

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA CAPITAL ACCESS PROGRAM (CalCAP)**

Meeting Date: May 27, 2009

Consideration and Approval of Permanent Regulations and Permanent Rulemaking Process

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Summary. On January 28, 2009 staff received Board approval to go forward with amending and filing emergency regulations to expand the California Capital Access Program (CalCAP) and clarify items of interest. Staff now requests approval of permanent regulations and for staff to complete the permanent rulemaking process. Changes consist of:

- 1) Revisions to the definitions of “Fees” and “Financial Institutions”;
- 2) Addition of a *preferred lender status* for Participating Financial Institution’s that choose to participate in Independent Contributor programs; and
- 3) Provision for Independent Contributors to reimburse CPCFA for costs associated with administering Independent Contributor programs.

The primary driver of these changes is CPCFA’s recent engagement by the California Air Resource Board (ARB) to provide assistance to small business truckers that have been impacted by their recently enacted On-Road and Off-Road Diesel Emission Regulations. The proposed CalCAP regulation changes are intended to expand the CalCAP Independent Contributor Program and provide greater flexibility for ARB.

Background.

Business Model. The CalCAP Program is designed to encourage lending to small businesses that might otherwise be outside the normal underwriting criteria of participating lenders. To accomplish this, CalCAP established a loan loss reserve account in which borrowers and lenders are required to deposit a combined 4%-7% of the loan proceeds. CalCAP then matches the contribution of the lender and deposits these funds into the loan loss reserve account. If an enrolled loan does not perform, the lender can file a claim and recover its loss from the loan loss reserve account.

Need for regulation changes. As the popularity and success of the CalCAP program grows, the number of Participating Financial Institutions enrolled in the program increases. The proposed changes are designed to (1) expand CalCAP for programs funded by Independent Contributors, (2) streamline regulation language and make it consistent with statutory changes that are currently being considered which will expand programs funded by Independent Contributors and (3) clarify several items. The proposed amendments to the existing regulations are the result of conducting the emergency and permanent rulemaking processes with lenders, Independent Contributors and include staff recommendations.

As previously reported to the Authority, a *Summary of Changes* may be found in Attachment A. Attachment B provides a redline version of those portions of the CalCAP regulations being amended.

Regulatory Process. Previously, after the Authority approved amending the regulations staff opened an emergency rulemaking file with the Office of Administrative Law (OAL). The Authority adopted and amended regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public made no comments on the proposed amended emergency regulations within the 5 calendar filing of the regulations for OAL review. OAL reviewed and approved the emergency regulations; they are effective for 180 days (through August 13, 2009) during which the Authority began the permanent rulemaking process.

Staff began the permanent rulemaking process by preparing a notice of a proposed rulemaking that was published in the California Regulatory Notice Register, mailed to our participating lenders and interested persons, and posted the notice, text, and initial statement of reasons on the CPCFA website. The notice started the OAL 45-day public comment period that ended on May 25, 2009. Staff has ~~reviewed and responded to received no further~~ public comments, ~~(Attachment C) and has determined that the comments either (1) are accepted and are not substantive changes to the Notice Regulations or (2) are not accepted.~~

Upon Authority approval, a permanent rulemaking file will be submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective as permanent regulations 30 days later.

Timeline. Outline below is the estimated schedule.

Emergency Regulations

January 28, 2009	The Board approved the emergency regulations.
February 2, 2009	Emergency regulations filed with OAL.
February 12, 2009	Public comment period ended.
February 13, 2009	OAL review period ends. Emergency regulations were filed with the Secretary of State and are in effect.
August 13, 2009	Emergency regulations expire.

Permanent Regulations

March 27, 2009	The <i>Rulemaking File</i> and Notice of Publication was filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
April 10, 2009	OAL published Notice and 45-day public comment period began.
May 25, 2009	Public comment period regarding proposed regulations ended.
May 27, 2009	Results of public hearing requests, if any, are presented at CPCFA Board meeting. Present permanent regulations to Authority for adoption if no public comments are received warranting modification of the proposed regulatory changes.
May 29, 2009	Deliver permanent regulation package to OAL for 30-day review.

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June 29, 2009 OAL issues Approval of Certificate of Compliance and
files regulations with the Secretary of State.
July 29, 2009 Permanent regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend the CPCFA regulations for the CalCAP Program and authorize staff to proceed with the permanent rulemaking process and other actions related to the CalCAP regulation revisions.

**A RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING PERMANENT REGULATIONS AND RULEMAKING
PROCESS**

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) and 44559.5(f) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its California Capital Access Program ("CalCAP" or the "Program"), as authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to CalCAP set forth in Article 7 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law in the form currently on file with the Authority.

Section 2. The Chair and Executive Director of the Authority are hereby authorized to take necessary actions, including making technical changes to the Regulations as may be required for approval by the Office of Administrative Law, or substantive to the Regulations as required by statute and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

**Attachment A
Summary of Changes**

The proposed amendments to the existing regulations were circulated to all CalCAP participating lenders and posted on the CPCFA website for public comment before the commencement of the formal rulemaking process. The proposed amendments are outlined below.

Substantive Regulation Changes

1. **Section 8070(d).** *Revise the definition of “Fees” so that “Fee or Fees” means a fee or fees as set forth in Health and Safety Code Section 44559.4(c).* The existing regulation is redundant to the current statute; it defines the term “Fees” as a non-refundable fee, agreed to by the Participating Financial Institution and the Borrower, of no less than 2 percent and no more than 3-1/2 percent of the principal amount of the Qualified Loan which the Borrower shall be required to pay to the Participating Financial Institution for deposit in the Loss Reserve Account, together with an equal, matching amount which the Participating Financial Institution shall deposit in the Loss Reserve Account. The Borrower's share of the Fees may be paid from loan proceeds or in accordance with subdivision (f) of this section and Section 8078. The proposed revision will simply conform the definition in the regulations so that “Fees” is defined as set forth in Health and Safety Code Section 44559.4(c). Currently, a statutory change is being considered that would in conjunction with the regulation change allow lenders to pay the borrower’s portion of the loan loss reserve contribution. This revision will streamline implementation once the statutory change is enacted.

2. **Section 8070(e).** *Revise the definition of “Financial Institution” so that a “Financial Institution” means an institution as set forth in Health and Safety Code Section 44559.1(d).* **Similar to Section 8070(d) above,** the existing regulation is redundant to the current statute. The amendment will conform the definition of “Financial Institution” in the regulations to the “Financial Institution” as set forth in Health and Safety Code Section 44559.1(d). A statutory change is currently being considered that would expand the definition of “Financial Institution” for programs funded by Independent Contributors and this revision will streamline implementation once the statutory change is enacted.

3. **Section 8076 (c)(4)** *Add a provision where the Executive Director of the Authority can terminate the participation of a Participating Financial Institution in the Program for providing false or misleading information regarding the Participating Financial Institution to the authority, or failure to provide the authority with notice of material changes in submitted information regarding the participating financial institution.*

4. **Section 8078(a)(6).** *Add the requirement that Independent Contributors enter into a reimbursement agreement with CPCFA to cover the cost associated with the administration of Independent Contributor Programs.* Current CalCAP Regulations do not require Independent Contributors to reimburse the Authority for additional cost associated with the administration of Independent Contributor Programs.

5. **Section 8078(e):** *Exempts Independent Contributor contributions to loan loss reserve accounts from the maximum limitations as set forth in Health and Safety Code Section 44594.4(c).* Where an Independent Contributor elects to pay the matching contribution and

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6. the borrower's fee or the matching contribution and all fees the Independent Contributor is not subject to the limitations placed on borrowers, participating financial institutions and the authority.
7. **Section 8078.1.** *Insert a section for allowing Participating Financial Institutions that choose to participate in special programs funded by Independent Contributors to receive preferred lender status.* Where an Independent Contributor elects to pay the matching contribution and the borrower's fee or the matching contribution and all fees and funds are available, designated Participating Financial Institutions can participate as *preferred lenders* to process, close, service, and liquidate CalCAP guaranteed loans with reduced requirements and no prior approval by the Executive Director. Participating Financial Institutions will have to submit an application to the Authority for review and approval prior to being granted preferred lender status.

Clarifying Regulation Changes

1. **Section 8070 (s)(6) and Section 8072(c)(21).** *Current Regulations are ambiguous as to whether the \$1,500,000 maximum loan amount is for all Qualified Loans or only enrolled portions of Qualified Loans. These amendments clarify that the \$1,500,000 loan maximum is for Qualified Loans made to a Qualified Business. Section 8070(s)(6) is new; it clarifies that a Qualified Loan does not include any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower to have a total enrolled principal amount from all Participating Financial Institutions in excess of \$1,500,000. Section 8072(c)(21) clarifies that the principal amount of the loan (without regard to the amount to be enrolled) does not exceed \$1,500,000*
2. **Section 8072(f).** *Clarify that all Loans of \$500,000 or greater must be pre-approved prior to enrollment in CalCAP.* The proposed change to this section clarifies that a Loan equal too or greater than \$500,000 must be submitted to the Authority for pre-approval.

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§ 8070. Definitions.

In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:

(a) "Borrower" means a Qualified Business which obtains a Qualified Loan from a Participating Financial Institution.

(b) "Early Stage Loan" means each of the first \$500,000 of Qualified Loan made by a Participating Financial Institution.

(c) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.

(d) "Fees" ~~or "Fees"~~ means ~~a non-refundable a non-refundable fee, agreed to by the Participating Financial Institution and the Borrower, of no less than 2 percent and no more than 3 1/2 percent of the principal amount of the Qualified Loan which the Borrower shall be required to pay to the Participating Financial Institution for deposit in the Loss Reserve Account, together with an equal, matching amount which the Participating Financial Institution shall deposit in the Loss Reserve Account. The Borrower's share of the Fees may be paid from loan proceeds or in accordance with subdivision (f) of this section and Section 8078.~~ fee or fees as set forth in Health and Safety Code Section 44559.4(c).

(e) "Financial Institution" means ~~a federal or state-chartered bank, savings association, credit union, not for profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of the foregoing entities. A consortium of such entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.~~

~~(2) "Financial Institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter 1 of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter 1 of Title 13 of the Code of Federal Regulations, and a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter 1 of Title 13 of the Code of Federal Regulations.~~

~~(3) A financial institution described in paragraph (1) shall have at least one office in the State of California.~~

~~(4) A financial institution described in paragraph (2) shall be domiciled or have its principal office in the State of California.~~

~~an institution as set forth in Health and Safety Code Section 44559.1(d).~~

(f) "Independent Contributor" means any individual, company, corporation, institution, foundation, utility, government agency or other entity, including any consortium of these persons or entities, whether public or private (but excluding any Borrower), that, pursuant to the provisions of this Article, pays to a Loss Reserve Account the Matching Contribution and/or Fees payable by the Borrower and/or the Financial Institution.

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(g) "Individual" means a natural person, together, if applicable, with any of his or her spouse, parents, siblings or children or the parents or spouse of any of them.

(h) "Law" means Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the California Health and Safety Code, as amended from time to time.

(i) "Loss Reserve Account" means an account held by a Program Trustee or by any Participating Financial Institution that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Section 8073.

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

(k) "Money Market Fund" means an open-ended management investment company regulated under the Investment Company Act of 1940, as amended, which values its securities pursuant to Section 270.2a-7 of Title 17 of the Code of Federal Regulations.

(l) "Participating Financial Institution" means a Financial Institution that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.

(m) "Passive Real Estate Ownership" means ownership of real estate for the purpose of deriving income from speculation, trade or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be satisfied when a Participating Financial Institution makes a Qualified Loan to an Individual, or to a partnership or trust wholly owned or controlled by one or more Individuals, for the purpose of financing property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and in such case the Qualified Loan will be deemed to be made also to such Qualified Business.

(n) "Primary business location in California" means that a business will be deemed to be located in California if either:

(1) a majority of the employees of the business are located in California; or

(2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.

(o) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:

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- (1) At least 51 percent of the total revenues of the business activity are generated in California;
or
- (2) At least 51 percent of the total jobs of the business activity are created or retained in California.
- (p) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the Law.
- (q) "Program Trustee" means a bank or trust company, or the State Treasurer, chosen by the Authority from time to time to hold or administer some or all of the Loss Reserve Accounts.
- (r) "Qualified Business" means a Small Business Concern that meets both of the following criteria:
- (1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in California.
- (2) It has its Primary business location in California.
- (s) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. "Qualified Loan" does not include any of the following:
- (1) A loan for the construction or purchase of residential housing.
- (2) A loan to finance Passive Real Estate Ownership.
- (3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.
- (4) A loan, the proceeds of which will be used
- (A) to provide any of the following facilities: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, racetrack, airplane, skybox (or other private luxury box), health club facility, facility primarily used for gambling or to facilitate gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, any religious facility or organization, escort service, nudist camp, gun club, shooting range or gallery; or
- (B) in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.
- (5) ~~any~~ Any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.
- (6) ~~a~~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 from all Participating Financing Institutions in excess of \$1,500,000.
- (t) "Severely Affected Community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act, Chapter 12.8 (commencing at Section 7070) of Division 7 of Title 1 of

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the California Government Code; any area, as designated by the Executive Director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended; and any other comparable economically distressed geographic area so designated by the Executive Director from time to time.

(u) "Small Business Assistance Fund" means a fund of that name created by the Authority.

(v) "Small Business Concern" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years.

(w) "Standards" means the criteria, limited to geographical area and/or type of business, to be used by an Independent Contributor in selecting businesses to assist through the Program.

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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 10 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 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 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) Name, D/B/A (if any), address, telephone and fax number of the Borrower.
 - (2) Brief description of the Borrower's business and either the SIC Code(s) or the NAICS Code(s) applicable to such business.
 - (3) Brief description of the Borrower's regular activities and the amount of its annual revenues.
 - (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).
 - (6) Type of the Qualified Loan (e.g., line of credit, term loan, equipment loan).
 - (7) Date of the Qualified Loan.
 - (8) Interest rate applicable to the Qualified Loan.
 - (9) Term 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 refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing
 - (14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.
 - (15) Whether any portion of the Fees payable by the Borrower or the Matching 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 Matching 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 that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.

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- (18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.
- (19) Certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (20) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Matching Contribution.
- (21) ~~Certification that the aggregate principal amount of the loan (without regard to the amount to be enrolled), together with the all other Qualified Loans made by a Participating Financial Institution under the program to the borrower over the last three years (including all related entities among which a common enterprise exists), does not exceed \$1,500,000.~~
- (22) Certification that the Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid from loan proceeds.
- (23) Acknowledgment that the lending activities of the Participating Financial Institution are subject to safety and soundness standards as set forth in applicable federal banking regulations. The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17), (18) and (21) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.
- (24) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has secured or made application for all applicable licenses or permits needed to conduct business.
- (25) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.
- (26) Certification that the Borrower does not meet the Participating Financial Institution's normal underwriting criteria for making loans of the type sought to be enrolled and that without enrollment, the Participating Financial Institution would not make a loan.
- (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

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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 all applicable federal laws that regulate conflicts of interests and insider transactions and Section 120.140 of Title 13 of the Code of Federal Regulations.

~~(9)-(f)~~ The Participating Financial Institution shall pre-qualify with the Authority any qualified loan with a principal amount of \$500,000 or more.

~~(f)-(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 10 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.

~~(g)-(h)~~ Upon enrollment of a Qualified Loan, the Matching 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.

~~(h)-(i)~~ The Participating Financial Institution shall notify the Authority within 60 days after any extension or renewal of any enrolled loan which does not increase the loan amount. If the

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amount is increased, a new loan enrollment form shall be submitted within such time, and Fees shall be transmitted or deposited pursuant to Section 8072(b)(2) based on the increased amount.

~~(j)~~ The Participating Financial Institution shall notify the Authority of the work-out status on Qualified Loans for which extension/renewal or charge off status is not yet clear. The "Notification of Work-Out Status" form provided by the Authority shall be used to notify the Authority. The Participating Financial Institution shall have up to 240 days from such initial notification to inform the Authority of re-enrollment or charge off.

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8076. Termination and Withdrawal from Program.

(a) A Participating Financial Institution shall be authorized to withdraw from the Program after giving written notice to the Authority. Such notice shall specify either:

(1) that the Participating Financial Institution waives any further interest in the Loss Reserve Account (including for the reason that all Qualified Loans covered by the Loss Reserve Account have been repaid); or

(2) that the Participating Financial Institution will not enroll any further loans under the Program but that the Loss Reserve Account shall continue in existence to secure all Qualified Loans enrolled prior to such notice.

(b) After receipt of a notice under subsection (a)(1) or receipt of a certificate from a Participating Financial Institution which has withdrawn from the Program pursuant to subsection (a)(2), certifying that all Qualified Loans secured by the Loss Reserve Account have been repaid and that there are no pending claims for reimbursement under Section 8074, the remaining balance in the Loss Reserve Account shall be distributed to the Authority; provided that with respect to moneys deposited in the Loss Reserve Account after January 1, 1999 (and assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date), such moneys shall be distributed to the Authority and to the Participating Financial Institution in the amount of the Authority Share and the Participating Financial Institution Share, respectively. For purposes of this Section 8076, "Authority Share" means the ratio of the contributions made by the Authority (or any Independent Contributor on behalf of the Authority) to the Loss Reserve Account in question from January 1, 1999 to the date of calculation, to the total amount of contributions made to such Loss Reserve Account during that period, and "Participating Financial Institution Share" means 100 minus the Authority Share.

(c) The Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program, by notice in writing, upon the occurrence of any of the following:

(1) entry of a cease and desist order, regulatory sanction, or any other action against the Participating Financial Institution by a regulatory agency that may impair its ability to participate in the Program;

(2) failure of the Participating Financial Institution to abide by the Law or this Article; or

(3) failure of the Participating Financial Institution to enroll any Qualified Loans under the Program for a period of one year.

(4) Provision of false or misleading information regarding the Participating Financial Institution to the authority, or failure to provide the authority with notice of material changes in submitted information regarding the Participating Financial Institution.

In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans, but all previously enrolled Qualified Loans shall continue to be covered by the Loss Reserve Account until they are paid, claims are filed, or the Participating Financial Institution withdraws from the Program pursuant to Section 8076(a)(1).

(d) If for a consecutive 12-month period the amount in the Loss Reserve Account continuously exceeds the outstanding balance of all the Participating Financial Institution's Qualified Loans made since the beginning of the Program, the Executive Director shall be authorized to withdraw

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any such excess to bring the Loss Reserve Account down to an amount equal to 100 percent of the outstanding balance, in the following manner: (i) first, distributions shall be made to the Authority up to an amount allocable to the moneys on deposit in the Loss Reserve Account on January 1, 1999 (assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date) and (ii) further distributions shall be made to the Authority and to the Participating Financial Institution based on the Authority Share and the Participating Financial Institution Share, respectively.

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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 Matching Contributions in connection with Qualified Loans, or receives a written waiver from the Executive Director of this requirement.

(6) agrees to reimburse the Authority for any reasonable costs related to the Independent Contributor's participation in the program, unless waived by the Authority.

(b) An Independent Contributor shall advise the Authority at any time the Standards provided to the Authority pursuant to Section 8078(a)(1) above are changed.

(c) The Authority shall be authorized to terminate an Independent Contributor's participation in the Program at any time, upon written notice, for any cause, including, but not limited to, failure to maintain a minimum deposit of at least \$5,000 with the Program Trustee. An Independent Contributor shall be authorized to terminate its participation in the Program at any time, upon written notice.

(d) An Independent Contributor must pay all fees of the Program Trustee attributable to the funds that the Independent Contributor deposits with the Program Trustee.

(e) Fees and matching contributions paid by Independent Contributors shall not be subject to the maximums set forth in Health and Safety Code Section 44559.4(c).

Section 8078.1 Preferred Lenders

(a) Where an Independent Contributor elects to pay the matching contribution and the borrower's fee or the matching contribution and all fees and funds are available, designated Participating Financial Institutions can participate as preferred lenders and process, close, service, and liquidate CalCAP guaranteed loans with reduced requirements for documentation to and prior approval by the Authority.

(b) Before it can operate as a preferred lender, the Participating Financial Institution must:

(1) Submit for review and approval by the Authority a preferred lender supplemental lender enrollment agreement, which will specify a term not to exceed two years. The application shall include the following information:

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(a) name of applicant Financial Institution.

(b) name, address and telephone number of contact person.

(c) combined capital and surplus as of the end of the Financial Institution's most recent fiscal year.

(d) number of lending branches.

(e) certification that the applicant Financial Institution is not subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program, and the name of that body.

(f) a full description of the board of directors, including number, race, ethnicity and gender of its members.

(g) the Financial Institution's rating from a nationally recognized credit rating agency which assesses the financial soundness and stability of financial institutions.

(h) the Financial Institution's agreement to follow the Program's procedures as set forth in the Law and this Article.

(i) the Financial Institution's agreement to permit an audit of any of its records relating to enrolled Qualified Loans, during normal business hours on its premises, by the Authority or its agents, and to supply such other information concerning enrolled Qualified Loans as shall be requested by the Executive Director.

(j) acknowledgment by the Financial Institution that the Authority and the State will have no liability to the Participating Financial Institution under the Program except from funds deposited in the Loss Reserve Account for the Participating Financial Institution.

(2) Demonstrate a satisfactory performance history with CalCAP.

(3) Provide the Authority with a plan which clearly outlines how the Participating Financial Institution will train individuals authorized to submit loans for enrollment in the Program.

(c) Upon receipt of a completed application, the Executive Director will within 10 days review and determine whether additional information is required, or whether the application is sufficient to permit the applicant Financial Institution to participate. The Executive Director's decision whether an application is sufficient shall be final.

(d) When the supplemental lender enrollment agreement expires, the Authority may recertify a Participating Financial Institution for an additional term not to exceed two years. Prior to recertification, the Authority will review a Participating Financial Institution's loans, policies and procedures.

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(e) Except as specified in this paragraph and paragraph (f), section 8072 shall not apply to the enrollment of a Qualified Loan by a preferred lender. A Participating Financial Institution is required to notify the Authority within ten (10) business days of its approval of a preferred lender's loan by submitting to the Authority loan appropriate documentation, as set forth in California Code of Regulations Title 4, Division 11, Section 8072 (a), (b)(1), (c), (d), (e), (g), (h), and (i) signed by the Participating Financial Institution authorized representatives. Upon receipt of the appropriate documentation for a Qualified Loan by the Authority and Trustee, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and the source of funds from which the transfer was made.

(f) The Authority shall, upon receipt of documentation from the Participating Financial Institution, verify the enrollment of and provide a CalCAP loan number for the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 10 business days after receipt by the Authority of all documentation required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final.

(g) If the Executive Director determines that the Qualified Loan does not meet the requirements of the Law and this Article the Authority will notify the Participating Financial Institution detailing the issue and requesting reimbursement of the contribution related to the Qualified Loan.

(g) The Participating Financial Institution is responsible for all loan decisions regarding creditworthiness. The Participating Financial Institution is also responsible for confirming that all loan closing decisions are correct, and that it has complied with all requirements of the Law and Program regulations.

(h) The Authority may review the performance of a Participating Financial Institution with respect to its preferred lender status.

(i) The Authority may suspend or revoke a preferred lender status upon written notice to the Participating Financial Institution providing the reasons at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation include lender violations of applicable statutes, regulations or Authority policies and procedures.

