

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**  
**Meeting Date: October 18, 2022**

**Consideration and Approval of Amendment to Regulations for the California  
Capital Access for Small Business Program Pertaining to the State Small  
Business Credit Initiative (SSBCI)**

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**Summary.** Staff requests Board approval to begin the emergency rulemaking process and file regulations to add § 8078.1 to the California Capital Access Program (CalCAP) regulations. Upon 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's citizens. 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 CalCAP for Small Business Program regulations will add language conforming to the U.S. Treasury and the State Small Business Credit Initiative (SSBCI) Program requirements.

**Regulation Change.** Staff proposes to add § 8078.1 Federal Capital Access and Funding, to CPCFA's regulations as shown in Attachment A.

**Need for Emergency Regulations:** Amendments to the CalCAP regulations are necessary to bring the regulations in line with the U.S. Treasury requirements in expending the federal SSBCI funds and meeting U.S. Treasury timelines. The U.S. Treasury requires allocated funds to begin being expended within 90 days of signing the allocation agreement. The State of California signed its allocation agreement with the U.S. Treasury on September 15, 2022.

**Regulatory Process.** On October 11, 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) business 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

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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 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. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a 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**

October 11, 2022	5-day Notice posted on CPCFA website and sent to Interested Parties
October 18, 2022	CPCFA Board Meeting – Resolution for Proposed Regulations
October 18, 2022	Emergency regulations filed with OAL.
October 25, 2022	Public comment period ends.
November 1, 2022	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
April 30, 2023	Emergency regulations expire.

Permanent Regulations

November 15, 2022	Post Notice of Proposed Rulemaking on CPCFA's website
November 22, 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.
December 2, 2022	OAL publishes Notice and 45-day public comment period begins.
January 16, 2023	Public comment period regarding proposed regulations ends.
January 17, 2023	Deliver permanent regulation package to OAL for 30-day review*
February 16, 2023	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:

January 18, 2023	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
February 2, 2022	15-day comment period ends.
February 7, 2023	Deliver permanent regulation package to OAL for 30-day review.
March 9, 2023	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

**Recommendation.** Staff recommends adoption of Resolution No. 22-02-004 to amend regulations adding requirements for loans enrolled in the CalCAP for Small Business Program with contributions made with federal funding from the SSBCI and to authorize staff to undertake the emergency and regular rulemaking proceedings and other actions related to CPCFA CalCAP program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING  
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING  
EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER  
ACTIONS RELATED THERETO PERTAINING TO THE STATE SMALL  
BUSINESS CREDIT INITIATIVE (SSBCI) FOR THE CALIFORNIA CAPITAL  
ACCESS PROGRAM FOR SMALL BUSINESS**

**October 18, 2022**

**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 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 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 October 18, 2022, 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 TEXT OF REGULATIONS

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

**§ 8078.1. Federal Capital Access Program and Funding.**

(a) Where the Contribution comes from funds provided under the State Small Business Credit Initiative enacted pursuant to the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2) the following shall apply, notwithstanding any other provision of this article, to the extent allowed by the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2) (American Rescue Plan Act):

(b) "Participating Financial Institution" also includes all those listed in Health and Safety Code Section 44559.1(d) and all certified community development financial institutions whether or not organized for profit.

(c) The Participating Financial Institution must obtain written assurance from the Borrower that:

(1) the loan will be used solely for a business purpose;

(2) the loan will not be used to repay delinquent federal or jurisdiction income taxes unless the borrower has a payment plan in place with the relevant taxing authority;

(3) the loan will not be used to repay taxes held in trust or escrow (e.g. payroll or sales tax);

(4) the loan will not be used to reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance;

(5) the loan will not be used to purchase any portion of the ownership interest of any owner of the business;

(6) the loan will not be used for business purposes prohibited by the U.S. Treasury;

(7) the loan will not be used to finance ineligible businesses;

(8) no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act 42 U.S.C. §16911); and

(9) the Borrower is not:

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

(B) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or

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(C) a related interest or immediate family member of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.

(D) Ineligible businesses include, but are not limited to, the following business types:

(1) a business engaged in speculative activities that develop profits from fluctuations in price, 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 strategy to guard against price fluctuations related to the regular activities of the business through the normal course of trade;

(2) a business that earns more than half of its annual net revenue from lending activities, unless the business is a Community Development Financial Institution that is not a depository institution or a bank holding company;

(3) 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;

(4) a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses or

(5) a business deriving more than one-third of gross annual revenue from legal gambling activities.

(6) other businesses that may be restricted by federal fund law or the Department of Treasury.

(E) The Participating Financial Institution must provide written assurance affirming the following:

(1) the Qualified Loan has not been made in order to place under the protection of the CalCAP prior debt that is not covered under CalCAP and that is or was owed by the Borrower to the Participating Financial Institution or to an affiliate of the Participating Financial Institution;

(2) the Qualified Loan is not a refinancing of a loan previously made to the borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution; 21

(3) no principal of the Participating Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. §16911));

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(4) the Participating Financial Institution will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right of Financial Privacy Act (12 U.S.C. §3401 et seq.) as applicable; and

(5) the Participating Financial Institution is in compliance with the requirements of 31 C.F.R. §103.121.

(F) Federal capital access funds shall not be used for the following:

(1) activities that relate to acquiring or holding passive investments in real estate, 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 (2 U.S.C. 1602(7));

(2) financing a non-business purpose;

(3) covering the unguaranteed portions of an SBA loan unless CalCAP receives prior written consent of the U.S. Treasury;

(4) supporting existing extension of credit, including but not limited to prior loans, lines of credit or other borrowings that were previously made available as part of a state small business credit enhancement program.

(G) The federal Matching Contribution shall be equal to the sum of the Fees paid by the Borrower and Participating Financial Institution, unless another amount is allowed by the American Rescue Plan Act.

(H) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds, unless another amount is allowed by the American Rescue Plan Act.

(I) Any Borrower or Participating Financial Institution fees assessed by the Authority as allowed by the American Rescue Plan Act may be deposited in a Loss Reserve Account.

(J) Claims for reimbursement may be processed according to the requirements of the American Rescue Plan Act.

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

Reference: Sections 44559.2, 44559.4 and 44559.11, Health and Safety Code.

NOTE: Authority cited: Section 44520 and 44548, Health and Safety Code.  
Reference: Section 44548, Health and Safety Code.