” and “eighteen (18) months” in relation to the Authority authorizing extensions of maturity dates for up to 18 months for loans. This change was needed with the determination that 180 days was not long enough to extend a loan and keep it out of default. Eighteen (18) months was deemed an acceptable length of time in consultation with participating financial institutions and other stakeholders.

§ 8078.25 Loss Reserve Accounts

Section 8078.25(a)(1)(B) Clarifies and updates the percentage of contributions in the Loan Loss Reserve account that exceeds \$500,000 to equal 10 percent of the enrolled amount. There was previously a three tier structure outlining the contribution amount for each lender, based on the amount of funds in their loan loss reserve accounts. Now there are two thresholds for contributions with the criteria being a balance below or equal to \$500,000 or a balance above \$500,000.

Section 8078.25(a)(1)(C) Deletes this whole section because it no longer applies to the CalCAP CARB Financing Program. Deemed necessary for consistency.

Section 8078.25(g)(2) Adds specific minimum recapture thresholds for the year 2020 to 15%. As a compromise with participating lenders to sustain the program, recapture will revert back to 15% threshold indefinitely due to the COVID-19 pandemic.

§ 8078.31 Loan Enrollment

Section 8078.31(d)(2)(B) Clarifies the percentage of support provided on loan amounts by deleting “20%” and adding “30%” for loans greater than “\$250,001 but no greater than” \$20,000,000. This is a clarification to reflect the actual loans received and approved to make it specific to the two tiers of enrollment amounts.

Section 8078.31(d)(3) Adds this section to clarify that all loans enrolled in the Collateral Support Program are eligible for four (4) years of support. Loans have been enrolled for a maximum term of four years so this section is to clarify that it is the maximum for any size loan.

Section 8078.31(e)(1) Updates the minimum closing fee by deleting “\$500” and adding “\$1,000”. The minimum fee was increased previously to account for costs of administering the program. Lenders were advised of the increase in the minimum fee during a lender roundtable webinar.

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 8072, 8073, 8078, 8078.22, 8078.24, 8078.25, and 8078.31 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 8072, 8073, 8078, 8078.22, 8078.24, 8078.25, and 8078.31 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 8072, 8073, 8078, 8078.22, 8078.24, 8078.25, and 8078.31 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 8072, 8073, 8078, 8078.22, 8078.24, 8078.25, and 8078.31 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.

TEXT OF REGULATIONS

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority
Article 7. Capital Access Program for Small Businesses

Text of Modified Regulations

Changes are illustrated with an underline for proposed additions,
and a strikethrough for proposed deletions.

§ 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, 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 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 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, 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.

(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:

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

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

(C) 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.

(D) 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.

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

(F) 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.

(G) 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.

(H) The Participating Financial Institution has validated that the Borrower has secured or made application for all applicable licenses or permits needed to conduct business.

(I) The Participating Financial Institution has not, and will not, enroll any portion of the same loan in any other government program substantially similar to the Program.

(J) The Qualified Loan is not a Refinance of a loan previously made to the Borrower to the extent that the outstanding balance is not increased.

(K) 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.

(L) 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 the material terms of an enrolled loan change prior to maturity, including TRAC Leases assumptions, by submitting a Change in Terms notification within fifteen (15) business days after such change.

(1) If any of the terms other than the interest rate have changed, then the Participating Financial Institution shall also submit an amended loan enrollment application including new lender and borrower certifications, for the loan.

(2) The Participating Financial Institution shall deposit Fees pursuant to Section 8072 for any increase to the total loan amount.

(3) If the Authority determines that the information contained in the Change in Terms constitutes an ineligible Refinance, or not a Qualified Loan as defined in Section 8070, neither the original nor the revised loan will continue to be enrolled in the Program.

(4) Notwithstanding the ineligibility of a Refinance when the outstanding balance is not increased under Section 8070(u)(3), the Authority may authorize a ~~single~~ an extension of the maturity date of an enrolled loan for up to ~~one hundred eighty (180) days~~ eighteen (18) months, if the Participating Financial Institution has provided the Authority written certification to its credit policy that provides for such extensions of the maturity date. Such authorization is contingent upon the submittal of the Change in Terms notification, an amended loan enrollment application, and new lender and borrower certifications for the loan.

(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 on or after August 15, 2017 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 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 15th 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 30th.

(2) Recapture is not applicable for Contributions for Qualified Loans that are charged off as a result of a default, and have a pending or approved claim with the Authority, and are reported as such on the Quarterly Report.

(3) 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%).~~ Beginning in 2020, the minimum threshold shall be fifteen percent (15%).

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

(5) 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. Loans enrolled on or after August 15,

2017 will be deemed ineligible if the Participating Financial Institution has not first submitted its election in writing. For any Participating Financial Institution that submits its election in writing after August 15, 2017, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to this subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments on or after the date of its written election. 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.

(6) The Authority shall deposit all Recaptured funds in the CalCAP for Small Business Loan Program Fund dedicated solely for future program and administrative expenditures of the CalCAP for Small Business Loan Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct and indirect administrative costs of the Program.

(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 shall be for 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.

§ 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; and-

(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.

§ 8078.22. 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) Only fleets with ten (10) or fewer vehicles are eligible to participate in the Program. Determination of the fleet size must be based on the definitions and criteria in the Statewide Truck & Bus Regulation at California Code of Regulations, title 13, section 2025;

(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 Borrower’s 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, except for the assumption of a TRAC Lease for a loan already enrolled in the Program.

(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, and the vehicle is registered 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.

§ 8078.24. 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, and the vehicle is registered in California, substantiated by the California Department of Motor Vehicles.

(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 have 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.

(d) The Participating Financial Institution must notify the Authority whenever the material terms of

an enrolled loan change prior to maturity, including TRAC Lease assumptions, by submitting a Change in Terms notification within fifteen (15) business days after such change.

(1) If any of the terms other than the interest rate have changed, then the Participating Financial Institution shall also submit an amended loan enrollment application, including new lender and borrower certifications, for the loan.

(2) If the Authority determines that the changes in material terms constitutes an ineligible Refinance or not a Qualified Loan as defined in Section 8078.22, neither the original nor the revised loan will continue to be enrolled in the Program.

(3) Notwithstanding the ineligibility of a Refinance, the Authority may authorize ~~a single~~ an extension of the maturity date of an enrolled loan for up to ~~one hundred eighty (180) days~~ eighteen (18) months, if the Participating Financial Institution has provided the Authority written certification to its credit policy that provides for such extensions of the maturity date. Such authorization is contingent upon the submittal of the Change in Terms, an amended loan enrollment application, and new lender and borrower certifications for the loan.

(e) 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~~ 10 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 Institute shall submit to the Authority a monthly statement of the account activities and balance, no later than the 15th 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 30th.

(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%).~~ Beginning in 2020, the minimum threshold shall be fifteen percent (15%).

(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. Loans enrolled on or after August 15, 2017 will be deemed ineligible if the Participating Financial Institution has not first submitted its election in writing. For any Participating Financial Institution that submits its election in writing after August 15, 2017, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to this subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments on or after the date of its written election. 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.

(5) The Authority shall deposit all Recaptured funds in the CalCAP ARB Financing Program Fund dedicated solely for future program and administrative expenditures of the CalCAP ARB Financing Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct and indirect administrative costs of the Program.

(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 shall be for 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.

§ 8078.31. 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 and receive an Initial Approval prior to the funding of the loan, ~~that includes~~ . The Collateral Support Program Request Shall include, 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, including an evaluation demonstrating a strong credit profile of the borrower and the loan except for the lack of collateral;

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

(E) Confirmation that all such other available collateral shall be pledged and 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 Support.

(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, for consistency with the terms and conditions for a Qualified Business and a Qualified Loan, and to determine whether the Authority shall offer and underwrite the Collateral Support.

(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, contingencies, or additional parameters necessary to support a prudent underwriting of the Collateral Support by the Authority, including but not limited to additional requirements to ensure the eligibility of the Borrower and the loan, the availability of cash flow, the value of the available collateral, and the liquidation plan in the event of a default.

(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, or additional parameters 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 that has received 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,~~ or additional parameters 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. The date of the disbursement must be after the date of the Initial Approval, and prior to the Final Enrollment.
- (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 ~~\$250,000 to 001~~ but no greater than \$20,000,000 are eligible to receive Collateral Support up to ~~20%~~ 30% 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 a four (4) year term of support.
- (34) 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~~ \$1000, 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.