

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY  
CALIFORNIA CAPITAL ACCESS PROGRAM  
Meeting Date: July 19, 2022**

**Request for Consideration and Approval of Amendments to the Regulations for the  
California Capital Access Program Regarding the California Capital Access  
Program for Small Business**

Prepared by: Kamika McGill

**Summary:** Staff requests Board approval to adopt emergency regulations that include updates for the California Capital Access Program (“CalCAP”) for Small Business Program. Upon the Board’s approval, staff will file the regulations with the Office of Administrative Law (“OAL”).

**Background:** The California Pollution Control Financing Authority’s (CPCFA) 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 CalCAP, a credit enhancement program to provide loss reserve funding to participating lenders making qualifying loans to California small businesses.

Existing law authorizes CPCFA 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 amendments to the regulations will remove the recapture language and requirements from the CalCAP for Small Business Program.

**Proposed Amendment to Regulation:** Staff proposes changes to CPCFA’s regulations by amending existing Sections 8070, 8072, 8073 as shown in Attachment A.

**Need for Emergency Regulations:** Changes to the CalCAP regulations are necessary to remove the recapture requirements.

**Summary of Regulations:** The proposed regulations revise and update definitions and administrative procedures related to the regulatory requirement for CPCFA to recapture funds from the lender’s loan loss reserve accounts annually. This regulatory change is for the CalCAP for small business program only.

**Informal Public Outreach:** CalCAP is anticipating federal funding from the US Treasury under SSBCI that will eliminate the need for recapture. CPCFA implemented the recapture provision in 2017 to sustain the CalCAP for Small Business program. At that time, the federal funding that CPCFA received in 2011 was expended and no new funding was allocated for the program. In anticipation of the 2022 receipt of new federal funding, CPCFA staff conducted lender webinars and meetings and advised lenders of the proposed removal of the recapture provisions from the regulations. CalCAP plans to continue stakeholder involvement during the rulemaking process.

**Regulatory Process:** On July 12, 2022, 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.

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 emergency regulations. Assuming OAL approves the emergency regulations, the emergency regulations are effective for 180 days during which time 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 proposed rulemaking to be published in the California Regulatory Notice Register (“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 public hearing. After that time, staff will review and respond to any comments and, if staff substantively modifies the present form of the regulations, staff 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 will be submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act. After OAL approval, the regulations will be effective 30 days after the regulations are filed with the Secretary of State.

**Timeline:** Outlined below is the estimated schedule.

### **Emergency Regulations**

July 12, 2022	5-day Notice posted on CPCFA website and sent to Interested Parties
July 19, 2022	CPCFA Board Meeting – Resolution for Proposed Regulations
July 19, 2022	Emergency regulations filed with OAL.
July 26, 2022	Public comment period ends.
August 2, 2022	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
January 30, 2023	Emergency regulations expire.

**Permanent Regulations**

August 16, 2022	Post Notice of Proposed Rulemaking on CPCFA's website
August 23, 2022	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.
September 2, 2022	OAL publishes Notice and 45-day public comment period begins.
October 17, 2022	Public comment period regarding proposed regulations ends.
October 18, 2022	Deliver permanent regulation package to OAL for 30-day review*
November 17, 2022	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:

October 19, 2022	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
November 4, 2022	15-day comment period ends.
November 8, 2022	Deliver permanent regulation package to OAL for 30-day review.
December 8, 2022	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

**Recommendation:** Staff recommends approval of Resolution Number 22-02-002 to authorize staff to undertake emergency and regular rulemaking proceedings and other related actions for the California Capital Access Program for implementation and administration of the California Capital Access for Small Business Program.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING  
AUTHORITY AUTHORIZING THE AMENDMENTS OF THE REGULATIONS FOR  
THE CALIFORNIA CAPITAL ACCESS FINANCING PROGRAM**

**July 19, 2022**

**WHEREAS**, pursuant to Health and Safety Code section 44520, the California Pollution Control Financing Authority (the "Authority") is authorized to adopt regulations to carry out its duties and powers under the California Pollution Control Financing Authority Act;

**WHEREAS**, Health and Safety Code section 44520 further authorizes the Authority to adopt regulations relating to small business as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for such purposes 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; and

**WHEREAS**, emergency regulations are necessary for the California Capital Access Program for implementation and administration of the for Small Businesses;

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

**Section 1.** The proposed emergency regulations presented at the July 19, 2022, meeting are hereby approved in substantially the form submitted by Authority staff. The Chair, Executive Director, and Deputy Executive Director are each hereby authorized, for and on behalf of the Authority, to submit such emergency regulations with the supporting documentation required by law to the Office of Administrative Law and comply with the Administrative Procedure Act. Additionally, the Chair, Executive Director, and Deputy Executive Director are each hereby authorized, for and on behalf of the Authority, to proceed with the procedures required by the Administrative Procedure Act to adopt the emergency regulations as permanent regulations.

**Section 2.** The Chair, Executive Director, and Deputy Executive Director are each 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, including STD399 and STD400, that he or she 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 TEXT OF REGULATIONS**

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

§ 8070. Definitions.

In addition to the definitions in Section 8020, the following terms shall have the following definitions,

unless the context requires otherwise:

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

Institution.

(b) "CalCAP" means California Capital Access Program.

(c) "Change in Terms" means any change in material terms of an enrolled loan, including changes to the

name(s) of the borrower or co-borrowers, the total loan amount, the maturity date, or the interest rate.

(d) "Contribution" means any or all eligible funds deposited by the Authority or Independent

Contributor to a Loss Reserve Account.

(e) "Executive Director" means the Executive Director of the California Pollution Control Financing

Authority, or his or her designee from time to time.

(f) "Fees" or "Fee" means a non-refundable fees or fee as set forth in Health and Safety Code Section

44559.4(c).

(g) "Financial Institution" means an institution as set forth in Health and Safety Code Section 44559.1(d).

**Agenda Item: 4.C.**

Financial Institution also includes microbusiness lenders, as defined in Section 13997.2 of the

Government Code that make small business loans and require a minimum of four hours of preloan

business technical and/or credit assistance to borrowers and a minimum of two hours of postloan

assistance each year, and are subject to an audit requirement by its Federal or State regulated funding

source.

(h) "Independent Contributor" means any individual, company, corporation, institution, foundation,

utility, government agency or other entity, including any consortium of these persons or entities,

whether public or private (but excluding any Borrower), that, pursuant to the provisions of this Article,

deposits Contributions to a Loss Reserve Account.

(i) "Individual" means a natural person, together, if applicable, with any of his or her spouse, parents,

siblings or children or the parents or spouse of any of them.

(j) "Law" means Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the California

Health and Safety Code, as amended from time to time.

(k) "Loss Reserve Account" means an account held by a Program Trustee or by any Participating

Financial Institution that is established and maintained by the Authority for the benefit of a Participating

Financial Institution for the purposes set forth in Sections 8073, 8078.6, 8078.11, 8078.18, and 8078.25.

(l) "Money Market Fund" means an open-ended management investment company regulated under the

**Agenda Item: 4.C.**

Investment Company Act of 1940, as amended, which values its securities pursuant to Section 270.2a-7

of Title 17 of the Code of Federal Regulations.

(m) "Participating Financial Institution" means a Financial Institution that has been approved by the

Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in

the Law and this Article and as may be required by any applicable federal law providing matching

funding.

(n) "Passive Real Estate Ownership" means ownership of real estate for the purpose of deriving income

from speculation, trade or rental, but does not include any of the following:

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

the business of the owner of the real estate; or

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

the construction or renovation phase.

For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or

construction of a building, at least 51 percent of the space in an existing building or at least 67 percent

of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be

satisfied when a Participating Financial Institution makes a Qualified Loan to an Individual, or to a

partnership or trust wholly owned or controlled by one or more Individuals, for the purpose of financing

**Agenda Item: 4.C.**

property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and

in such case the Qualified Loan will be deemed to be made also to such Qualified Business.

(o) "Primary business location in California" means that a business will be deemed to be located in

California if either:

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

(2) the Executive Director determines that the Primary business location is in California by finding that

the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income

Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in

Revenue and Taxation Code Section 25134 is greater than 50 percent.

(p) "Outstanding Principal Balance" means the amount due and owing to satisfy the payoff of the

underlying loan, less interest and other charges.

(q) "Primary economic effect in California" means, as applied to a business activity, that either of the

following conditions exists:

(1) At least 51 percent of the total revenues of the business activity are generated in California; or

(2) At least 51 percent of the total jobs of the business activity are created or retained in California.

(r) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the

Law.

**Agenda Item: 4.C.**

(s) "Program Trustee" means a bank or trust company, or the State Treasurer, chosen by the Authority

from time to time to hold or administer some or all of the Loss Reserve Accounts.

(t) "Qualified Business" and "Small Business Concern" means a business as set forth in Health and Safety

Code Section 44559.1 subdivisions (i) and (m), that is not dominant in its field of operation, and that

together with affiliates, has 500 or fewer employees.

(u) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a

Qualified Business for any business activity that has its Primary economic effect in California. A Qualified

Loan may be made in the form of a line of credit, in which case the Participating Financial Institution

shall specify the amount of the line of credit to be covered under the Program, which may be equal to

the maximum commitment under the line of credit or an amount that is less than the maximum

commitment. "Qualified Loan" does not include any of the following:

(1) A loan for the construction or purchase of residential housing.

(2) A loan to finance Passive Real Estate Ownership.

(3) A loan for the Refinancing of an existing loan when and to the extent that the outstanding balance is

not increased.

(4) A loan, the proceeds of which will be used

(A) For any of the following businesses, facilities, or purposes regardless of the source of funds used for

the Authority's Contribution:

**Agenda Item: 4.C.**

(i) massage parlor, sauna or hot tub facility, racetrack, facility primarily used for gambling or to facilitate

gambling, liquor store, bar, a store or other facility whose principal business is the sale of firearms, a

store or other facility whose principal business is the manufacture or sale of tobacco or tobacco

products, a store or other facility whose principal business is religious, escort service, nudist camp, adult

entertainment (including strip clubs, adult book stores, and businesses whose principal business is the

sale of pornography), gun club, or shooting range or gallery.

(ii) a business engaged in speculative activities that develop profits from fluctuations in price rather than

through the normal course of trade, such as wildcatting for oil and dealing in commodities futures,

unless those activities are incidental to the regular activities of the business and part of legitimate risk

management strategies to guard against price fluctuations related to the regular activities of the

business;

(iii) a business that earns more than half of its annual net revenue from lending activities, unless the

business is a non-bank or non-bank holding company certified as a Community Development Financial

Institution;

(iv) a business engaged in pyramid sales plans, where a participant's primary incentive is based on the

sales made by an ever-increasing number of participants;

(v) a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction

**Agenda Item: 4.C.**

where the business is located or conducted. Included in these activities is the production, servicing, or

distribution of otherwise legal products that are to be used in connection with an illegal activity, such as

selling drug paraphernalia or operating a motel that permits illegal prostitution on its premises;

(vi) businesses that may be restricted by federal law;

(vii) activities that relate to acquiring or holding passive investments such as commercial real estate

ownership, the purchase of securities, and lobbying activities as defined in Section 3(7) of the Lobbying

Disclosure Act of 1995. P.L. 104-65, as amended;

(viii) financing a non-business purpose;

(ix) covering the unguaranteed portions of an Small Business Administration loan unless the Authority

receives prior written consent of the U.S. Treasury; or

(x) supporting existing extension of credit, including prior loans, lines of credit or other borrowings that

were previously made available as part of a substantially similar governmental small business credit

enhancement program.

(B) to provide any of the following facilities when the Authority's Contributions will be paid for with fees

from the issuance of tax-exempt bond sales, all items listed in (A) and: a store whose principal business

is the sale of alcoholic beverages for consumption off premises, private or commercial golf course,

country club, spas that provide massage services, tennis club, skating facility (including roller skating,

**Agenda Item: 4.C.**

skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), suntan

facility, airplane, aircraft, skybox (or other private luxury box), health club facility.

(C) in any manner that could cause the interest on any bonds previously issued by the Authority to

become subject to federal income tax, as specified in writing to all Participating Financial Institutions by

the Executive Director.

(5) any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will

be enrolled in any other government program substantially similar to the Program.

(6) any loan that exceeds \$5,000,000.

(7) any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower

(including all related entities among which a common enterprise exists) to have a total enrolled principal

amount in excess of \$2,500,000 at any Participating Financial Institution over a three-year period.

(v) "Quarterly Report" means the mandatory report on the status of loans enrolled submitted to the

Authority by each Participating Financial Institution on a quarterly basis, no later than the 15th of the

month following the end of each quarter.

(w) "Recapture" means the withdrawal of the Authority's Contributions pursuant to each program's

rules set forth in Sections ~~8073~~, 8078.11, 8078.18, and 8078.25.

(x) "Refinance" means the revision or restructure of an existing debt obligation with or without a new

**Agenda Item: 4.C.**

debt obligation with different terms and conditions, including an increase to the outstanding principal

balance, an extended maturity date or term, or permitting another borrower to assume the loan.

(y) "Severely Affected Community" means any area, as designated by the Executive Director, contiguous

to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended;

and any other comparable economically distressed geographic area so designated by the Executive

Director from time to time.

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

(aa) "Standards" means the criteria to be used by an Independent Contributor in assisting businesses

through the Program.

(bb) "TRAC Lease" means "Terminal Rental Adjustment Clause" as defined in Section 7701(h)(3) of Title

26 of the United States Code.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference:

Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7, 44559.9 and 44559.12, Division 27,

Health and Safety Code.

§ 8072. Loan Enrollment.

(a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall

be determined solely by agreement of the Participating Financial Institution and the Borrower.

**Agenda Item: 4.C.**

(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, or the Contribution from an Independent Contributor on behalf of the Borrower and/or

the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees or

Contributions have been deposited in a Loss Reserve Account held by either the Participating Financial

Institution or the Program Trustee.

(c) The notification to the Authority shall include at least the following information:

(1) Borrower name, which includes the Borrower's legal name and the name by which the Borrower

does business, if any, and the business address.

(2) Brief description of the Borrower's business and regular activities, Census Tract Number associated

to the Borrower's business address, and the location of the facilities being financed if different, either

the SIC Code(s) or the NAICS Code(s) applicable to Borrower's business, and the amount of its annual

revenues.

(3) Whether this business has been open for two years or more, and is owned by one of the following: a

woman, minority, or veteran.

(4) Brief summary of the intended use of the proceeds of the Qualified Loan.

(5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the

Qualified Loan is being enrolled) and the Participating Financial Institution loan number.

(6) Type of the Qualified Loan (e.g., line of credit, term loan, TRAC Lease).

(7) Date of the Qualified Loan, based on the first disbursement of proceeds to the Borrower.

(8) Interest rate applicable to the Qualified Loan.

(9) Term or maturity date of the Qualified Loan.

(10) Geographic location of the Qualified Business and the location of the facilities being financed if

different.

(11) Whether the Qualified Business or the location of the facilities being financed is in a Severely

Affected Community.

(12) Whether the loan is secured.

(13) Whether the loan is a Refinance, and if so, the name of the prior lender if different than the

Participating Financial Institution, whether the prior loan was enrolled under the Program or any other

government lending program, and whether the amount of the loan was increased as part of the

Refinance.

**Agenda Item: 4.C.**

(14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial

Institution.

(15) Whether any portion of the Fees payable by the Borrower or the Contribution was or is to be paid

by an Independent Contributor; the identity of such Independent Contributor; and a certification that

the Independent Contributor has approved the use of its funds to pay such Fees or Contribution in

connection with the Qualified Loan.

(16) Number of persons currently employed by the Borrower, and number of jobs expected to be

created, retained or affected by the Qualified Loan.

(17) Certification by the Participating Financial Institution that:

(A) The loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified

Business.

(B) The Qualified Loan is for a business activity that has its Primary economic effect in California.

(C) Upon request of the Executive Director, the Participating Financial Institution will provide

information from the financial records of the Borrower, including documents validating the Borrower's

establishment of a business entity, and that the Participating Financial Institution has obtained the

consent of the Borrower to such disclosure.

(D) The Participating Financial Institution has obtained a written representation from the Borrower that

it has no legal, beneficial or equitable interest in the Fees or the Contribution.

**Agenda Item: 4.C.**

(E) The enrolled amount of the loan does not exceed \$2,500,000.

(F) The Participating Financial Institution has notified the Borrower if the Participating Financial

Institution's share of the Fees for the Qualified Loan have been paid by the Borrower.

(G) The lending activities of the Participating Financial Institution are subject to any applicable safety

and soundness standards as set forth in applicable federal banking regulations.

(H) The Participating Financial Institution has validated that the Borrower has secured or made

application for all applicable licenses or permits needed to conduct business.

(I) The Participating Financial Institution has not, and will not, enroll any portion of the same loan in any

other government program substantially similar to the Program.

(J) The Qualified Loan is not a Refinance of a loan previously made to the Borrower to the extent that

the outstanding balance is not increased.

(K) The Participating Financial Institution has provided the Borrower the Authority's Privacy Notice for

the CalCAP for Small Business Loan Program, which provides the notice required under the California

Information Practices Act (Civil Code section 1798.17). The Privacy Notice informs the Borrower that

personal information protected by the California Information Practices Act may be disclosed under the

following circumstances:

(i) To consultants, auditors or contractors retained by the Authority where disclosure is required to fulfill

Program requirements and subject to a nondisclosure agreement;

(ii) To another governmental entity where required by state or federal law; or

(iii) As otherwise required by law.

(L) The Participating Financial Institution will make available to the Authority all records related to the

use of the funds in the Loss Reserve Account.

The Participating Financial Institution shall be authorized to rely on representations made to the

Participating Financial Institution by the Borrower for the information requested in subdivisions (c)(4),

(c)(16), (c)(17)(A), (c)(17)(B) and (c)(17)(D); provided that no such Borrower representation may be

relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution

who are directly involved in the negotiation of the Qualified Loan. All other certifications shall be based

upon the Participating Financial Institution's established due diligence and underwriting standards

applied in the regular course of business, and the Participating Financial Institution shall maintain

substantiating documentation in the Borrower's loan file.

(18) The Participating Financial Institution must obtain written certification from the Borrower that:

(A) The loan will be used solely for a business purpose;

(B) The loan will not be used to repay delinquent federal or state income taxes unless the Borrower has

a payment plan in place with the relevant taxing authority;

(C) The loan will not be used to repay taxes held in trust or escrow;

(D) The loan will not be used to refinance or reimburse funds owed to any owner, including any equity

injection or injection of capital for the business' continuance;

**Agenda Item: 4.C.**

(E) The loan will not be used to purchase any portion of the ownership interest of any owner of the

business;

(F) The loan will not be used to finance ineligible businesses or facilities identified in Section 8070;

(G) The Borrower is not:

(i) an executive officer, director, or principal shareholder of the Participating Financial Institution;

(ii) a member of the immediate family of an executive officer, director, or principal shareholder of the

Participating Financial Institution; or

(iii) a related interest of such executive officer, director, principal shareholder, or member of the

immediate family of the Participating Financial Institution.

(d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its

employees in California, the Participating Financial Institution shall be authorized to submit information

to, and seek a determination from, the Executive Director that such Borrower has its Primary business

location in California. Such determination shall be made by the Executive Director within 10 days of

receipt of a written request from a Participating Financial Institution containing information about the

business activities of the proposed Borrower.

(e) If a Borrower seeking a Qualified Loan from a Participating Financial Institution is an employee,

member, director, officer, principle shareholder, or affiliate of the Participating Financial Institution, the

terms and the conditions of the Qualified Loan and the internal procedures used to approve the

Qualified Loan must comply with the following requirements:

(1) If the Participating Financial Institution is a federal-chartered bank, the Qualified Loan must be made

in accordance with all applicable federal banking laws that regulate conflicts of interests and insider

transactions and Sections 371c, 371c-1, 375a, and 375b of the Title 12 of the United States Code, and

Sections 215.4 of Title 12 of the Code of Federal Regulations.

(2) If the Participating Financial Institution is a state-chartered bank, the Qualified Loan must be made in

accordance with all applicable state banking laws that regulate conflicts of interests and insider

transactions and Section 3370 et seq. of the Financial Code, and Sections 10.19300 to 10.19302 of Title

10 of the California Code of Regulations.

(3) If the Participating Financial Institution is a federal-chartered savings association, the Qualified Loan

must be made in accordance with all applicable federal banking laws that regulate conflicts of interests

and insider transactions and Section 1468 of Title 12 of the United States Code.

(4) If the Participating Financial Institution is a state-chartered savings association, the Qualified Loan

must be made in accordance with all applicable state banking laws that regulate conflicts of interests

and insider transactions and Sections 6503 and 6529 of the Financial Code.

(5) If the Participating Financial Institution is a federal-chartered credit union, the Qualified Loan must

be made in accordance with all applicable federal banking laws that regulate conflicts of interests and

insider transactions and Sections 1757 and 1761c of Title 12 of the United States Code and Section

701.21(d) of Title 12 of the Code of Federal Regulations.

(6) If the Participating Financial Institution is a state-chartered credit union, the Qualified Loan must be

made in accordance with all applicable state banking laws that regulate conflicts of interests and insider

transactions and Section 15050 of the Financial Code.

(7) If the Participating Financial Institution is a not-for-profit certified community development financial

institution (CDFI), the Qualified Loan must be made in accordance with all applicable federal banking

laws that regulate conflicts of interests and insider transactions and Sections 1805.807 of Title 12 of the

Code of Federal Regulations.

(8) If the Participating Financial Institution is a lending institution as described in Section 44559.1(d)(2)

of the Health and Safety Code, the Qualified Loan must be made in accordance with any applicable

federal laws that regulate conflicts of interests and insider transactions and Section 120.140 of Title 13

of the Code of Federal Regulations.

(f) The Participating Financial Institution may pre-qualify with the Authority any qualified loan. Prequalifications do not necessarily guarantee that funds for Contributions will be available at the time of

final enrollment, unless the funding source requires it. Pre-qualifications shall be valid for six (6) months.

**Agenda Item: 4.C.**

(g) The Authority shall, upon receipt of documentation and Fees from the Participating Financial

Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets

the requirements of the Law and this Article. The Executive Director shall notify the Participating

Financial Institution of enrollment within 15 business days after receipt by the Authority of all

documentation and Fees required by the Law and/or this Article. The Executive Director's determination

whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized

to review an application for enrollment submitted by a Participating Financial Institution in advance of

the making of the loan, and notify the institution whether such loan meets the requirements of the Law

and this Article.

(h) Upon enrollment of a Qualified Loan, the Contribution shall be transferred for deposit in the Loss

Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee

shall notify the Participating Financial Institution of the transfer and of the source of funds from which

the transfer was made.

(i) The Participating Financial Institution must notify the Authority whenever the material terms of an

enrolled loan change prior to maturity, including TRAC Leases assumptions, by submitting a Change in

Terms notification within fifteen (15) business days after such change.

**Agenda Item: 4.C.**

(1) If any of the terms other than the interest rate have changed, then the Participating Financial

Institution shall also submit an amended loan enrollment application including new lender and borrower

certifications, for the loan.

(2) The Participating Financial Institution shall deposit Fees pursuant to Section 8072 for any increase to

the total loan amount.

(3) If the Authority determines that the information contained in the Change in Terms constitutes an

ineligible Refinance, or not a Qualified Loan as defined in Section 8070, neither the original nor the

revised loan will continue to be enrolled in the Program.

(4) Notwithstanding the ineligibility of a Refinance when the outstanding balance is not increased under

Section 8070(u)(3), the Authority may authorize an extension of the maturity date of an enrolled loan

for up to eighteen (18) months, if the Participating Financial Institution has provided the Authority

written certification to its credit policy that provides for such extensions of the maturity date. Such

authorization is contingent upon the submittal of the Change in Terms notification, an amended loan

enrollment application, and new lender and borrower certifications for the loan.

(j) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed ten

years.

~~(k) Loan enrollments submitted on or after August 15, 2017 will be subject to Recapture as specified in~~

~~Section 8073.~~

Note: Authority cited: Sections 44520 and 44559.5, Health and Safety Code. Reference: Sections

44559.2, 44559.4 and 44559.12, Health and Safety Code; and Section 1798.17, Civil Code.

§ 8073. Loss Reserve Accounts.

(a) Upon the Executive Director's acceptance of an application under Section 8071, the Authority shall

establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:

(1) to receive all Fees deposited by the Participating Financial Institution, Borrowers and/or Independent

Contributors;

(2) to receive Contributions deposited by the Authority and/or Independent Contributors; and

(3) to pay claims in accordance with Section 8074.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating

Financial Institution or by the Program Trustee. For each Loss Reserve Account held by a Participating

Financial Institution, the Participating Financial Institution shall submit to the Authority a monthly

statement of the account activities and balance, no later than the 15th of the following month.

(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing

demand account or deposit account at a banking institution, or a Money Market Fund if approved in

writing by the Executive Director, or a combination thereof, and earning a rate of interest that would be

**Agenda Item: 4.C.**

expected of accounts of similar type and size. The Loss Reserve Account shall be insured by the Federal

Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Securities

Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not

deposit any Loss Reserve Account with a Participating Financial Institution if:

(1) there are any charges by the Participating Financial Institution for the establishment or maintenance

of the Loss Reserve Account at such Financial Institution; or

(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, it has

a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank

Financial Quarterly, or Credit Union Financial Profiles; or it has a rating of "C" or below from LACE

Financial Corp; or it has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or

successor publication approved by the Executive Director.

(3) the Participating Financial Institution has not timely submitted its Quarterly Report described in

Section 8073, and, for accounts held at the Participating Financial Institution, the monthly statements

described in Section 8078.

(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating

Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve Account

upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below).

**Agenda Item: 4.C.**

Interest or income earned on moneys credited to the 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 all interest and income that has been credited to the Loss Reserve Account as set forth in Health

and Safety Code Section 44559.3(d), ~~and any Contributions subject to Recapture as provided in Section~~

~~8073~~. The Executive Director shall be authorized to return to a Participating Financial Institution any

Fees improperly deposited in a Loss Reserve Account. No Participating Financial Institution holding its

Loss Reserve Account shall make any withdrawal from the account without written instruction from the

Authority.

(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with

the approval of the applicable Participating Financial Institution, to assign, transfer, pledge or create

security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including

a trustee of a securitization trust or trusts) in connection with the securitization of all or a portion of the

Participating Financial Institution's loans enrolled in the Program. Any loan enrolled in the program or

portion thereof which is subsequently assigned, transferred, pledged or securitized without the advance

written approval of the Executive Director shall no longer be deemed a Qualified Loan or covered by the

Loss Reserve Account. If a Participating Financial Institution desires to assign, transfer, pledge or

**Agenda Item: 4.C.**

securitize all or a portion of any enrolled loan or Loss Reserve Account, it shall submit a written request

to the Authority no less than thirty (30) calendar days in advance of such action, together with the list of

loans and the amount of the Loss Reserve Account subject to the request, and a draft of the legal

document specifying the assignment, transfer, pledge or securitization.

(f) The Participating Financial Institution shall provide information to the Authority regarding the status

of accounts, enrolled loans, claims and recoveries upon request, including timely Quarterly Reports of

the data regarding: Outstanding Principal Balance of all enrolled loans; all loans in default and charged

off, and claim amounts; and deposits made to replenish the Loss Reserve Account pursuant to Section

8074, in the form provided by the Authority. Failure to submit timely and complete Quarterly Reports

will result in the suspension of any pending loan enrollments or claim applications from that

Participating Financial Institution, and transfer of any Loss Reserve Accounts held by the Participating

Financial Institution to the Program Trustee.

~~(g) The Executive Director is authorized to Recapture from each Loss Reserve Account the Authority's~~

~~Contribution for each enrolled loan when the corresponding Qualified Loan matures or upon five years~~

~~from the date of enrollment, whichever occurs first, and subject to each of the following conditions:~~

~~(1) Recapture shall be conducted on an annual basis following the end of each fiscal year based on the~~

~~data reported in the Quarterly Reports submitted for the term ending June 30th.~~

~~(2) Recapture is not applicable for Contributions for Qualified Loans that are charged off as a result of a~~

~~default, and have a pending or approved claim with the Authority, and are reported as such on the~~

~~Quarterly Report.~~

~~(3) The Executive Director shall limit the amount of the annual Recapture of Contributions from each~~

~~Loss Reserve Account if necessary to ensure that the balance remaining in that Loss Reserve Account~~

~~immediately following Recapture is greater than a minimum threshold set as a percentage of the~~

~~Outstanding Principal Balance of loans enrolled in the 60 months prior to each annual Recapture.~~

~~Beginning in 2020, the minimum threshold shall be fifteen percent (15%).~~

~~(4) Recapture shall apply to each new Loss Reserve Account established on or after August 15, 2017.~~

~~(5) For Loss Reserve Accounts established before August 15, 2017, each Participating Financial~~

~~Institution shall affirm in writing its election to continue enrolling loans in the Program subject to~~

~~Recapture applicable to Contributions for all past and future Qualified Loans. This election may not later~~

~~be withdrawn by the Participating Financial Institution. Loans enrolled on or after August 15, 2017 will~~

~~be deemed ineligible if the Participating Financial Institution has not first submitted its election in~~

~~writing. For any Participating Financial Institution that submits its election in writing after August 15,~~

~~2017, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to this~~

~~subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments~~

~~on or after the date of its written election. Nevertheless, Qualified Loans enrolled before August 15,~~

~~2017 will be supported by the Loss Reserve Account and the Participating Financial Institution will be~~

~~eligible for claim reimbursement pursuant to Section 8074 for the previously enrolled Qualified Loans~~

~~until maturity.~~

~~(6) The Authority shall deposit all Recaptured funds in the CalCAP for Small Business Loan Program Fund~~

~~dedicated solely for future program and administrative expenditures of the CalCAP for Small Business~~

~~Loan Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct~~

~~and indirect administrative costs of the Program.~~

~~(7) The Executive Director is authorized to suspend Recapture when the Program is funded by outside sources including, but not limited to, federal funding, and does not require Recapture to sustain the operations of the Program.~~