

**MINUTES**

**California Pollution Control Financing Authority  
801 Capitol Mall, Room 150  
Sacramento, California  
July 18, 2017**

**1. CALL TO ORDER & ROLL CALL**

Steve Juarez, Chairperson, called the California Pollution Control Financing Authority (CPCFA) meeting to order at 11:20 a.m.

Members Present: Eraina Ortega for Michael Cohen, Director of Finance  
Anne Baker for Betty T. Yee, State Controller  
Steve Juarez for John Chiang, State Treasurer

Staff Present: Reneé Webster-Hawkins, Executive Director

Quorum: The Chairperson declared a quorum

**2. MINUTES**

Mr. Juarez asked if there were any questions or comments concerning the meeting minutes from the meeting held June 20, 2017. There were none.

Ms. Ortega moved approval of the minutes; upon a second, the minutes were unanimously approved.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

**3. EXECUTIVE DIRECTOR'S REPORT**

Ms. Webster-Hawkins greeted the members of the Board and proceeded to update the Board on the two interagency agreements (IA) that Ms. Webster-Hawkins acted on, under her delegated authority since the June 20, 2017 Board meeting. The first IA was the agreement between CPCFA and the Air Resources Board (ARB) that was approved at the June 20, 2017 Board meeting. Contract No. ARB13-606 Amendment #5 was signed on June 21, 2017 for the amount of \$63,000,000.00 and has been approved by the Department of General Services (DGS). This amendment added additional funds and made some improvements to the scope of work performed. CIDFAC01-15 was signed on June 23, 2017 for the amended amount of \$52,597.07 which allows CPCFA to provide administrative services and carry out the program

## Agenda Item 2.

duties on behalf of the California Industrial Development Financing Advisory Commission (CIDFAC).

Ms. Webster-Hawkins proceeded to update the Board on program updates, and focused primarily on bills that are pending in the Legislature that affect CPCFA.

AB 1553 is a bill that would make two program improvements to the California Capital Access Program (CalCAP) Americans with Disabilities Act (CalCAP/ADA) Financing Program to increase the attraction of the program to borrowers. The bill has passed out of the Policy Committees and is currently in the suspense file at the Senate Appropriations Committee.

AB 964 is the bill that would establish an incentive and financial assistance program for low income consumers to purchase electric vehicles. CPCFA is approaching the prospect of adopting such a program to be statewide and to benefit consumers of electric vehicles, specifically consumers in the low income brackets. CPCFA has taken a bold approach to ensure that it is effective, accessible, and also provides a consumer experience that most middle class people have when buying a car, where the purchase and financing decisions are done almost on the spot. Approaching the program from that perspective, CPCFA is working together with the State Treasurer's Office (STO), the Administrative Services Division (ASD), the Information Technology Division (ITD), and the Budget Office. CPCFA is quantifying the costs of such a program and they will be significant, to provide a financing access program that is statewide. CPCFA will be providing those numbers to the Legislature, the Bill's author and the Department of Finance (DOF) to inform them what the program could look like in terms of the program and administrative costs.

SB 551 is the bill that would make some changes to the CalCAP program. The bill was converted into a two year bill and the author is looking forward to working with the bill's sponsors and CPCFA regarding its language.

Mr. Webster-Hawkins asked if there were any questions. There were none.

Mr. Webster-Hawkins addressed the Board's request from the June 20, 2017 Board meeting to provide a quick overview in regards to the measures that CPCFA takes to ensure that fraud, waste and abuse is avoided. The request came from Mr. Steve Juarez when Ms. Webster-Hawkins spoke about the SB 99 audit that was soon to be released on the CPCFA Bond program.

Ms. Webster-Hawkins informed the Board that since the June 20, 2017 Board meeting, CPCFA did receive the final audit from Richardson & Company LLP. The audit of the Bond program is mandated by Senate Bill 99 from 2010, which requires independent audits of all bond programs, including the accounts and records. Even though the focus is primarily on the Bond program, the scope of the audit, in terms of its evaluations and review of the program administration, accounting and other administrative aspects of the program, ends up being an evaluation of the entire administrative structure because the same framework administratively is performed across all of the CPCFA programs.

## Agenda Item 2.

Ms. Webster-Hawkins highlighted the pillars and values of the CPCFA administration that is implemented on a daily basis. The first is effective customer service combined with prudent administration of taxpayer resources is the heart of all decisions CPCFA makes and all of the processes that are implemented to ensure that the programs are sound and effective.

Ms. Webster-Hawkins stated that like all state agencies, CPCFA adheres to the controlling authorities, which includes the government and public contracting codes, the control agencies such as the DOF and the State Controller's Office (SCO), and DGS. In addition to the State Administrative Manual (SAM) which interprets the codes, CPCFA also follows the State Treasurer's Office Department Administrative Manual (STO DAM), findings and recommendations provided by key audits such as those received from the Office of the Inspector General (OIG), and the California State Auditor (CSA).

CPCFA integrates internal controls into all levels of decision making including a tri-level approval process. This means that all decisions that are germane to the expenditures, both program and administration, have at least three levels of review and approval, starting with analysis at the analytic level by processing the transaction, whatever the request is, then moving to first level of management for quality control and validation of the analysis, and finally executive approval from the Executive Director which checks the soundness of the approval process and considers any policy considerations needed in a decision. CPCFA has sound and validated business processes that control all of the routine administrative tasks, which means that there are written procedures that are validated by staff prior to implementation and then followed. Proof of adherence to the procedures are in the form of checklists, initial and dates of all levels of approval and input received on all of the key decisions.

Lastly, CPCFA incorporates a separation of duties and pays attention to statutory and delegated authorities relative to the ability to make such approvals. All of the duties are described in job descriptions and a risk matrix was implemented primarily for the CalCAP program when the federal monies were given, however, CPCFA has extrapolated the key recommendations from the accounting firm into all decision making.

A key element in the recently released SB 99 audit recognizes that the decision making authority resides with CPCFA but is supported by the management services and expertise of the STO ASD.

Ms. Webster-Hawkins informed the Board that Richardson & Company LLP performed the audit this last year and that it was the first year of a three year audit contract, and that CPCFA enjoyed working with them. The audit produced no findings. In addition, the company was able to provide what was conveyed to be very welcome and important technical assistance to the STO accounting office regarding evolving responsibilities that all state agencies have to report pension and other personnel and employment benefits numbers in state audits on the asset and liability sheets.

Ms. Webster-Hawkins provided a framework of the evaluation that the auditors performed and why it is a sound indicator of the administration of all of CPCFA's programs. In addition to looking at the very specific details of the bond transactions, within the audit review period,

## Agenda Item 2.

namely fiscal year 2015-2016. The auditors asked for additional general information and documentation and proof of transactions germane to all of the administration. Ms. Webster-Hawkins provided a list of some of the key areas that were examined:

- Invoicing for program and administrative expenditures and revenues
- Accounting Procedures:
  - Payroll
  - General Ledger and journal entries
  - Cash Receipts and wires, remittances, deposit memos
  - Cost allocation calculations
  - Accounting system access
  - Reconciliations
- Bond program procedures:
  - Financing application checklists
  - Document review procedures
  - Drafting of resolutions
  - Board notices and minutes
  - Application of fee schedules
- Review of contracts with impact on financial statements
- Review of other audits performed
  - State Personnel Board (annual)
  - California State Audit  
(recent audit of the CalReUSE program which also had no findings)
- Conflicts
  - Review of officers and executives and their related interests
  - Whistle-blowing and anti-fraud policies
- Internal controls and separation of duties
  - Authorized signers
  - Timesheets (reviewed and approved)
  - Travel and expenses
  - Review of implementation of all major policies  
(including investment opportunities, equal opportunity and hiring policies)
- Documentation of Board and staff meetings (sound and accurate)

Ms. Webster-Hawkins concluded and asked the Board if they had any questions.

Mr. Juarez stated no, but expressed his thanks and appreciation for the presentation. Mr. Juarez stated that he was the one that suggested that Ms. Webster-Hawkins provide a presentation to the Board. This emanated from the SB 99 audit, and Mr. Juarez stated that he received a questionnaire and realized that he was not knowledgeable enough to know the course of action that is taken to ensure that there are no conflicts, and that everything is being done that the

auditor expects to be done. Mr. Juarez stated that with this presentation, it is clearly the case and that the audit shows that it is clearly being done with no findings. Mr. Juarez stated that he wanted the Board to be privy to the rigors of what CPCFA goes through and stated that next month they will hear from CAEATFA in a similar fashion to make sure that due diligence is being done relative to certain issues.

Mr. Juarez asked if there were any questions from the Board or public. There were none.

**4. BUSINESS ITEMS**

**A. REQUEST TO APPROVE INITIAL RESOLUTION REFLECTING OFFICIAL INTENT TO ISSUE REVENUE BONDS/NOTES**

1. Orange Avenue Disposal Company, Inc. (dba Industrial Waste & Salvage), Cedar Avenue Recycling and Transfer Station, L.P., Caglia Environmental LLC (dba Red Rock Environmental Group) and/or its Affiliates

Presented by: Kris Luoma, Staff Services Analyst

Staff introduced Mark Holmstedt, Westhoff, Cone & Holmstedt

Orange Avenue Disposal Company, Inc. (dba Industrial Waste & Salvage), Cedar Avenue Recycling and Transfer Station, L.P., Caglia Environmental LLC (dba Red Rock Environmental Group) and/or their Affiliates, requested approval of an Initial Resolution for an amount not to exceed \$5,105,000 to finance the purchase of California Air Resources Board (CARB) compliant collection vehicles, carts, bins and containers and the construction of improvements to its material recovery facility and its solid waste disposal facilities.

Staff recommended approval of Initial Resolution No. 17-10 for Orange Avenue Disposal Company, Inc., Cedar Avenue Recycling and Transfer Station, L.P., Caglia Environmental LLC and/or their Affiliates for an amount not to exceed \$5,105,000.

Mr. Juarez asked if Mr. Holmstedt had any comments. He stated no.

Mr. Juarez asked if there were any comments from the Board or the public. There were none.

Ms. Ortega moved approval of the item; there was a second.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

2. SIONEER Stockton, LLC and/or its Affiliates

## Agenda Item 2.

Presented by: Andrea Gonzalez, Associate Treasury Program Officer

Staff introduced Mark Holmstedt, Westhoff, Cone & Holmstedt

SiONEER Stockton, LLC and/or its Affiliates requested approval of an Initial Resolution for an amount not to exceed \$9,800,000.

SiONEER Stockton, LLC is a new company formed by the parent company Glass Processing Solutions, LLC. The company is a small business currently with three employees and is expected to have a maximum of 30 employees at commercial operation.

The company plans to finance the construction of a glass processing facility which is anticipated to process 6,000 tons a month of post-consumer glass. The finished products of the processing facility will be a specialty sand and a high quality pozzolan. Pozzolans are required for ultra-high strength concrete used in infrastructure projects.

Staff recommended approval of Initial Resolution No. 17-11 for SiONEER Stockton, LLC and/or its Affiliates for an amount not to exceed \$9,800,000.

Mr. Juarez asked if Mr. Holmstedt had any comments. Mr. Holmstedt stated that a lot of glass recycling is being done in California and that this project involves the broken pieces of glass which are too small to be sent to landfills. This project will sift and recycle those pieces and will eventually be made into pozzolan as described by Ms. Gonzalez.

Mr. Juarez asked if there were any comments from the Board or the public. There were none.

Ms. Ortega moved approval of the item; there was a second.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

### 3. Alameda County Industries, Inc. and/or its Affiliates

Presented by: Dmitri Godamunne, Staff Services Analyst

Staff introduced Mark Holmstedt, Westhoff, Cone & Holmstedt

Alameda County Industries, Inc. and/or its Affiliates requested approval of an Initial Resolution for an amount not to exceed \$12,205,000 of tax-exempt notes to finance the improvements of an existing Materials Recovery Facility and the acquisition of related equipment for the processing, transfer and recycling of waste.

**Agenda Item 2.**

Staff recommended approval of Initial Resolution No. 17-12 for Alameda County Industries, Inc. and/or its Affiliates for an amount not to exceed \$12,205,000.

Mr. Juarez asked if Mr. Holmstedt had any comments. Mr. Holmstedt did not.

Mr. Juarez asked if there were any comments from the Board or the public. There were none.

Ms. Ortega moved approval of the item; there was a second.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

**B. REQUEST TO APPROVE FINAL RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS/NOTES**

Aemerge Redpak Services Southern California, LLC. and/or its Affiliates,

Presented by: Kris Luoma, Staff Services Analyst

Staff introduced Doug Lamb, McGuireWoods LLP, Mark Holmstedt, Westhoff, Cone & Holmstedt

Aemerge Redpak Services Southern California, LLC and/or its Affiliates requested approval of a Final Resolution for an amount not to exceed \$12,350,000 in tax-exempt bonds to finance the cost of refurbishing existing equipment, construction costs resulting from construction delays and additional earthquake safety improvements.

Aemerge anticipates a limited offering and private placement of non-rated, fixed rate ad tax exempt solid waste disposal revenue bonds in minimum denominations of \$250,000 and a restriction on transfers to Qualified Institutional Buyers. The company is returning for allocation approval at the August 15, 2017 CPCFA Board meeting and anticipates closing on August 17, 2017.

Staff recommended approval of Final Resolution No. 569 for an amount not to exceed \$12,350,000 for Aemerge Redpak Services Southern California, LLC and/or its Affiliates.

Mr. Homstedt stated his thanks to the Board for support of the project and as was previously discussed, this is to take care of cost overruns. There were five principal bond holders for the original transaction and they have the support of all five of them, and that a combination of the five will most likely be purchasing the new bonds. Once that process is completed, in the next couple of weeks, the company will be coming back for Board approval on August 15, 2017.

## Agenda Item 2.

Mr. Juarez asked Mr. Holmstedt if the principal bond holders stand behind the prior bonds that were issued in terms of their priority. Mr. Holmstedt stated that this transaction will.

Mr. Juarez asked if Mr. Lamb had any comments. Mr. Lamb did not.

Mr. Juarez asked if there were any comments from the Board or the public. There were none.

Ms. Webster-Hawkins expressed her appreciation to Mr. Lamb for coming aboard and working with CPCFA on this project, and hopes that he will work with CPCFA in the future and that it has been a pleasure.

Mr. Lamb stated that they would like to work with CPCFA again and it was also a pleasure.

Ms. Ortega moved approval of the item; there was a second.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

### **C. REQUEST TO APPROVE FINAL RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS/NOTES FOR NEW MONEY AND REFUNDING PURPOSES, SMALL BUSINESS ASSISTANCE FUND (SBAF) COSTS OF ISSUANCE ASSISTANCE AND TAX-EXEMPT VOLUME CAP ALLOCATION**

Best Way Disposal Co., Inc. and/or its Affiliates

Presented by: Dmitri Godamunne, Staff Services Analyst

Staff introduced Mark Holmstedt, Westhoff, Cone & Holmstedt

Best Way Disposal Co., Inc. and/or its Affiliates requested approval of a Final Resolution to issue revenue notes to refund the outstanding amount of \$13,775,000 for the Series 2012 California Pollution Control Financing Authority Bonds. The company also requested Volume Cap Allocation approval for an amount not to exceed \$7,655,000 in new money revenue notes to finance improvements to an existing materials recovery facility (MRF), and the acquisition of equipment for the collection, processing, transfer and recycling of solid waste which includes organic waste, including rolling stock, collection vehicles, carts, pails, bins, containers and other related equipment.

The company also requested approval of a Small Business Assistance Fund Resolution in an amount not to exceed \$146,280 to assist with the cost of issuance of this transaction.

Staff recommended approval of Final Resolution No. 570 for an amount not to exceed \$21,430,000, Volume Cap Allocation Resolution No. 14-147-04 for an amount not to



## Agenda Item 2.

exceed \$7,655,000 (please note that it is 04 not 03 as is currently stated in the FR report). And lastly, staff is recommending a SBAF Resolution in an amount not to exceed \$146,280 for Best Way Disposal Co., Inc. and/or its affiliates.

Ms. Webster-Hawkins clarified for the record to be perfectly clear. The staff recommendation in the staff report has the incorrect reference to the Volume Cap Allocation Resolution number of 14-147-03, however the actual resolution has the accurate Volume Cap Resolution number. The appropriate Volume Cap Resolution number is 14-147-04.

Mr. Juarez thanked her for that clarification.

Mr. Juarez asked if there were any comments from the Board or the public. There were none.

Ms. Ortega moved approval of the item; there was a second.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

### **D. REQUEST FOR CONSIDERATION AND APPROVAL OF AMENDMENTS OF THE REGULATIONS FOR THE CALIFORNIA CAPITAL ACCESS PROGRAM REGARDING THE AIR RESOURCES BOARD (ARB) ON-ROAD HEAVY-DUTY VEHICLE AIR QUALITY LOAN PROGRAM, THE CALIFORNIA CAPITAL ACCESS PROGRAM FOR SMALL BUSINESSES AND THE COLLATERAL SUPPORT PROGRAM**

Presented by: Doreen Smith, Treasury Program Manager I

Staff requested Board approval to adopt emergency regulations for the Air Resources Board On-Road Heavy-Duty Vehicle Air Quality Loan Program (ARB) and the Collateral Support Program (CSP). The emergency regulations also include updates and clarifications to the California Capital Access Program for Small Business Program (CalCAP). Upon the Board's approval, staff will file the regulations with the Office of Administrative Law (OAL).

CalCAP staff has conducted outreach regarding the proposed regulations:

- A stakeholder symposium was held on April 26, 2017 to discuss CalCAP program performance data and introduce the recapture proposal in the proposed regulations. Stakeholder presentations and comments were solicited and were heard at the symposium.
- Notices were sent to participating lenders and other stakeholders advising them of the need to implement a recapture mechanism to ensure the sustainability of the CalCAP programs.

## Agenda Item 2.

- Additionally, a lender roundtable webinar was held on July 11, 2017 to further discuss the recapture and regulatory process and the current status of each program.

On July 11, 2017, staff posted a Notice of Emergency Regulations to provide the required opportunity for the public, including stakeholders, to comment on the proposed text of the regulations and finding of emergency for five (5) working days.

Ms. Smith stated that staff has received written comments, which Ms. Webster-Hawkins will address now.

Ms. Webster-Hawkins thanked Ms. Smith and stated that there were comments received in response to the notice of emergency regulations. Since this Board meeting is part of the public process as part of the rulemaking, she took the time to inform the Board and public the salient points that were raised for the record and for consideration.

Several of the comments addressed the legality of CPCFA's proposal to move forward through an emergency rulemaking. Ms. Webster-Hawkins called upon Deborah Yang, CPCFA's staff counsel, to provide comment.

Ms. Yang stated that CPCFA does have authority to implement emergency regulations in statute, as the emergency is declared in statute for the CalCAP program.

Mr. Juarez stated that two of the letters that he read suggested that the Board needed to be conditioned by certain requirements in order to declare emergency regulations, and he has since learned that this is not necessarily the case and that it is embedded in the statute that the Board does have the authority.

Ms. Yang concurred.

Mr. Webster-Hawkins stated to be clear and responsive to the comments received in the letters, the letter cited Government Code section 11346.1 as providing the pathway by which an agency normally would have to specify facts and circumstances justifying an emergency, but that Government Code section doesn't apply because of the reason that we have a legislatively declared emergency in the Health and Safety Code.

Mr. Juarez stated that he appreciated the clarification.

Ms. Webster-Hawkins stated that several comments suggested that, even if the Authority has the legislative authority to conduct emergency rulemaking, the fact that end of program funding has been anticipated for some time suggests that this rulemaking should not be subject to such quick action.

Ms. Webster-Hawkins responded by stating all CPCFA program improvements relating to small businesses have been adopted pursuant to the emergency rulemaking authority in the legislation because of the fact that the Legislature has declared it an emergency. This

## Agenda Item 2.

includes a variety of improvements that have been made over the past years including the expansion of eligible loans under the CalCAP program to include wineries and microbreweries. The end of the U.S. Treasury Allocation Agreement which ended on March 31, 2017 and the exhaustion of the federal funds clearly constitutes a scenario where we need to move forward, expeditiously. CPCFA staff has been discussing the possibility of recapture and the emergency rulemaking with lenders since summer 2015, when ARB tasked CPCFA with researching sustainability mechanisms so that we could wean off of the first time program funding for the Truck Loan Program, and when CPCFA staff began considering long-range planning for the Small Business Program when the federal allocation was exhausted. In November 2016, CPCFA staff had initially proposed beginning the emergency rulemaking by March 2017. However, many lenders responding to our CalCAP Seismic Safety rulemaking urged us to go slower. To that end, we offered the CalCAP Stakeholder Symposium in April 2017 to solicit input on various sustainability mechanisms, including but not limited to recapture. We received no viable alternative through that process, so proceeded with the current proposal. At the same time, loan enrollments in both programs have risen sharply over this time one year ago. In the Small Business Program, in the first 6 months of 2017 lenders have submitted almost as many loans as they did in all of calendar year 2016. In the Truck Loan Program, we have received 2/3 the number of loans as we did all year in 2016. So program expenditures have risen just in the last 6 months beyond what could have been anticipated. All of this, together with the legislatively declared authority to conduct an emergency rulemaking, justifies a quick response to attempt to keep the program continuously funded beyond the monies remaining in our initial state and federal allocations. Staff received comments from some of the lenders urging CPCFA to move forward with the emergency rulemaking because of the need to keep the program open when the funds are exhausted.

Ms. Webster-Hawkins stated that there is a suggestion that the timeline for lenders to opt-in is too quick for them to make such a significant decision.

Ms. Webster-Hawkins clarified that the proposed regulations state that, for an existing lender to enroll loans after August 15, 2017, it must acknowledge in writing its election to participate in recapture. If a lender wants to take additional time to decide, it may do so. Please note that there is no requirement for an affirmative opt-out. Nothing in the proposed language prohibits a lender from taking one, three or six or months to decide before electing to opt-in, and CPCFA does not intend to prohibit a lender from taking this time to decide or adjust its business practices. Rather, the intent is to limit the enrollment of loans after August 15, 2017 into programs funded solely or largely by recycled monies only to those lenders after each has affirmatively opted in.

To clarify this, we might recommend the following language in Section 8073(g)(4) [and subsequent corresponding sections]: “Any Participating Financial Institution that does not affirm its election in writing will be deemed ineligible to submit loan enrollments on or after August 15, 2017, *until such time that the institution submits its election in writing. For any Participating Financial Institution that later submits its election in writing, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to*

## Agenda Item 2.

*this subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments on or after the date of its written election.”*

Ms. Webster-Hawkins stated another public comment suggested that CPCFA lacks the authority to adopt the Recapture mechanism, citing the mandatory recapture requirements contained in the CalCAP/ADA and CalCAP/Seismic Safety Programs, and even mentioning an unconstitutional taking.

The CalCAP statutes states unambiguously that:

- “Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.” H&SC section 44559.2(e);
- “The authority may establish and maintain loss reserve accounts with any financial institution under any policies the authority may adopt.” H&SC section 44559.3(c); and
- “All money’s in a loss reserve account established pursuant to this article are the exclusive property of and solely controlled by, the authority.” H&SC section 44559.3(d).

These provisions provide the Authority the ability to adopt policies to increase sustainability, and further specify the property rights to the funds in the loss reserve.

These provisions in the CalCAP/ADA and CalCAP/Seismic Safety program mandates that the Authority include Recapture in those new programs, and in no way limits the discretion of the Authority to do the same in its legacy programs or those established through an interagency agreement with another state agency like with ARB.

One comment noted that the proposed rulemaking does not specify that the Recaptured funds must be used for the same program from which it was collected, as required by the *statutory* language governing the CalCAP/ADA and CalCAP/Seismic Safety Programs.

Ms. Webster-Hawkins stated that the commenter was right and that it was an oversight. CPCFA appreciates the comment and concurs that the intent is to limit the use of each recaptured dollar to the program from which it originated and therefore CPCFA recommends corresponding language be added in the rulemaking package.

Mr. Juarez asked if this would be for the final rulemaking or for the emergency rulemaking.

Ms. Webster-Hawkins stated that it would be for the emergency rulemaking. She stated that the recommendations that she is making here along with one more administrative recommendation to be added, and would recommend making the changes in the emergency

## Agenda Item 2.

rulemaking package, and in an abundance of caution, re-noticing the emergency rulemaking which would be posted no later than July 19, 2017. This would be an additional 5 day period for the public to comment and then at that time the package would be submitted to OAL.

Mr. Juarez stated that this was excellent.

Ms. Webster stated that the next comment suggested that the changes to the manner in which a loss reserve account is distributed following a lender's termination from the program is not necessary or hard to understand, or that the lenders should be entitled to receive the proportion related to the fees paid by the borrowers.

Ms. Webster-Hawkins stated the proposed amendments delete much of the existing language in Section 8076 which is confusing. The substantive change is to limit the amount of the exiting lender's share of the remaining loss reserve account to the proportion associated with the fees deposited by the lender, as compared to the total amount of fees and contributions made by the lender, its borrowers, and the Authority over time. The existing regulation inexplicably would allocate the share of the lender and the associated borrower fees as well. Health and Safety Code section 44559.3(d) provides that all funds in the loss reserve account are the property of the Authority. There is no policy rationale for gifting to the lenders the funds proportionate to the fees by the borrowers. Staff recommended eliminating that proportion.

Ms. Ortega sought clarification and asked if essentially the lender would get back what they put in. Ms. Webster-Hawkins stated the lender would get back their proportion of what they have deposited over the life of their participation in the program. Ms. Ortega asked if they would have access to any other funds. Ms. Webster-Hawkins stated the lender would not have access to funds deposited by CPCFA or by the borrower.

Ms. Ortega then thanked Ms. Webster-Hawkins.

Ms. Webster-Hawkins then stated that a lender makes the suggestion that, instead of recapture, an existing lender ought to be able to enroll loans against its existing loan loss reserve account even after funds for public contributions are exhausted.

Ms. Webster-Hawkins stated that this suggestion has been recommended before and extensively considered and analyzed by staff and others, and subsequently declined by decision-makers and legal advisors in both the Treasurer's Office, legislative and executive branches, as unsustainable and contrary to the policy underlying the loan loss reserve program.

Mr. Juarez stated that by having said that, the lenders could re-apply if they have new loans that they would like to issue if they are participating in the recapture program, and asked if the lenders can re-apply for additional loan loss reserve.

## Agenda Item 2.

Ms. Webster-Hawkins stated that it would depend if there are program funds to be able to make contributions for those new loans. This commenter addressed the scenario in which CPCFA no longer has any program funds to provide the contributions for those enrolled loans.

There is a suggestion that Small Business Program and Truck Loan Program revenues are drying up because of increased administrative costs to operate CalCAP, and “wasted” efforts by CPCFA to enroll new lenders and develop new programs.

Ms. Webster-Hawkins stated that this comment seemed predicated on the misassumption that CPCFA’s administrative costs are paid from one unified fund regardless of source.

Both the CalCAP/ADA and CalCAP/Seismic Safety Programs have discreet allocations of funds for administrative and outreach costs, maintained separately from Small Business and ARB funds respectively. CPCFA staff keeps timekeeping records to 15 minute increments and charges time and other expenditures to the respective program and fund, and our accounting procedures ensure that the correct program is assessed for time spent. While the costs to run statewide programs are increasing in all state agencies, CPCFA has maintained its administrative expenditures to well under the allowable maximums permitted by the U.S. Treasury for the Small Business Program, and by ARB for the Truck Loan Program.

Efforts to recruit new lenders for the Small Business and Truck Loan Programs are reasonable expenditures, given the number of small businesses with lending needs in California not yet being served by CalCAP, as shown by the underrepresentation in certain industrial sectors and regions of the state.

Efforts to develop the new programs are not charged to the CalCAP Small Business Program or Truck Loan Program. Each of the programs, both old and new, have discreet administrative budgets and allowable expenditures.

CPCFA’s internal controls for all programs are structured upon federal and state administrative cost principles to ensure that funds are not wasted, and have successfully passed independent and state audits for the past four years due to improvements made by current executive management.

Several comments suggest that the program will “terminate” or “shut down” if lenders cannot continuously enroll new loans due to exhausted program funding.

Ms. Webster-Hawkins stated that in the event either program runs out of funding for contributions, all loans previously enrolled will continue to be supported by the lender’s loss reserve account as long as funds remain in the account, and CPCFA will continue to actively process claims and monitor all accounts.

Some comments addressed the possibility that the Recapture may not provide a steady or continuous source of funding.

## Agenda Item 2.

Staff acknowledged that this is possible, because the amount to be recaptured as well as the volume of future loan enrollments are both impossible to predict. The alternative to adopting a voluntary Recapture for those willing lenders is that all lenders will be precluded from enrolling future loans after the current program funding runs out. What the Authority is proposing is not a guarantee for continuous future funding, but the best alternative to ending new loan enrollments permanently.

One comment addressed the attention that banking regulators might pay to a reduction in a lender's loss reserve due to Recapture.

Ms. Webster-Hawkins stated that the proposal for Recapture is in keeping with the CalCAP program serving as a supplement to a lender's own anticipated loss reserve, not a substitute for it. Given the two-year forecast of the need for recapture – or the end of new contributions into Loss Reserve Accounts when the program funding ended – participating lenders hopefully have been attentive to the potential impact on the balances of their loss reserve accounts to avoid any undue alarm by regulators.

One comment proposed to convert the existing requirement for Authority approval of transfer or assignment of enrolled loans, to one of notice only.

Ms. Webster-Hawkins stated that the approval process currently in the regulations ensures that the transfer or assignment of a Participating Financial Institution's enrolled loan is consistent with program rules, and serves to ensure the rights and responsibilities of both the original Participating Financial Institution as well as the successor in interest, depending on the specific expectations of the parties in each transfer.

One comment sought a change to the definition of Refinance to permit the enrollment of a refinance of prior debt, and also seeks a 90 day grace period of the changes to the definition of Refinance.

Ms. Webster-Hawkins stated that The Health and Safety Code section 44559.1(j)(2)(C) prohibits "A loan for the refinancing of an existing loan when and to the extent that the outstanding balanced is not increased." Ms. Webster-Hawkins stated that the statute remains untouched and remains the fundamental guide for refinance. The regulations address such scenarios in compliance with the statutory prohibition in which we can entertain refinancing. If the outstanding balance is increased, then a refinance may be eligible for enrollment in the program and since this has always been the case, no grace period is warranted as there is no substantive change.

Ms. Webster-Hawkins stated that there were other related comments from the same commenter. Ms. Webster-Hawkins reiterated that they are not substantive changes but restatements or remunerations of rules related to refinance that were in other areas of CPCFA's regulations or the U.S. Treasury Allocation Agreement.

## Agenda Item 2.

Ms. Webster-Hawkins summarized that she identified two changes that CPCFA concur with the commenters. The first is related to clarification, to ensure that the lenders can take time to opt-in to the recapture. And the other is to clarify that any recaptured dollar would be dedicated to be spent in the program from which it originated.

Ms. Webster-Hawkins stated that there was another change that staff identified and wants to clarify, that at various places in the regulatory package, CPCFA stated that the effective date of recapture is August 15, 2017 and in one area it also states the date of August 15, 2017 is the effective date of the regulations and this is incorrect. CPCFA wants to align with the August 15, 2017 date as the date as stated in all areas of the recapture.

Ms. Webster-Hawkins stated that with those three substantive changes, CPCFA proposed to generate a new set of language, and upon advice of counsel, CPCFA would re-post the notice of the emergency rulemaking, assuming that it is approved by the Board which would provide another five days of public comment and then CPCFA would file with OAL.

Mr. Juarez asked if this would change the timeline for the adoption of the permanent regulations. Ms. Webster-Hawkins stated CPCFA would proceed on the same timeline.

Mr. Juarez asked if there was any other comments or questions before it is turned over to the Board. There was none.

Ms. Webster-Hawkins acknowledged that written comment was received today by staff in response to the emergency rulemaking, and was referenced in the previous comments and that the submitted comment today from Crossroads Equipment and Lease Finance which will be entered into the rulemaking record.

Mr. Juarez thanked Ms. Webster-Hawkins.

Mr. Juarez stated that Board members have also received comments from a couple of parties and stated his appreciation in their interest in wanting to make sure that their voices are heard. Mr. Juarez stated that the issue of recapture has been at the forefront of discussions with CPCFA and with the staff and has been before the Board. Mr. Juarez stated that there has been plenty of time to offer alternatives, and that with some of the letters seen, some of the lenders have participated in the workshop that was held earlier this year and with no necessary suggestions on how they might work to improve what staff was considering. Mr. Juarez stated his appreciation for the people who have participated and have made suggestions which led to what Mr. Juarez considered to be a very elegant compromise that Ms. Webster-Hawkins and staff came up with relative to starting at fifteen percent and eventually moving down to ten percent. There have been other discussions that people probably viewed as much more draconian and he believed that staff heard that and is responsible for the proposal that is before the Board today. Mr. Juarez stated that with all of that being said, he knows that there are concerns, but he believes this is the right path to go to, to keep the program funded and moving forward in the future, and from his perspective he intends to support the emergency regulations today.



## Agenda Item 2.

Mr. Juarez stated that before the Board votes, he would like to see if there are any public comments or questions for those in attendance in the audience. There were none. Mr. Juarez then asked if there were any comments or questions from anyone on the phone. There were none.

Ms. Ortega made a motion to approve the rulemaking process in what was presented by staff recommendation with the three changes that Ms. Webster-Hawkins mentioned. Ms. Ortega concurred with the chairs statements and that she has not heard anything to be an alternative to the programs eventually running out of funds to enroll new loans, and that without this rulemaking CPCFA would be in a worse position later and for those reasons Ms. Ortega would also support the package.

Ms. Baker seconded that motion and stated she concurred with both of the statements and stated that she believes the legislature over the interim will have the opportunity to look at the long term plans and believed this to be a short term plan in terms of a solution and this will allow us to engage with legislature on what a long term solution will look like and that this rulemaking will allow both to happen.

Mr. Juarez took that as a motion and a second, and that there were no public comments so role was taken.

Ms. Ortega moved approval of the item; there was a second.

The item was passed by the following vote:

Eraina Ortega for the Director of Finance	Aye
Anne Baker for the State Controller	Aye
Steve Juarez for the State Treasurer	Aye

### 5. PUBLIC COMMENT

Mr. Juarez asked if there were any comments from the public and specifically asked if the gentleman, Matt Schrap, who approached the staff table wanted to speak. Mr. Schrap was asked by staff and the Board if he wanted to speak and he declined. There were no public comments or questions.

### 6. ADJOURNMENT

There being no further business, public comments, or concerns, the meeting adjourned at 12:11 p.m.

**Respectfully submitted,**

(Originally signed by)

Reneé Webster-Hawkins  
Executive Director