

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CalCAP Program Staff Summary
Meeting Date: December 13, 2016

***Request for Consideration and Approval of Amendment of the Regulations for the
California Capital Access Financing Program to Implement the
California Seismic Safety Capital Access Loan Program***

Prepared by: *Elena M. Miller*

Summary. Staff requests Board approval of the emergency rulemaking process pertaining to the launch of the California Seismic Safety Capital Access Loan Program (“CalCAP/Seismic Safety Program” or “Program”). Pursuant to the authority granted by the enabling statute, staff is proposing to file emergency regulations to amend the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations by including §§ 8078.15 – 8078.21 to implement the new CalCAP/Seismic Safety Program under the model of the existing CalCAP Loan Loss Reserve Program. Upon the Board’s approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. CPCFA’s mission is to promote access to capital through the delivery of diverse financing options to California. In 1994, the Legislature authorized CPCFA to develop and implement the California Capital Access Program (CalCAP), a credit enhancement program to provide loss reserve funding to participating lenders making qualifying loans to California small businesses. Senate Bill 837, passed by the Legislature and signed by Governor Brown in June 2016, provided CPCFA a one-time \$10 million appropriation to create the CalCAP/Seismic Safety Program. Under this legislation, CPCFA is authorized to develop and implement a new credit enhancement program based on the CalCAP model, specifically for private lending supporting residential property owners and small business owners in seismically retrofitting residences and small businesses with a priority on soft-story buildings and unreinforced brick and concrete buildings. The Program includes funding for registered mobilehomes and qualified multiunit housing buildings. The statute directs CPCFA to conduct a rulemaking to establish specific Program rules and procedures. The statute also directs CPCFA to establish a sustainable Program and describes a Program feature that recaptures unclaimed funding relating to matured loans to be used to support future loans beyond the \$10 million initially appropriated.

Proposed Amendment to Regulation. Staff proposes to amend CPCFA’s existing regulations by including new Sections 8078.15 – 8078.21 as shown in Attachment A.

Need for Emergency Regulations. Proceeding with an emergency rulemaking is required by the legislation establishing the CalCAP/Seismic Safety Program. Section 44559.14(e) directs the Authority to implement the Program by pursuing the emergency regulations in accordance with Section 45520(b) of the existing CalCAP statute, for CalCAP programs funded by sources other than CPCFA’s own small business assistance funds.

Summary of Regulations. The proposed regulations describe specific elements tailored to CalCAP/Seismic Safety, consistent with the intent of SB 837, which are different than the existing CalCAP program, such as the definition of the CalCAP/Seismic Safety Contribution, Eligible Costs, Qualified building, Qualified residential property owner, Registered mobilehome, Seismic retrofit construction, the recapture provision, and other technical requirements the borrowers must meet.

The regulations necessary to administer the CalCAP/Seismic Safety Program include:

- Definitions that apply specifically to the CalCAP/Seismic Safety Program, including the following:
 - Cost Estimate means a written proposal or estimate of the Eligible Costs of materials, services, and other expenses identified to complete the Seismic retrofit construction for each Eligible project as provided by an engineer, architect or a licensed contractor;
 - Earthquake-Resistant Bracing System means a mobilehome bracing system certified by the Department of Housing and Community Development designed and constructed for the purpose of protecting the health and safety of occupants and reducing damage in the event of an earthquake;
 - Eligible Costs include costs incurred on or after January 1, 2017 for necessary engineering or architectural design work to complete the Eligible project;
 - Eligible project means Seismic retrofit construction that is necessary to ensure that the Qualified building is capable of substantially mitigating seismic damage;
 - Qualified building includes registered mobilehomes, manufactured homes or multifamily manufactured homes, and multiunit housing buildings certified by local building code enforcement as hazardous and in danger of collapse in the event of a catastrophic earthquake;
 - Qualified Loan, a term previously identified in the CalCAP program is amended to include loans made to residential property owners, limited to a loan enrollment amount of \$250,000, and for a ten year term of loan loss coverage;
 - Seismic retrofit construction means alterations performed on or after January 1, 2017 to mitigate seismic damage;
- Establishing loan loss reserve funds with a borrower's contribution between 2 and 3.5 percent of the Qualified Loan, matched by an equal lender's contribution, plus a CalCAP/Seismic Safety contribution equal to four times the amount of the lender's contribution for loans enrolled for sixty (60) months or less, plus an additional CalCAP/Seismic Safety contribution of twice the lender's contribution if the enrolled loan is in a disadvantaged community; or, a CalCAP/Seismic Safety contribution equal to three times the lender's contribution for loans enrolled for sixty one (61) months to one hundred twenty (120) months, plus an additional CalCAP/Seismic Safety contribution equal to the lender's contribution if the enrolled loan is in a disadvantaged community;
- Establishing a maximum of one hundred twenty (120) month term that a loan can be enrolled in the Program; and
- Recapture of the CalCAP/Seismic Safety contribution(s) at the time the loan is paid off, at month sixty (60) if enrolled for five years, or one hundred twenty (120) months after the loan is enrolled, whichever comes first.

Informal Public Outreach. In addition to the standard outreach to CalCAP lenders, CPCFA conducted particular outreach by meeting with the Cities of Los Angeles (attended by L.A.'s Soft-Story Program Staff and the Mayor's Office), San Francisco, and Oakland prior to drafting the regulations. During the drafting of the regulations, staff collaborated with the California Earthquake Authority, Housing and Community Development, Department of Insurance, Division of State Architect, and the Seismic Safety Commission. In addition, staff met with the Association of Bay Area Governments (ABAG) and attended a workshop hosted by ABAG in Oakland to promote seismic safety retrofit awareness for cities in the Alameda Corridor along the Hayward Fault Zone. Once a preliminary draft of the regulations was written, language was shared with these organizations during an informal outreach period and comments were received both orally and written by each organization or their consultants. The League of Cities, California Association of Realtors, the California Bankers Association, and the Western Manufactured Housing Communities Association have also offered their support, with written statements of support received from the Association of Realtors and the Seismic Safety Commission shown in Attachment C.

On November 7, 2016, CPCFA posted notice of an informal public workshop and statewide webinar with closed captioning which took place on November 16, 2016 to explain the draft regulations and seek public comment. On November 14, 2016 a draft of the proposed regulations was posted by CPCFA on its website and announced on its listserv. Both oral and written comments were received at or immediately following the November 16, 2016 workshop from members of the public, experts in structural engineering, and property owners. Additionally, staff conducted a lender roundtable webinar on November 29, 2016 requesting input from lenders on the regulations. The current text of the proposed regulations reflects updates in response to comments received from this public outreach.

Regulatory Process. On December 6, 2016, staff posted a Notice of Emergency Regulations (Attachment B) to provide the required five-day opportunity for the public including stakeholders to comment on the proposed text of the regulations and finding of emergency. At the Board meeting on December 13, 2016, staff will brief the Board regarding any comment received.

Upon the Board's adoption of these amendments to the existing regulations as proposed, emergency and regular rulemaking packages will be filed with OAL according to the established rulemaking process. The public may comment on the proposed emergency regulations within five (5) calendar days after the Authority files the regulations with OAL for review. OAL has up to ten (10) calendar days to review or deny emergency regulations. Assuming OAL approves this amendment as an emergency, the emergency regulations are effective for 180 days during which the Authority will begin the regular rulemaking process to conform the emergency regulations as permanent.

To begin the regular 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 interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period and will include a publicly noticed hearing. After that time, staff will review and respond to any comments and, if staff modifies the present form of the regulations, it will 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 regular 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

December 6, 2016	5-day Notice posted on CPCFA website and sent to Interested Parties.
December 13, 2016	The Board adopts the emergency regulations.
December 13, 2016	Emergency regulations filed with OAL.
December 19, 2016	Public comment period ends.
December 27, 2016	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
June 23, 2017	Emergency regulations expire 180 days after their effective date.

Permanent Regulations (Estimated Dates)

February 14, 2017	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.
February 24, 2017	OAL publishes Notice and 45-day public comment period begins.
March 15, 2017	Public Hearing.
April 12, 2017	Public comment period regarding proposed regulations ends.
April 13, 2017	* Deliver permanent regulation package to OAL for 30-day review.
May 15, 2017	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. 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:

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April 13, 2017	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
April 28, 2017	15-day comment period ends.
May 1, 2017	Deliver permanent regulation package to OAL for 30-day review.
June 1, 2017	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Recommendation. Staff recommends approval of the proposed resolution to adopt regulations concerning the CalCAP/Seismic Safety Financing Program and to authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to implementing the California Seismic Safety Capital Access Loan Program pursuant to SB 837.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY AUTHORIZING AMENDMENT OF THE REGULATIONS FOR
THE CALIFORNIA CAPITAL ACCESS FINANCING PROGRAM TO
IMPLEMENT THE CALIFORNIA SEISMIC SAFETY CAPITAL ACCESS LOAN
PROGRAM
December 13, 2016**

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) 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 is authorized by California Health and Safety Code Section 44559.14(d) and (e) to adopt regulations relating to residential property and small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted as emergency regulations 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 December 13, 2016 meeting is 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 filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as regular 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. This resolution shall take effect immediately upon its approval.

ATTACHMENT A

Proposed Regulations Implementing the CalCAP/Seismic Safety Financing Program

§ 8078.15 Definitions.

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Seismic Safety Capital Access Loan Program. 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 Program.

- (a) “CalCAP/Seismic Safety Contribution” means the Contribution(s) made by the Authority from the California Seismic Safety Capital Access Loan Program Fund established pursuant to Section 44559.14(c)(1) of the Health and Safety Code.
- (b) “Cost Estimate” means a written proposal or estimate of the Eligible Costs of materials, services, and other expenses identified to complete the Seismic retrofit construction for each Eligible project as provided by an engineer, architect or a licensed contractor.
- (c) “Earthquake-Resistant Bracing System” means a bracing system, certified by the Department of Housing and Community Development designed and constructed for the purpose of protecting the health and safety of the occupants and reducing damage in the event of an earthquake.
- (d) “Eligible Costs” means and includes all or any part, as defined in subdivision (b)(2) of Section 44559.14 of the Health and Safety Code, the costs paid or incurred on or after January 1, 2017, for an Eligible project, including any engineering or architectural design work necessary to permit or complete the Eligible project less the amount of any grant provided by a public entity for the Eligible project. “Eligible Costs” do not include costs paid or incurred for any of the following:
 - (1) Maintenance, including abatement of deferred or inadequate maintenance, and correction of violations unrelated to the seismic retrofit construction.
 - (2) Repair, including repair of earthquake damage.
 - (3) Seismic retrofit construction required by local building codes as a result of addition, repair, building relocation, or change of use or occupancy.
 - (4) Other work or improvement required by local building or planning codes as a result of the intended seismic retrofit construction.
 - (5) Rent reductions or other associated compensation, compliance actions, or other related coordination involving the qualified residential property owner or qualified small business and any other party, including a tenant, insurer, or lender.
 - (6) Replacement of existing building components, including equipment, except as needed to complete the seismic retrofit construction.

- (7) Bracing or securing nonpermanent building contents.
- (8) The offset of costs, reimbursements, or other costs transferred from the qualified residential property owner or qualified small business to others.
- (e) “Eligible project” means Seismic retrofit construction that is necessary to ensure that the Qualified building is capable of substantially mitigating seismic damage, and the financing necessary to pay Eligible Costs of the project.
- (f) “Program” or “CalCAP/Seismic Safety Financing Program” or “CalCAP/Seismic Safety Program” means the California Seismic Safety Capital Access Loan Program established pursuant to the Section 44559.14 of the Health and Safety Code. Where the term “Program” is used in Sections 8078.15 to 8078.21 inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p).
- (g) “Qualified building” means a building in California that is certified by the appropriate local building code enforcement authority for the jurisdiction in which the building is located as hazardous and in danger of collapse in the event of a catastrophic earthquake. A “Qualified building” may be a single-family residence, multiunit housing building, multiunit housing building with commercial space, or mobilehome, manufactured home, and multifamily manufactured home installed in accordance with Health and Safety Code 18613.
- (h) “Qualified Loan” means a loan or portion of a loan as defined in subdivision (j) of Section 44559.1 or a loan made to a Qualified residential property owner, where the proceeds of the loan or portion of the loan are limited to the Eligible Costs for an Eligible project under this Program, and where the loan or portion of the loan does not exceed two hundred fifty thousand dollars (\$250,000), and where the term of loss coverage for each qualified loan is no more than ten years. “Qualified Loan” does not include any of the following:
 - (1) 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; and
 - (2) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$250,000.
- (i) “Qualified small business” means a business referred to in subdivisions (i) and (m) of Section 44559.1 that owns and occupies, or intends to occupy, a Qualified building for the operation of the business.
- (j) “Qualified residential property owner” means either an owner and occupant of a residential building that is a Qualified building or a Qualified small business that owns one or more residential buildings, including a multiunit housing building, that is a Qualified building.
- (k) “Qualified commercial property owner” means either an owner and occupant of a commercial building that is a Qualified building or a Qualified small business that owns one or more commercial buildings, that is a Qualified building.

- (l) “Recapture” means the withdrawal of CalCAP/Seismic Safety Contribution amounts on an annual basis when enrolled loans mature or after one-hundred twenty (120) months from the date of enrollment, whichever occurs first. Recapture is not applicable for Contributions on charged off loans for which a claim has been approved.

- (m) “Registered mobilehome” means a mobilehome or manufactured home that is currently registered with the Department of Housing and Community Development and the Borrower’s name is on the Department of Housing and Community Development registration for that mobilehome or manufactured home.

- (n) “Seismic retrofit construction” means alteration performed on or after January 1, 2017, of a Qualified building or its components to substantially mitigate seismic damage. Seismic retrofit construction includes, but is not limited to, all of the following:
 - (1) Anchoring the structure to the foundation.
 - (2) Bracing cripple walls.
 - (3) Bracing water heaters.
 - (4) Installing automatic gas shutoff valves.
 - (5) Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage.
 - (6) Anchoring fuel storage.
 - (7) Installing an Earthquake-Resistant Bracing System for mobilehomes or manufactured homes that are registered with the Department of Housing and Community Development.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.3, 44559.5, and 44559.11, Division 27, Health and Safety Code, and Sections 18613, 18613.4, 18613.5, and 18613.7, Division 13, Health and Safety Code; Sections 13340, 11340 and 11349.6, Government Code.

§ 8078.16 Application by Financial Institution.

Financial Institutions shall follow the procedures set forth in Section 8071 in making application to become Participating Financial Institutions in the Program.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8078.17 Loan Enrollment.

- (a) The terms and conditions of the Qualified Loans, including rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower, consistent with the Participating Financial Institution’s usual methods for making determinations on loans that are not enrolled in the Program and subject to the safety and soundness standards as set forth in applicable federal banking regulations or State law regulating the Participating Financial Institution.

- (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 in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held either by the Participating Financial Institution or the Program Trustee.
- (c) A Participating Financial Institution may enroll all or any portion of a Qualified Loan in the Program by submitting a CalCAP/Seismic Safety Loan Enrollment Application which shall include the following information:
- (1) The name of the Borrower, including an official business name or “Doing Business As”, if any.
 - (2) Name and title of individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower(s).
 - (3) If a small business owner, brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business.
 - (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Costs for Seismic retrofit construction.
 - (5) Location(s) of the Qualified building, including physical address.
 - (6) Type of Qualified building, residential or commercial property, and the number of dwelling units.
 - (7) Amount of the Qualified Loan being enrolled in the Program, and total loan amount if different, and the Participating Financial Institution loan number.
 - (8) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
 - (9) Date of the Qualified Loan.
 - (10) Interest rate applicable to the Qualified Loan.
 - (11) Term or maturity date of the Qualified Loan.

- (12) Whether the loan is for alteration(s) or retrofit(s) of a Qualified building located in a Severely Affected Community.
- (13) If a Qualified small business, number of full-time equivalent employees currently employed by the Borrower.
- (14) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the property owner receiving the Qualified Loan is a Qualified small business, Qualified residential property owner, or Qualified commercial property owner.
- (15) The Participating Financial Institution's certification upon enrollment of a Qualified Loan that the proceeds of the loan will be used for the Eligible Costs of Seismic retrofit construction.
- (16) The Participating Financial Institution's 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.
- (17) The Participating Financial Institution's certification that the total amount of loans for the Borrower enrolled in the CalCAP/Seismic Safety Program does not exceed \$250,000.
- (18) The Participating Financial Institution's certification that it has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the CalCAP/Seismic Safety Contribution.
- (19) The Participating Financial Institution's certification that the Borrower has provided a Cost Estimate prepared by an engineer, architect or a licensed contractor, and that the Cost Estimate for Seismic retrofit construction to be financed is limited to Eligible Costs.
- (20) The Participating Financial Institution's certification, when the Qualified building is a mobilehome or manufactured home, that the Borrower has provided a record of Borrower's name on a current registration from the Department of Housing and Community Development for the mobilehome or manufactured home.
- (21) The Participating Financial Institution's certification that its usual methods of securing collateral have been applied, including if applicable a lien placed on the Borrower's Qualified building for the amount of the Qualified Loan.
- (22) The Participating Financial Institution's certification that the Borrower will provide all applicable licenses or permits needed for the Seismic retrofit construction and satisfy the local building enforcement agency or the Department of Housing and Community Development compliance and inspection requirements once Seismic retrofit construction is completed.

- (23) The Participating Financial Institution's certification that the Qualified Loan is not a restructured or refinanced loan and has not previously been enrolled in the Program.
- (24) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.
- (25) The Participating Financial Institution shall be authorized to certify to the information requested by subsections (12), (13), (14), (18) and (19) above based upon the Participating Financial Institution's established due diligence and underwriting standards, and shall maintain substantiating documentation in the Borrower's loan file.
- (26) Certification from the Participating Financial Institution that it has not, and will not, enroll the Qualified Loan, or any portion thereof, in any other Capital Access Loan Program for Small Business offered by the Authority as long as funds are available for this Program.
- (27) Certification from the Participating Financial Institution that it has provided the Borrower CPCFA's Privacy Notice for the CalCAP/Seismic Safety Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the CalCAP/Seismic Safety Financing Program informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:
 - (A) To consultants, auditors or contractors retained by the CPCFA where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement;
 - (B) To another governmental entity where required by state or federal law; or
 - (C) As otherwise required by law.
- (28) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:
 - (A) That it satisfies the definitions in Sections 8078.15(d), 8078.15(e), 8078.15(g), 8078.15(h), 8078.15(i), 8078.15(j) and 8078.15(k) of the California Seismic Safety Capital Access Loan Program Regulations;
 - (B) The Qualified building is located within the boundaries of the State of California;
 - (C) The Borrower has legal control of the facility for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;

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- (D) The Borrower agrees to allow the Participating Financial Institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA;
 - (E) The Borrower has no legal, beneficial, or equitable interest in the CalCAP/Seismic Safety Contribution;
 - (F) If the Seismic retrofit construction financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the Qualified Loan in this Program is limited to Eligible Costs necessary and allocable to the Eligible project;
 - (G) The Borrower will provide all applicable licenses or permits needed for construction related to Eligible Costs for the Seismic retrofit construction to the Participating Financial Institution;
 - (H) The Borrower has provided verification of Eligible Costs less the amount of any grant provided by a public entity for the Eligible project to the Participating Financial Institution;
 - (I) The Borrower's certification that the proceeds of the loan will be used for the Seismic retrofit construction of an Eligible project;
 - (J) The Borrower's certification when the Qualified building is a mobilehome or manufactured home that it is currently registered with the Department of Housing and Community Development and the Borrower's name is on the Department of Housing and Community Development registration for that mobilehome or manufactured home;
 - (K) The Borrower agrees to allow CPCFA staff or its designee to inspect the project site.
- (d) Upon enrollment of a Qualified Loan, the Participating Financial Institution shall elect a Contribution between 2 and 3.5 percent of the Qualified Loan, and shall deposit the Participating Financial Institution's and Borrower's Contributions each in the elected amount into the Participating Financial Institution's Loss Reserve Account established for the Program pursuant to Section 8078.15.
- (e) Upon verification of the deposit of the Participating Financial Institution's and Borrower's Contributions, Qualified Loans with a term of sixty (60) months or less shall receive a CalCAP/Seismic Safety Contribution equal to four times the amount of the Participating Financial Institution's Contribution. All other Qualified Loans shall receive a CalCAP/Seismic Safety Contribution equal to three times the amount of the Participating Financial Institution's Contribution.

- (f) All Qualified Loans with a term of sixty (60) months or less that support Eligible projects located in a Severely Affected Community shall receive an additional CalCAP/Seismic Safety Contribution in the amount of two times the Participating Financial Institution's Contribution. All other Qualified Loans that support Eligible projects located in a Severely Affected Community shall receive an additional CalCAP/Seismic Safety Contribution in the amount of one time the Participating Financial Institution's Contribution.
- (g) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed one hundred twenty (120) months from the date of first disbursement of the Qualified Loan.
- (h) Qualified Loans shall no longer be enrolled in the Program upon the sale, transfer or refinancing of the Qualified building or Qualified Loan, and shall be deemed to have matured within the meaning of 8078.18(c) upon the date of such sale, transfer or refinancing.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, and Section 18613, Division 13, Health and Safety Code.

§ 8078.18 Loss Reserve Accounts

- (a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loss Reserve Account for that Participating Financial Institution for this Program for the following purposes:
 - (1) To receive deposits from the Participating Financial Institution Contributions, the Borrower Contributions and the CalCAP/Seismic Safety Contributions; and
 - (2) To pay claims in accordance with Section 8078.19.
- (b) All moneys in a Loss Reserve Account are property of the Authority held in trust to be 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 Loan 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 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.
- (c) The Executive Director shall be authorized to Recapture the CalCAP/Seismic Safety Contribution from the Loss Reserve Account when the corresponding Qualified Loan matures or at ten years from the date of enrollment, whichever occurs first.
- (d) On an annual basis after March 31, CPCFA will send a notice to the Participating Financial Institution listing the CalCAP/Seismic Safety Contribution amounts that will be recaptured based on the status of the loan(s) at the end of the previous calendar year.

- (e) If any Loss Reserve Account is held at a Participating Financial Institution, the Participating Financial Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.
- (f) The Participating Financial Institution shall provide reports on a quarterly basis to CPCFA no later than 15 days after the end of each quarter, listing the status of all enrolled loans, claims and recoveries whether or not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8078.19 Claim for Reimbursement.

Participating Financial Institutions shall follow the procedures set forth in Section 8074 in making claims for reimbursement for Qualified Loans enrolled in the California Seismic Safety Capital Access Financing Program. Any references to Section 8072 shall be replaced with Section 8078.17.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8078.20 Subrogation.

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the California Seismic Safety Capital Access Financing Program.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

§ 8078.21 Termination and Withdrawal from Program.

The procedures for termination and withdrawal from the CalCAP program set forth in Section 8076 shall be followed for loans enrolled in the California Seismic Safety Capital Access Loan Program.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.14 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

ATTACHMENT B



CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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 Sacramento, CA 95814
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 cpcfa@treasurer.ca.gov
 www.treasurer.ca.gov/cpcfa

MEMBER 3
 JOHN CHIANG, CHAIRMAN
 State Treasurer
 BETTY YEE
 State Controller
 MICHAEL COHEN
 Director of Finance
 EXECUTIVE DIRECTOR
 René Webster-Hawkins

December 6, 2016

**California Pollution Control Financing Authority
 The California Seismic Safety
 Capital Access Loan Program
 Notice of Emergency Regulations**

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

CPCFA proposes to adopt Article 7 Sections 8078.15–8078.21 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the establishment of the California Seismic Safety Capital Access Loan Program, to be administered by the CPCFA’s California Capital Access Program (the “Program”). These regulations are anticipated to be approved by the Office of Administrative Law on an emergency basis no later than December 27, 2016.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency regulation action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

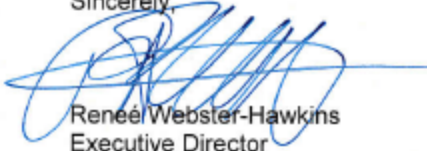
In accordance with its authority under Health and Safety Code Sections 44520(b) and 44559.14 (d) and (e), CPCFA is proposing to adopt the regulations as emergency regulations. Attached to this Notice is the specific regulatory language of CPCFA’s proposed emergency action and Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on CPCFA’s website at the following address: <http://www.treasurer.ca.gov/cpcfa/>. If you prefer to receive a hard copy of the proposed

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emergency regulations please contact Betina Brantley at (916) 651-6432 and a copy will be provided at no cost.

The regulations will be presented to the CPCFA Board for approval at a public meeting to be held on December 13, 2016 at 10:30 A.M. in Room 587 at 915 Capitol Mall, Sacramento, California 95814.

Sincerely,



Renee Webster-Hawkins
Executive Director

Enclosure(s): Proposed Text of Regulations
Finding of Emergency

cc: Elena M. Miller, Deputy Executive Director
Robert Hedrick, CPCFA Legal Counsel
Patricia Crowson, Treasury Program Manager II
Bianca Smith, CalCAP Program Manager

RWH: em

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Section 44520(b) and 44559.14 (d) and (e) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the “Authority”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Necessity

These Emergency Regulations are necessary to implement, interpret, and make specific Article 8 of the California Pollution Control Financing Authority Act (the “Act”).¹ The Authority’s Capital Access Program (“CalCAP”) was authorized through Senate Bill 837, signed by Governor Brown on June 27, 2016, to implement the California Seismic Safety Capital Access Loan Program (the “CalCAP/ Seismic Safety Program”) that requires alternate provisions to be written into regulation as authorized in Section 44559.11 and Section 44559.14 (e) of the Act.

Authority and Reference

Authority: Sections 44520(a), 44520(b), and 44559.5(f), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.” Section 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Authority: Sections 44559.14 of the Health and Safety Code. Section 44559.14 of the Act authorizes the Authority to administer the California Seismic Safety Capital Access Loan Program to assist residential property owners and small business owners in seismically retrofitting residences and small businesses. The intent of the Act is not to assist with the physical expansion of small businesses and residences. Section 44559.14 of the Act also authorizes the Authority to adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340, including Section 11349.6) of Part 1 of Division 3 of Title 2 of the Government Code, and “the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare”.

Reference: Sections 44559.1, 44559.2, 44559.3, 44559.5, 44559.11, and 44559.14 of the Health and Safety Code; Sections 13340, 11340 and 11349.6 of the Government Code. These

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 8 is codified at Health and Safety Code section 44559 through 44559.14.

Emergency Regulations implement, interpret and make specific Sections of the Act by adopting Sections 8078.15, 8078.16, 8078.17, 8078.18, 8078.19, 8078.20, and 8078.21 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest

Existing law establishes the Capital Access Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital. (Health and Safety Code, § 44559)

The proposed additions to the regulations allow the Authority to include alternate provisions specific to the California Seismic Safety Capital Access Loan Program (“CalCAP/Seismic Safety Financing Program”) within CalCAP’s existing Small Business Loan Program. The proposed regulations will create a self-sustaining program to provide loans to assist residential property owners and small business owners in financing the costs of seismically retrofitting residences and small businesses, meeting specified criteria, with priority on soft-story buildings and unreinforced brick and concrete buildings. The CalCAP/Seismic Safety Financing Program will provide a credit enhancement to support private bank loans to qualified residential property owners and qualified commercial property owners to make improvements to substantially mitigate seismic damage.

Pursuant to Title 1, Division 1 of the California Code of Regulations Section 12(b), the proposed regulations repeat and rephrase existing law to provide clarity to the CalCAP/Seismic Safety Financing Program’s participating financial institutions and qualified borrowers.

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.

The Proposed Amendments and Objectives for Each Section are as Follows:

§ 8078.15. Definitions.

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

Necessity. The proposed amendments are necessary to include definitions specific to the CalCAP/Seismic Safety Financing Program.

§ 8078.16. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the CalCAP/Seismic Safety Financing Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the CalCAP/Seismic Safety Financing Program.

§ 8078.17. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the CalCAP/Seismic Safety Financing Program's policies and regulations. In addition the borrower must self-certify on several aspects of the project as well as provide specific requested information regarding the project.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the CalCAP/Seismic Safety Financing Program.

§ 8078.18. Loss Reserve Accounts

This section describes the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8078.19. Claim for Reimbursement

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the CalCAP/Seismic Safety Financing Program.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8078.20. Subrogation

This section describes the procedure for the Authority's right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated will help the Authority enforce its rights.

§ 8078.21. Termination and Withdrawal from Program

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

Mandate on Local Agencies or School Districts

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Executive Director of the Authority has determined that the Emergency 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 the 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 State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

ATTACHMENT C



CALIFORNIA ASSOCIATION OF REALTORS®

November 29, 2016

Elena Miller, Deputy Executive Director
CPCFA
801 Capitol Mall, 2nd Floor
Sacramento, CA 95814

RE: Proposed Draft Regulations for the CalCAP/Seismic Safety Program

Dear Deputy Executive Director Miller:

Thank you for the opportunity to provide comment on the proposed draft regulations for the CalCAP/Seismic Safety Program (regulations). The California Association of REALTORS® (C.A.R.) seeks to be a valuable contributor to the development of regulations that will increase access to the capital necessary to improve the safety of single family and multifamily buildings in California. To that end, we offer our support of these draft regulations.

We appreciate your clarification that the draft regulations include single family 1-4 unit residential properties as "Qualified buildings". We believe it is imperative that residential property owners have access to loans which will increase building safety. C.A.R. also appreciates your willingness to clarify that the regulations allow Participating Financial Institutions and Borrowers to negotiate whether the loan can be assumed during the transfer or refinance of the property with the approval of the Executive Director.

C.A.R. looks forward to working with the CPCFA in developing these regulations to ensure they are as "user friendly" as possible for potential Borrowers and increasing capital available for improving building safety in California.

Sincerely,

A handwritten signature in black ink that reads "Stan Wieg".

Stan Wieg
Legislative Advocate
California Association of REALTORS®



REALTOR® — is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics, is a member of the NATIONAL ASSOCIATION OF REALTORS®



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Agenda Item 4.D

From: Richard McCarthy [<mailto:mccarthy@stateseismic.com>]
Sent: Thursday, December 01, 2016 12:17 PM
To: Miller, Elena <Elena.Miller@treasurer.ca.gov>
Cc: 'Gardner, Mike' <MGardner@riversideca.gov>; valencia@stateseismic.com; 'Lena Daniel' <edaniel@stateseismic.com>
Subject: CalCap Seismic Safety Program

Dear Ms. Miller:

Thank you for allowing the Commission to participate with the Treasurer' Office in developing a successful CalCap Seismic Safety Program. We understand the challenges you face and the short time line that you have been provided to establish a workable program.

The Commission Chairman is pleased that you have accepted our invitation to brief the Commission on the CalCap Seismic Safety Program on Thursday, January 12, 2017 at the Capitol. The Chairman has instructed the staff to assist the Treasurer's Office in carrying out the intent of the Governor and the Legislature to implement a program that will help reduce the earthquake risk to the People of California. There are a variety of options on how the Commission can assist you with your program and your testimony next month will help focus on developing a cost-effective partnership that will achieve your objectives.

We will send you an agenda for the January meeting sometime during the end of December.

Please do not hesitate to contact me should you need any additional assistance.

Richard McCarthy
Executive Director