

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: September 17, 2024

**Request for Consideration and Approval of Amendment to the Regulations for the
California Capital Access Program Pertaining to the Use of Alternative Funding
Sources**

NOT ADA COMP

Prepared by: Lauren Dominguez

Summary: Staff requests Board approval to begin the emergency rulemaking process and file regulations to add 4 C.C.R. § 8078.36 to the California Capital Access Program (CalCAP) regulations providing for a way to use alternative funding sources, including from the State Small Business Credit Initiative. 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 loan 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) and may make maximum, efficient use of capital access programs enacted by all federal and state agencies, as well as funding available from any governmental program whose goals may be advanced by providing funding to the Capital Access Loan Program (Health and Safety Code, § 44559.11).

CPCFA determined that the purposes and goals of SSBCI are best served through the implementation of a third SSBCI Program, a Loan Participation Project (LPP). The LPP will be administered by our Authority and will enable an accelerated deployment of SSBCI funding. CPCFA anticipates the LPP will target and help California community banks and other lenders in meeting their leverage ratio and liquidity.

California requested to modify its SSBCI Allocation Agreement, approved by the U.S. Treasury on September 16, 2022, to allow for the inclusion of a loan participation program as described in 12 U.S.C. § 5705(c) the State Small Business Credit Initiative (SSBCI).

U.S. Treasury approved our amended SSBCI Allocation Agreement on July 25, 2024, allowing our Authority to allocate \$150 million to the LPP from the Collateral Support Program allocation of \$472.7 million to establish the LPP. As of June 30, 2024, California expended 80% of our first SSBCI tranche and applied for our second SSBCI tranche on July 26, 2024. We intend to implement the LPP after we receive our second tranche in early 2025.

**Agenda Item 4.C.
Resolution No. 24-02-005**

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 specific to an LPP.

Regulation Change: Staff proposes to add 4 C.C.R. § 8078.36 Alternative Funding Source, to CPCFA's regulations as shown in Attachment A.

Need for Emergency Regulations: Amendments to the CalCAP regulations are necessary to begin administering the LPP according to U.S. Treasury requirements. The U.S. Treasury requires project implementation within 90 days of the execution of the Allocation Agreement. U.S. Treasury approved and Team California signed our amended allocation agreement on July 25, 2024, in order to meet U.S. Treasury requirements regulations must be in place by October 23, 2024.

Regulatory Process: On September 10, 2024, 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 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 the OAL approves the emergency regulations, the emergency regulations are effective for One hundred eighty (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 forty-five (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 fifteen (15)-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has thirty (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 thirty (30) days later.

Timeline: Outlined below is the estimated schedule.

Emergency Regulations

September 10, 2024	Five (5)-day Notice posted on CPCFA website and sent to Interested Parties
September 17, 2024	CPCFA Board Meeting – Resolution for Proposed Regulations
September 17, 2024	Emergency regulations filed with OAL.
September 24, 2024	Public comment period ends.
October 1, 2024	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
March 31, 2025	Emergency regulations expire.

Permanent Regulations

October 15, 2024	Post Notice of Proposed Rulemaking on CPCFA’s website
October 22, 2024	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.
November 1, 2024	OAL publishes Notice and forty five (45)-day public comment period begins.
December 16, 2024	Public comment period regarding proposed regulations ends.
December 17, 2024	Deliver permanent regulation package to OAL for thirty (30)-day review*
January 16, 2024	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Public Comments – Substantial Modification

If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a fifteen (15)-day comment period as follows:

- | | |
|-------------------|---|
| December 18, 2024 | Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a fifteen (15)-day comment period. |
| January 6, 2025 | Fifteen (15)-day comment period ends. |
| January 7, 2025 | Deliver permanent regulation package to OAL for thirty (30)-day review. |
| February 9, 2025 | 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. 24-02-005 to amend regulations conforming to U.S. Treasury requirements for a Loan Participation Project administered through our California Capital Access 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
AUTHORIZING THE AMENDMENTS OF THE REGULATIONS FOR
THE CALIFORNIA CAPITAL ACCESS FINANCING PROGRAM
September 17, 2024**

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 September 17, 2024, 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

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 7. Capital Access Program for Small Businesses

§ 8078.36. Alternative Funding Source.

(a) The Authority may from time to time have access to an alternative funding source, 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 an alternative funding source, the Authority shall develop and adopt by resolution the terms and conditions describing the financing, 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 loan.
- iv. An indication of loan eligibility, borrower eligibility, or other eligibility criteria, as applicable.
- v. Terms for the process by which PFIs may apply to participate, and how the funding shall be calculated and disbursed.

(c) The Authority may contract with a third-party to administer the alternative funding source, including to:

- i. Provide operational capacity, skills, relationships, and expertise to manage the financing;
- 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 financing;

Agenda Item 4.C.
Resolution No. 24-02-005

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 conflict with 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.