

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA CAPITAL ACCESS PROGRAM (CalCAP)
Meeting Date: February 21, 2012**

Consideration and Approval of Emergency and Permanent Rulemaking Process

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Summary. The California Capital Access Program (CalCAP or the “Program”) is the subject of legislation [AB 901 (Perez), Ch. 483 of Statutes of 2011] that allows Microbusiness Lenders to be added to CalCAP as qualified Participating Financial Institution. The approval of this bill requires modifications to the CalCAP regulations. Staff requests approval to file emergency regulations amending the existing CalCAP regulations to include microbusiness lenders as another qualified lender participating in CalCAP. Upon approval staff will proceed concurrently with the emergency and permanent rulemaking process.

Background.

Business Model. CalCAP is designed to encourage lending to small businesses throughout California. To accomplish this, CalCAP establishes loan loss reserve accounts in which borrowers and lenders or an Independent Contributor are required to deposit a percentage based on the loan enrollment to help insure against losses. This program is a way to encourage banks and other financial institutions to lend money to many small businesses.

Need for regulation changes. In response to AB 901 passing, CalCAP is proposing changes to the regulations to define microbusiness lenders in order to allow them as Qualified Participating Financial Institutions in the Program. Microbusiness lenders will give borrowers another option for loan financing. The bill defines microbusiness lenders as

“a non-profit or non-bank lender that serves very small businesses in low- and moderate income communities that experience barriers accessing capital. These businesses are often owned by minorities, immigrants, women and persons with disabilities. Microbusiness lenders generally provide loans under fifty thousand dollars (\$50,000) and offer technical assistance, both preloan and postloan, to improve an applicant’s ability to qualify and successfully repay a loan”.

Several of our current Participating Financial Institutions already classify themselves as Microbusiness lenders, but qualified as a CalCAP lender of a different definition, so it is important for us to be able to define these organizations that may not already qualify under the

current CalCAP Regulations. With these amendments, more lenders will be eligible to participate and more borrowers will benefit with this additional security to the lenders.

Stakeholder Involvement. On January 19, 2012, staff held a Public Discussion with individuals from the small business lending community to gain feedback about microbusiness lenders, common lending practices, and ways to determine what types of entities qualify as microbusiness lenders. Staff heard the suggestions that any definition of microbusiness lender should track the legislative definition by specifying early and ongoing technical assistance. Staff also conducted a *Lender Roundtable Conference Call* on February 8, 2012 to provide an open forum for staff to discuss the upcoming addition of microbusiness lenders to the program and to explain the proposed changes to the regulations. Staff received positive feedback on the conference call about the upcoming changes in the Program.

The proposed amendments to the existing regulations were circulated to all CalCAP participating lenders before the February 8th *Lender Roundtable Conference Call* and each item was discussed at length. The proposed amendments are briefly described below.

Regulation. Section 8070(e)(1). *Add a definition for Microbusiness Lender.* New legislation has added Microbusiness Lenders as an eligible financial institution in CalCAP. By defining these entities in the regulations, it will be made clear how microbusiness lenders pertain to CalCAP and how they will fit in the Program. Staff will also be able to easily identify a particular organization for eligibility in the Program.

The definition of a Microbusiness Lender in Section 13997.2 of the Government Code reads:

(15) "Microbusiness lender" means a nonprofit or nonbank lender that serves very small businesses in low- and moderate-income communities that experience barriers in accessing capital. These businesses are often owned by minorities, immigrants, women, and persons with disabilities. Microbusiness lenders generally provide loans under fifty thousand dollars (\$50,000) and offer business technical assistance, both preloan and postloan, to improve an applicant's ability to qualify and successfully repay a loan.

Attachment A is a redline version of those portions of the CalCAP regulations that highlights the proposed amendments in underline and strike through.

Regulatory Process. After Authority approval to amend the existing regulations, emergency and permanent rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the permanent rulemaking process. The permanent rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

Agenda Item 4.A.

To begin the permanent rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to our participating lenders and interested persons, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a permanent rulemaking file is 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 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

February 15, 2012	5-day Notice posted on CalCAP site and sent to Lenders.
February 21, 2012	The Board approves the emergency regulations.
February 24, 2012	Emergency regulations filed with OAL.
February 29, 2012	Public comment period ends.
March 5, 2012	OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect.
August 22, 2012	Emergency regulations expire.

Permanent Regulations

March 13, 2012	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
March 23, 2012	OAL publishes Notice and 45-day public comment period begins.
May 7, 2012	Public comment period regarding proposed regulations ends.
May 8, 2012	Public Hearing Scheduled.
May 11, 2012	Deliver permanent regulation package to OAL for 30-day review*
June 11, 2012	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.

Agenda Item 4.A.

June 12, 2012 Permanent regulations become effective.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

May 14, 2012 Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period.

May 29, 2012 15-day comment period ends.

May 31, 2012 Deliver permanent regulation package to OAL for 30-day review.

July 2, 2012 OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.

July 3, 2012 Permanent regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations for the CalCAP Program and authorize staff to undertake emergency and permanent rulemaking proceedings and other actions related to CalCAP regulation revisions.

**RESOLUTION OF THE
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
APPROVING REGULATIONS AND AUTHORIZING EMERGENCY AND
PERMANENT RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED
THERE TO, INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES**

February 21, 2012

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 is 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 its Capital Access Program for Small Businesses (the "Program") 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 presented at the February 21, 2012, meeting are hereby approved in substantially the form submitted. The Chair, Executive Director, or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with the public notice and comment procedures and file such regulations, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as permanent regulations.

Section 2. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required to address comments made after the date of this resolution and to execute and deliver any and all documents with the Office of Administrative Law for the purposes of adopting any such changes in the form of emergency regulations and later as permanent regulations.

Section 4. This resolution shall take effect immediately upon its approval.

CURRENT TEXT OF REGULATIONS

(February 21, 2012)

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

§ 8070. Definitions.

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

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

(b) “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 “Fee” and “Premiums” or “Premium” means a non-refundable fees or fee as set forth in Health and Safety Code Section 44559.4(c).

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

(f) “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.

(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