

# 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 amend Sections 8073 and 8074 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 ensure program clarity and continuity, and to refine and clarify program features of 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 (a), 44520 (b) and 44559.5 (f), Health and Safety Code.

Reference: Sections 44559-44559.9, Health and Safety Code.

### **Informative Digest/Policy Statement Overview**

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

The proposed amendments to the CalCAP Small Business Program regulations will clarify and revise processes for selling CalCAP loans and extend the timeframe CalCAP has to pay claims in the CalCAP for Small Business Program.

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.

### **§ 8073. Loss Reserve Accounts.**

Section 8073 (e). Clarifies the language regarding the sale of CalCAP loans.

Necessity. The proposed amendments are necessary to clarify the process for CalCAP Lenders to sell CalCAP Loans to Lenders within and outside of the Capital Access Program for Small Business.

### **§ 8074. Claim for Reimbursement.**

Section 8074 (c). Extends the current timeframe for CalCAP to pay claims from 30 days to 180 days.

Necessity. The proposed amendments are necessary to allow CalCAP additional time to process and pay the increased number of claims submitted to CalCAP due to the effects Covid-19 had on small businesses.

## **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. The proposed regulation are not expected to affect worker safety or the state's environment.

## **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 at **5:00 p.m. (PT) on January 13, 2024**. 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 California Capital Access Program (“CalCAP”) for Small Business Program (“CalCAP/SB”) and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital. (Health and Safety Code, § 44559)

The proposed amendments to the regulations allow the Authority ensure program clarity and program continuity, and to refine and clarify program features in the CalCAP Small Business Program (“CalCAP/SB”).

#### **Statement of Benefits**

The reason for the changes to the Authority’s CalCAP regulations will clarify and revise processes for selling CalCAP loans and extend the timeframe CalCAP has to pay claims in the CalCAP for Small Business Program.



## **Section Analysis**

### **§ 8073. Loss Reserve Accounts.**

Section 8073(e). Clarifies the language regarding the sale of CalCAP loans.

### **§ 8074. Claim for Reimbursement.**

Section 8074 (c). Extends the current timeframe for CalCAP to pay claims from 30 days to 180 days.

## **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 amended 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 revisions of Sections 8073 and 8074 of the CPCFA Regulations are 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 revisions of Sections 8073 and 8074 do not implement a new program, but rather, just clarifies aspects of an already existing program.

**The creation of new businesses or the elimination of existing businesses within the State of California:** The proposed revisions to Sections 8073 and 8074 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 revision of Sections 8073 and 8074 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.

# PROPOSED TEXT OF REGULATIONS

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

## Text of Modified Regulations

All sections affected in this rulemaking are being adopted.  
Changes are illustrated with an underline for proposed additions,  
and a strikethrough for proposed deletions.

### **§ 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 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). 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). 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, sold, 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 chooses to service the loans after they are sold, those loans shall no longer be deemed a Qualified Loan or covered by the Loss Reserve Account, and must be reported on the Quarterly Report. ~~desires to assign, transfer, pledge or 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.~~ Contributions of loans sold, assigned, transferred or pledged to another Participating Financial Institution is allowable only if the Participating Financial Institution submits 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 subjects 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 Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution at least ten (10) business days prior to the effective

date of the suspension. Causes for suspension shall be for violations of applicable statutes or regulations. If the violations are not corrected within thirty (30) business days from the effective date of the suspension the Executive Director is authorized to terminate participation of a Participating Financial Institution in the Program. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans.

Authority cited: Sections 44520 and 44559.5, Health and Safety Code. Reference: Sections 44559.3 and 44559.8, Health and Safety Code.

**§ 8074. Claim for Reimbursement.**

(a) A Participating Financial Institution shall notify the Authority within 120 days after it has charged off all or part of a Qualified Loan as a result of a default.

(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 120 days.

(c) The Authority shall pay claims within ~~30~~180 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the certifications, representations and warranties provided by the Participating Financial Institution or Borrower pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid. The Authority may request and the lender shall provide, any and all information from the Borrower's loan file to substantiate the eligibility of the Borrower's business and the enrolled loan, and the reasonableness of the costs claimed.

(d) Claim reimbursement shall not exceed the enrolled amount of the qualified loan or loans that form the basis for the claim, except when reasonable out-of-pocket expenses are claimed. In the event only a portion of the loan was enrolled, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion to the total loan amount.

(e) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:

(1) Name and number of the Participating Financial Institution.

(2) Name, address and telephone number of contact person.

(3) Name of the business receiving the defaulted Qualified Loan.

(4) Amount and date of the Qualified Loan and the Authority's loan number.

(5) Date and amount of default.

(6) A description of the facts and circumstances of the default, efforts to settle or cure the default, efforts to liquidate collateral or collect from other sources, and any other narrative information and documentation necessary to demonstrate that the claim is eligible under Health and Safety Code Section 44559.5, and that any out-of-pocket expenses sought are reasonable.

(7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.

(8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 120 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.

(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.

(11) Statement whether the Qualified Loan qualifies under Section 8074(g).



(f) Except as provided in Section 8074(g) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(g) If a Qualified Loan suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(h) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

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

Reference: Section 44559.5, Division 27, Health and Safety Code.