

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

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

Proposed Regulatory Action

The Authority proposes to amend Sections 8070, 8072, and 8073, and add Section 8078.2 of Title 4 of the California Code of Regulations concerning the administration of the California Capital Access Program for Small Businesses (the “Program” and CalCAP). These regulations were adopted on an emergency basis in November 2010 and February 2011. The current rulemaking action would combine the two regulatory actions and make those changes permanent.

Authority and Reference

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

Reference: Sections 44559-44559.9 of the Health and Safety Code. These amended regulations implement, interpret, and make specific Sections of the Act by amending Sections 8070, 8072, and 8073 and adding Section 8078.2 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

Existing law establishes the California Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender’s Loss Reserve Account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid by the lender to the Loss Reserve Account at 150 percent or matches the combination of the fees paid by both the lender and the borrower. (Health and Safety Code, § 44559.4(d).) The funds held in the lender’s Loss Reserve Account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments: revise the definition of a “Qualified Business” and “Qualified Loan”; increases the maximum loan amount and enrolled amount; streamline paperwork; adds a rating entity to the current list of rating entities; and adds a new section that relates solely to participation in the State Small Business Credit Initiative. These amendments are the result of receiving \$84.4 million from the State Small Business Credit Initiative and \$6 million from the passage of California’s AB 1632. The proposed amendments and objectives for each section are as follows:

Section 8070 (d). The current definition of “Fees” or “Fee” is being modified to include “Premiums” or “Premium.” This amendment adds terms the CalCAP lenders are more familiar with and will provide better consistency with the Federal Statute.

Section 8070 (r). The definition of “Qualified Business” will now include the term “Small Business Concern” along with its definition. This amendment will increase the business size from “100 or fewer employees” to “500 or fewer employees” and eliminate the annual revenue restriction.

Section 8070 (s). The amendment to the definition of “Qualified Loan” will establish a maximum total loan amount of \$5 million for any one loan, and increase the allowable enrolled loan amount for a borrower from any one Lender to \$2.5 million. Receipt of the \$84.4 million from the State Small Business Credit Initiative and \$6 million from the passage of California’s AB 1632 allows the Authority to increase these amounts. The Authority’s available funds could not sustain a program with loan amounts of that size.

Section 8072 (c). The information required for CalCAP loan enrollment is being modified including certification that the enrolled loan amount does not exceed \$2.5 million and removal of the requirement to submit a “Notification of Work-Out Status” form. These changes conform to the other changes and streamline our process in order to effectively use the State and Federal funds.

Section 8073(c). An additional rating entity is being added to the list of entities the Authority uses to verify the financial viability of a lending institution.

Proposed Section 8078.2. In response to receiving \$84.4 million from the State Small Business Credit Initiative (SSBCI) (Federal funds), the Authority was required to include SSBCI rules to our regulations.

Disclosures Regarding the Proposed Action:

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations.

Mandate on local agencies or school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 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

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:

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

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

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

Consideration of Alternatives

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

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

Agency Contact Person

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

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the amended CalCAP Regulations to the Authority. The written comment period on the amended CalCAP Regulations ends at **5:00 p.m. on June 6, 2011**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

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

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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this

Notice, the Initial Statement of Reasons and the proposed text of the amended CalCAP Regulations. Copies of these items are available upon request from the Agency Contact Person(s) designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfafa/>.

Public Hearing

A public hearing regarding the amended CalCAP Regulations has been scheduled for **June 7, 2011 at 10:00 AM (PST) at 915 Capitol Mall, Room 470, Sacramento, CA 95814.**

Availability of Changed or Modified Text

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

Availability of Final Statement of Reasons

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