
JEDE AMENDMENTS

AB 2314 (Petrie-Norris) As Amended: April 20, 2022
Submitted by: Toni Symonds, JEDE Committee Staff

Summary of the Proposed Amendments

1. Add legislative intent language relative to SSBCI.
2. Rearrange and clarify the CalCAP provisions between lender commitments to participate in the program and conditions for enrolling a loan.
3. Conform the fair lending standards between CalCAP and Small Business Loan Guarantee Program.

Mock-up of Proposed Amendments

SECTION 1. The Legislature finds and declares all of the following:

(a) The integrity of small business lending programs are of paramount importance to California’s small business owners. Fostering a healthy small business lending marketplace will encourage the equitable recovery of established businesses and foster new small business creation.

(b) There are 4.1 million small businesses in California. Small business owners employ roughly one-half of the private sector workforce and, since the Great Recession, have been the largest drivers of new job growth in our country. Despite these facts, small business owners struggle to access capital from traditional lending institutions like banks and credit unions. The index of commercial and industrial lending dropped below zero percent late in 2020 and continued to be below 10% in September 2021. After the Great Recession, bank lending under \$250,000 declined significantly.

(c) New small business startups are rapidly growing. The United States Census Bureau’s data on new firm formations shows that new business applications grew by almost 2 million between 2019 and 2021, a higher rate than ever before. This is especially true for non-White business owners. After experiencing the largest number of small business closures in April 2020, the number of Black and Latino-owned firms were significantly higher in September 2021 than in February 2020.

(d) As a result, many small business owners turn to online lending as they struggle to find the capital they need in order to grow and expand. Financial products that allow small businesses to access hard-to-obtain capital often lack transparency, and recent research by the Federal Reserve concluded Black and Hispanic entrepreneurs are twice as likely to be affected by “potentially higher-cost and less-transparent credit products.” A study by Accion Opportunity Fund demonstrates that California small business owners take out online loans at an average Annual Percentage Rate of 94 percent, and many terms or conditions are not made clear to business owners, like products that come with hidden fees and obscure rates. Most small business owners cannot afford to make these mistakes.

(e) Small business organizations, for-profit financing providers, and nonprofit community development financial institutions have responded to the rise of these irresponsible financing practices by joining together in developing a cross-sector set of practice standards for responsible small business lending called the “Small Business Borrowers’ Bill of Rights.” The Small Business Borrowers’ Bill of Rights” has served as the basis for California small business financial protection law and practice requirements recommended by the United States Treasury for participation in the State Small Business Credit Initiative.”

(f) Therefore, lenders participating in state lending programs funded by taxpayer dollars should use fully transparent and fair lending practices aligned with the Small Business Borrower Bill of Rights to ensure that small business borrowers can access the capital they need in order to grow and expand their businesses.

SEC. 2. Section 63089.70 of the Government Code is amended to read:

63089.70. (a) The Small Business Expansion Fund, which is hereby continued in existence, shall, among other things, provide guarantees to loans offered by financial institutions and financial companies to small businesses.

(b) The Legislature finds and declares that the Small Business Loan Guarantee Program has enabled participating small businesses that do not qualify for conventional business loans or Small Business Administration loans to secure funds to expand their businesses. These small businesses would not have been able to expand their businesses in the absence of the program. The program has also provided valuable technical assistance to small businesses to ensure growth and stability. The study commissioned by former Section 14069.6 of the Corporations Code, as added by Chapter 919 of the Statutes of 1997, documented the return on investment of the program and the need for its services. The value of the program has also been recognized by the Governor through proposals contained in the May Revision to the Budget Act of 2000 for the 2000–01 fiscal year.

(c) A corporation shall not issue a guarantee under this section unless it determines that the following conditions are satisfied:

(1) There is a low probability that the loan being guaranteed would be granted by a financial company or financial institution under reasonable terms and conditions and the borrower has demonstrated a reasonable prospect of repayment.

(2) The loan proceeds will be used exclusively in this state.

(3) The loan qualifies as a small business loan or an employment incentive loan.

(4) The borrower has a minimum equity interest in the business as determined by the directives and requirements.

(5) As a result of the loan being guaranteed, the jobs generated or retained demonstrate reasonable conformance to any directives and requirements specifying employment criteria.

(d) A loan guarantee funded by the federal State Small Business Credit Initiative Act of 2010 (Public Law 111-240), as modified by the American Rescue Plan Act of 2021 (Public Law 117-2), shall be issued only if it meets all of the following conditions:

(1) The guaranteed loan shall not require the borrower to sign a confession of judgment, as specified in Section 1132 of the Code of Civil Procedure.

(2) The guaranteed loan shall not be refinanced or renewed, nor shall it be used to refinance or renew another loan, if the new loan to refinance or renew includes charges, as defined in Section 22500 of the Financial Code, to pay off the balance of the previous loan.

~~(3) The final payoff amount of the guaranteed loan shall not vary based upon the source of the funds used to make the final payoff. [Combined #3 and #4 below]~~

~~(4)~~ The guaranteed loan shall consider repayment funds from a third party as equivalent to funds from the borrower and shall not vary based upon the source of the funds used to make the final payoff.

~~(4)~~ ~~(5)~~ The guaranteed loan repayment information shall be sent to a commercial credit reporting agency, as defined in subdivision (b) of Section 1785.42 of the Civil Code, and credit data shall be consulted when underwriting the guaranteed loan.

~~(5)~~ ~~(6)~~ The guaranteed loan's borrower and any guarantors shall be informed if the financial institution or corporation intends to report guaranteed loan repayment performance to a commercial credit reporting agency if default occurs.

~~(6)~~ ~~(7)~~ The guaranteed loan shall fully disclose each separate fee and charge in a clear and transparent manner, including but not limited to financing charges other than interest accrued since last payment as prepayment charges and any additional charges or fees added in the case of prepayment.

The guaranteed loan shall follow a schedule of conditions concerning hidden payment charges, as follows:

~~(A) The guaranteed loan shall disclose financing charges other than interest accrued since the last payment as "prepayment charges."~~

~~(B) The guaranteed loan shall disclose any additional charges or fees added in the case of prepayment as "prepayment penalties."~~

~~(C) The guaranteed loan shall disclose potential prepayment charges and penalties in any loan offer summary.~~

~~(D) The guaranteed loan shall disclose actual prepayment charges and penalties at the time of prepayment.~~

~~(7)~~ The borrower can afford the guaranteed loan or has a credible is a credible path to profitability. If the debt-service coverage ratio is less than 1.00, the revenues and expenses of the borrower affords a credible path to profitability.

~~(8) The guaranteed loan shall be given to a borrower that can afford the loan or that has a credible path to profitability, meaning that the firm has a debt service coverage ratio of greater than 1.00.~~

~~(9) The guaranteed loan shall be given to a borrower that can afford the loan or that has a credible path to profitability if the financial institution received repayment directly from the borrower's gross receipts, such as through credit cards, payments process, or daily payments, that prevent the borrower from paying for operating expenses first.~~

~~(8)~~ The guaranteed loan has a requirement that information on pre-payment and refinancing shall be provided to the borrower in timely manner. [This was not covered in the loan guarantee section, but is covered in the loss reserve program]

SEC. 3. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) (1) “Financial institution” means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) (A) “Financial institution” also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations, and a small business financial development corporation, as defined in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or microbusiness lender, as defined in Section 12100 of the Government Code, that meets standards that shall be established by the authority. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, “financial institution” also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

(B) A financial institution described in this paragraph shall be domiciled or have its principal office in the State of California.

(3) “Financial institution” also includes an insured depository institution, insured credit union, or community development financial institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.

(e) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program, has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding, ~~and complies with the following:~~

(1) Among other information on the application to become a participating financial institution, the application shall require the financial institution to commit to all of the following:

~~(A) The financial institution shall not require the borrower of the qualified loan to sign a confession of judgment, as specified in Section 1132 of the Code of Civil Procedure.—~~

~~(B) (2) The financial institution shall not refinance or renew a qualified loan, nor shall it use a qualified loan to refinance or renew another loan, if the new loan to refinance or renew includes charges, as defined in Section 22500 of the Financial Code, to pay off the balance of the previous loan.~~

(A) The financial institution shall provide pre-payment and refinance information to the borrower in a timely manner, as specified by the authority.

~~(3) The financial institution may not provide information required for prepayment beyond two days from the date upon which the borrower requests to prepay or refinance a loan.~~

~~(4) The financial institution shall not vary the final payoff amount of the guaranteed loan based upon the source of the funds used to make the final payoff.~~

~~(5) The financial institution shall consider repayment funds from a third party as equivalent to funds from the borrower.~~

(B) (6) The financial institution shall send qualified loan repayment information shall be sent to a commercial credit reporting agency, as defined in subdivision (b) of Section 1785.42 of the Civil Code, and credit data shall be consulted when underwriting the guaranteed loan.

(C) (7) The qualified loan's financial institution shall inform the borrower and any guarantors shall be informed if financial institution it intends to report the qualified loan's guaranteed loan repayment performance to a commercial credit reporting agency if default occurs.

~~(8) The financial institution shall ensure that the borrower can afford the qualified loan or that it has a credible path to profitability, meaning that the borrower has a debt service coverage ratio greater than 1.00.~~

~~(9) The financial institution shall ensure that the borrower can afford the loan or that it has a credible path to profitability if the financial institution receives repayment directly from the qualified loan's borrower's gross receipts, such as through credit card, payments processing, or daily payments, that prevents that qualified loan's borrower from paying for operating expenses first.~~

(D) The financial institution shall fully disclose each separate fee and charge related to a qualified loan in a clear and transparent manner at the time of the loan offer. [This subparagraph, combined with the additions to the definition of a qualified loan is an aggregation of (A), (B), and (C) from (10) below.]

(E) The financial institution shall disclose actual prepayment charges and penalties at the time of prepayment. [This is from (10)(D) below]

~~(10) follow a schedule of conditions concerning hidden payment charges, as follows: [Not sure about where this fits—it is clearly about transparent fees—is that a lender issue of a loan issue?]~~

~~(A) The qualified loan shall disclose financing charges other than interest accrued since the last payment as prepayment charges.~~

~~(B) The qualified loan shall disclose any additional charges or fees added in the case of prepayment as prepayment penalties.~~

~~(C) The qualified loan shall disclose potential prepayment charges and penalties in any loan offer summary.~~

~~(D) The qualified loan shall disclose actual prepayment charges and penalties at the time of prepayment.~~

(g) "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.

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

(h) “Program” means the Capital Access Loan Program created pursuant to this article.

(i) “Qualified business” means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) “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 that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) “Qualified loan” does not include any of the following:

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

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(E) A loan that requires the borrower to sign a confession of judgment, as defined in subdivision (a) of specified in Section 1132 of the Code of Civil Procedure. [*This is from (f)(A) from the financial institution requirements/definitions*]

(F) The loan refinances or renews a qualified loan of the financial institution or a qualified loan refinances or renews a loan by a different financial institution, and the loan includes charges, as defined in Section 22500 of the Financial Code. [*This is from (f)(B) from the financial institution requirements/definition*]

(G) The loan treats repayment funds from a third party differently than funds from the borrower or varies the repayment amount based upon the source of the funds used to make the final payoff. [*This is from (f) (5) and (6) from the financial institution requirements/definitions*]

(3) A loan, including the loan summary, clearly identifies each applicable financing fee and charge and each prepayment fee, charge, and penalty, including, but not limited to any financing charges due in the event of

prepayment other than interest accrued since the last payment as prepayment charges, any pre-payment penalties, and actual prepayment charges and penalties at the time of prepayment. *[This is from (f) (10) from the financial institution requirements/definitions]*

(4) The borrower can afford the guaranteed loan or has a credible path to profitability. If the loan repayment mechanism is from gross receipts and debt-service coverage ratio is less than 1.00, the revenues and expenses of the borrower affords a credible path to profitability. *[This is from (f) (8) and (9) from the financial institution requirements/definitions]*

(k) “Severely affected community” means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) “Small Business Assistance Fund” means a fund created within the authority pursuant to Section 44548.

(m) “Small business concern” has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.