

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Proposed Regulatory Action

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”) proposes to adopt Section 8078.36 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the administration of the California Pollution Control Financing Authority’s California Capital Access Loan Program (“CalCAP”). These Proposed Regulations are necessary to adopt language to use funds from alternative sources, including to implement a new loan participation program as more particularly described in Sec. 3006 of the State Small Business Credit Initiative (SSBCI) Act within the California Pollution Control Financing Authority Act (the “Act”). The Proposed Regulations have been approved by the Office of Administrative Law (“OAL”) on an emergency basis, and this proposed rulemaking would make these changes permanent.

Authority and Reference

Authority: Sections, 44520 and 44559.11 Health and Safety Code.

Reference: Sections 44525, 44526(e)-(f), 44559(a)-(b), 44559.1, 44559.6 and 44559.11 of the Health and Safety Code; 12 U.S. Code Section 5703(b)(4).

Informative Digest/Policy Statement Overview

Existing law establishes the Capital Access Loan Program (CalCAP) and authorizes the Authority to contract with specified financial institutions to make loans to eligible small

businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, §44559.2.)

In addition, the Authority may from time to time have access to funding to provide capital in partnership with specified financial institutions through various financing mechanisms for small business growth and expansion. (Health and Safety Code, §44559.11 (a).) Existing law authorizes the Authority by regulation adopted pursuant to subdivision (b) of Section 44520 to establish alternative provisions as necessary to enable the Authority to participate in an alternative funding source program. (Health and Safety Code, §44559.11 (b).) The proposed amendment to the regulations will add language providing for the methods and means in which to receive and deploy such funds, including conforming to the U.S. Department of the Treasury and its State Small Business Credit Initiative (SSBCI) Program requirements for the implementation of a Loan Participation Project (LPP). The LPP is an additional financing tool that CPCFA anticipates will target and help California community banks and other lenders in meeting their leverage ratio and liquidity.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

§ 8078.36. Alternative Funding Source

Section 8078.36 (a). This subsection is added to indicate that Authority may from time to time gain access to alternative source funding, to whom such funds may be deployed, and for what purpose.

Necessity. This provision is necessary to specify where alternative source funding may come from for public transparency. It is also necessary to clarify that the Authority may

accept funds from the Federal State Small Business Credit Initiative (SSBCI) pursuant to the American Rescue Plan Act of 2021 (H.R. 1319 Public Law No. 117-2).

Section 8078.36 (b). This subsection is added to describe how the Authority may contract with a third-party to administer the alternative funding source program.

Necessity. This provision is necessary to allow the Authority to better achieve the purpose of goals of this Article and to accelerate the deployment of new sources of external funds, including the SSBCI funding.

Section 8078.36 (d). This provision is necessary to affirm that a participating lender must agree to the terms and processes outlined in the term sheet, and that their participation in the alternative funding source program is contingent upon their ability to meet the requirements of the funding; provided that the alternative funding source program will never contradict existing requirements described in CalCAP criteria and requirements.

Disclosure Regarding the Proposed Action

The Authority has made the following determinations regarding the effect of the Proposed Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630: None.

Other non–discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business: The proposed regulations will not have an effect on small business because the program is voluntary for any small business that seeks to apply for financial assistance in any of the CalCAP Programs.

Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

Assessment regarding effect on jobs/businesses: The proposed regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment: The broad objective of the regulations is to

provide sustainable access to capital for small businesses that have difficulty obtaining financing.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the proposed regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the proposed regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Proposed Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries, and any questions regarding the substance of the Proposed Regulations must be submitted or directed to:

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Regulations to the Authority. The written comment period on the Proposed Regulations ends on **March 24, 2025**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time and day in order to be considered by the Authority.

Availability of Initial Statement of Reasons And Text of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 901 P Street, Third Floor, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the California Regulatory Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Proposed Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request

from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

Public Hearing

CPCFA does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found on the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

TITLE 4, DIVISION 11, ARTICLE 7

INITIAL STATEMENT OF REASONS

Introduction

Pursuant to Article 8, Section 44520(b) of the Health and Safety Code, the California Pollution Control Financing Authority (the “Authority” or “CPCFA”) is authorized to adopt these regulations which are necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Existing law establishes the Capital Access Loan Program (CalCAP) and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, §44559.2.)

In addition, the Authority may from time to time have access to funding to provide capital in partnership with specified financial institutions through various financing mechanisms for small business growth and expansion. (Health and Safety Code, §44559.11 (a).) Existing law authorizes the Authority by regulation adopted pursuant to subdivision (b) of Section 44520 to establish alternative provisions as necessary to enable the Authority to participate in an alternative funding source program. (Health and Safety Code, §44559.11 (b).)

Statement of Benefits

The proposed amendment to the regulations will add language providing for the methods and means in which to receive and deploy such funds, including conforming to the U.S. Department of the Treasury and its State Small Business Credit Initiative (SSBCI) Program requirements for the implementation of a Loan Participation Project (LPP). The LPP is an additional financing tool that CPCFA anticipates will target and help California community banks and other lenders in meeting their leverage ratio and liquidity.

Section Analysis

§ 8078.36 Alternative Funding Source.

Section 8078.36(a). Indicates the possibility that the Authority may gain access to alternative source funding from time to time, to whom the funds may be deployed, and for what purpose.

Section 8078.36 (b). Describes how the Authority may contract with a third-party to administer the alternative funding source program.

Section 8078.36 (d). Affirms that a participating lender must agree to the terms and processes outlined in the term sheet, and that their participation in the alternative funding source program is contingent upon their ability to meet the requirements of the funding; provided that the alternative funding source program will never contradict existing requirements described in CalCAP criteria and requirements.

Reliance

Staff has advised stakeholders of the extension of the timeframe to pay claims and the sale of loans.

Alternatives Considered

The Authority has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed regulations.

Mandated Technology or Equipment

The Authority has determined the proposed regulations do not mandate the use of specific technologies or equipment.

Economic Impact Statement

The Authority has determined that the proposed regulations will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons, because they do not impose any kind of restrictions or burdens on businesses or persons. The program is voluntary, and the regulations provide financial incentives to lenders to make loans to small businesses for expansion, property acquisition or working capital. Furthermore, the Authority has determined that the adopted regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) of the Government Code.

The creation or elimination of jobs within California: The adoption of Section 8078.36 of the CPCFA Regulations is not expected to have a direct impact on the creation or elimination of jobs within the State of California, due to the limited amount of funding available to support small businesses and due to the nature of the uses of loan proceeds. The adoption of Section 8078.36 implements a Loan Participating Program, which is an additional financing tool that CPCFA anticipates will target and help California community banks and other lenders in meeting their leverage ratio and liquidity.

The creation of new businesses or the elimination of existing businesses within the State of California: The proposed adoption of Section 8078.36 of the CPCFA Regulations is not expected to have a direct impact on creating new businesses, as these programs are in place already.

The expansion of businesses currently doing business within the State of California: The adoption of Section 8078.36 of the CPCFA Regulations are not expected to have an impact on the expansion of businesses within the State of California. The program is designed to increase access to capital for small businesses and for small businesses.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The broad objective of the regulations is to provide access to financing for small businesses and to enable small businesses which have difficulty obtaining financing. These regulations are not expected to have a direct impact on the health and welfare of California residents, worker safety, or the state's environment.

Documents Relied Upon

CPCFA did not rely upon any documents when preparing the proposed regulations.

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

Text of Modified Regulations

Changes are illustrated with an underline for proposed additions,
and a strikethrough for proposed deletions.

§ 8078.36. Alternative Funding Source.

(a) The Authority may from time to time have access to external funding, including from the Federal State Small Business Credit Initiative (SSBCI) pursuant to the American Rescue Plan Act of 2021 (ARPA) for a loan participation project (LPP), enabling the Authority to provide capital through various financing mechanisms for small business growth and expansion.

(b) When the Authority gains access to external funds, the Authority shall develop and adopt by resolution the terms and conditions describing the alternative funding source program, including the following information:

i. The total amount of funding available.

ii. The target interest rate.

iii. If applicable, the maximum amount of funding available per Eligible Loan.

iv. An indication of loan eligibility, borrower eligibility, or other eligibility criteria shall qualify as an Eligible Loan.

v. Terms for the process by which PFIs may apply to participate in the alternative funding source program, and how the funding shall be calculated and disbursed.

(c) The Authority may contract with a third-party administrator to:

i. Provide operational capacity, skills, relationships, and expertise to manage the alternative funding source program;

ii. Provide the Authority with all necessary data and information needed for reporting;

iii. Assist with loan participations and coordination between the Authority and PFIs;

iv. Collaborate and partner with California community banks and other State agencies to market and advertise the alternative funding source program;

v. Create and develop an accessible digital database to collect loan requests for screening and pre-qualification; and coordinate the selection, assembly, and management of the PFI.

(d) The terms of an alternative funding source program shall not contradict or override existing requirements and criteria described in this Article.

Authority: Sections 44520 and 44559.11, Health and Safety Code. Reference: Sections 44525, 44526(e)-(f), 44559(a)-(b), 44559.1, 44559.6 and 44559.11; 12 U.S.C. sections 5701-5710.