
JEDE AMENDMENTS

AB 2400 (Cervantes) As Amended April 19, 2022
Submitted by: Toni Symonds, JEDE Committee Staff

SUMMARY:

1. Authorize CPCFA to use an alternative regulation adoption process for regulations related to small business lending.
2. Remove the requirement to automatically transfer available funds to the IBank following the conclusion of the federal SSBCI agreement and, instead, implement reporting and engagement requirements on the use of those funds. This is good faith language to support the author's continued discussions with the State Treasurer on this important matter.

SECTION 1. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any state board or department for aid and assistance in preparing plans and specifications and in developing technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt a regulation relating to brownfield site financing as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulation shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulation shall be repealed 180 days after its effective date, unless the adopting authority or agency complies with that Chapter 3.5.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt a regulation relating to the loans and grants authorized under subdivision (g) of Section 44526 as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulation shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulation shall be repealed 180 days after its effective date, unless the adopting authority or agency complies with that Chapter 3.5.

(d) Notwithstanding subdivision (a), the authority may adopt, amend, or repeal rules and regulations for the financing of small businesses pursuant to Article 8 commencing with section 44559 without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as described in subdivision (b).

(b) The authority shall provide a notice of proposed action as described in [Section 11346.5](#) of the Government Code. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the authority shall schedule at least one public hearing as described in [Section](#)

11346.8 of the Government Code before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3 of the Government Code. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (a) of Section 11346.9 of the Government Code.

NOTE: Modeled after Health and Safety Code 50199.17, relating to the California Tax Credit Allocation Committee

SEC. 2. 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, the following terms have the following meanings:

(a) “Authority” means the California Pollution Control Financing Authority.

(b) “Business enterprise owned and controlled by socially and economically disadvantaged individuals” or “business enterprise owned and controlled by SEDI” has the meaning set forth in Section 5701(15) of Title 12 of the United States Code.

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

(d) “Executive director” means the Executive Director of the California Pollution Control Financing Authority.

(e) (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, which shall have the meaning of “corporation” set forth in subdivision (f) of Section 14003 of the Corporations Code, or microbusiness lender, as defined in paragraph (15) of subdivision (b) of 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 finance 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.

(f) “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 program for all of the following purposes:

- (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.

(g) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program and 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.

(h) “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.

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

(j) “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.

(k) (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 the state. 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.

(l) “Severely affected community” means any of the following:

(1) An area in a census tract in the state that qualifies as eligible for designation by the United States Treasury as an Opportunity Zone pursuant to Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code.

(2) An 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.

(3) For program revenues derived from bond issuances, any other comparable economically distressed geographic area so designated by the executive director from time to time.

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

(n) “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.

(o) “Socially and economically disadvantaged individuals” or “SEDI” has the meaning set forth in Section 5701(18) of Title 12 of the United States Code.

SEC. 3. Section 44559.2 of the Health and Safety Code is amended to read:

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the program.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation and dissolution of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution’s loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) (A) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete North American Industry Classification System (NAICS) for the qualified

business, the number of jobs created, the number of jobs retained, and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(B) The financial institution shall request, but not require, that a customer who is the recipient of a qualified loan disclose their gender, race, and ethnicity.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) The term of the contract, which may include renewals, but shall not extend beyond July 1, 2032.

(8) Provisions for the dissolution of the account, including, but not limited to, the distribution of funds within the account between the authority and the financial institution at the conclusion of the agreement. The agreement shall provide that no more than 50 percent of the deposits remain with the financial institution upon dissolution of the account.

(9) Other terms that the authority may require for purposes of this article.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 commencing with Section 14000) of the Financial Code) may participate in the program only to the extent the credit union's participation complies with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) An individual, company, corporation, institution, utility, government agency, or other entity, including a consortium of these persons or entities, whether public or private, may participate in the program by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

(f) The changes made to the standard form of contract provisions required by subdivision (b) by the act adding this subdivision shall not be construed or implemented in a manner that impairs a contractual right or obligation that existed before January 1, 2023.

SEC. 4. Section 44559.3 of the Health and Safety Code is amended to read:

44559.3. (a) The authority shall establish a loss reserve account for each financial institution with which the authority makes a contract. The authority shall either establish a separate loss reserve account with a financial institution or require separate accounting of all deposits for enrolled loans where the state deposits funds that were derived from the State Small Business Credit Initiative (Public Law 111-240) on or after April 1, 2022.

(b) The loss reserve account for a financial institution shall consist of moneys paid as fees by borrowers and the financial institution, moneys transferred to the account from a small business assistance fund, any matching federal moneys, and any other moneys provided by the authority or other source.

(c) The authority may adopt policies to establish and maintain a loss reserve account with a financial institution.

(d) (1) All moneys in a loss reserve account established pursuant to this article, except as specified in paragraph (3), are the exclusive property of, and solely controlled by, the authority. Interest or income earned on moneys credited to the loss reserve account shall be deemed to be part of the loss reserve account.

(2) The authority may withdraw from the loss reserve account all, or a portion of, the interest or other income that has been credited to the loss reserve account. Any withdrawal made pursuant to this subdivision may be made prior to paying any claim and shall be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs of the program and loss reserve account contributions.

(3) A withdrawal from an account that includes a deposit made by the authority from funds received from the United States Treasury through an agreement pursuant to the State Small Business Credit Initiative (Public Law 111-240), including interest income, shall be deposited in an account of the authority that only includes funds, including interest and other income, derived from the State Small Business Credit Initiative, as modified by the American Rescue Plan Act of 2021 (Public Law 117-2), and shall not be comingled with any other funds of the authority.

(e) The combined amount to be deposited by the participating financial institution into any individual loss reserve account over a three-year period, in connection with any single borrower or any group of borrowers among which a common enterprise exists, shall be not more than one hundred thousand dollars (\$100,000).

SEC. 5. Section 44559.4 of the Health and Safety Code is amended to read:

44559.4. (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 15 days after the date on which the loan is made, of all of the following:

- (1) The disbursement of the loan.
- (2) The dollar amount of the loan enrolled.
- (3) The interest rate applicable to, and the term of, the loan.
- (4) The amount of the agreed upon premium.

(b) The executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will

be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (i) of Section 44559.1.

(d) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than 3¹/₂ percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(e) When depositing fees collected under subdivision (d) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If matching funds are not available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount not less than 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, if the qualified business is a business owned and controlled by SEDI and a higher fee amount is authorized under the federal program, the authority may transfer to the loss reserve account an amount up to 150 percent of the amount of the fees paid by the participating financial institution. In no case shall the total amount deposited into the loss reserve account be less than the amount that would have been deposited in the absence of matching funds.

SEC. 6. Section 44559.6 of the Health and Safety Code is amended to read:

44559.6. (a) Notwithstanding Section 10231.5 of the Government Code, the authority shall annually prepare a report to the Governor and, in compliance with Section 9795 of the Government Code, to the Legislature that describes the financial condition and programmatic results of the capital access loan program for small businesses authorized under this article. Programmatic results shall include, but not be limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector for all new loans issued since the report for the prior year.

(b) The authority shall separately account for funds that were received by the authority through an agreement with the United States Treasury, or its designee, pursuant to the State Small Business Credit Initiative (Public Law 111-240), including any interest income and account withdrawals.

(c) (1) The Legislature finds and declares the following:

(A) State Small Business Credit Initiative (Public Law 111-240) represents a significant source of small business capital. The Legislature is committed to supporting the state's successful deployment of its SSBCI allocation, including the main capital allocation funds, very small business allocation funds, SEDI allocation funds, and SEDI incentive allocation funds.

(B) Upon the conclusion of the SSBCI Program, all recycled SSBCI funds which the state has expended, transferred, or obligated, pursuant to its allocation agreement with the US Treasury, become available for further use by the state to meet the capital needs of small businesses.

(2) It is the intent of the Legislature that:

(A) Following the conclusion of the state's SSBCI agreement with the US Treasury that recycled and recaptured SSBCI funds be substantially used to serve small businesses in underserved communities and SEDI-business owner populations. This includes all funds derived from the main SSBCI capital allocation funds, very small business allocation funds, SEDI allocation funds, and SEDI incentive allocation funds.

(B) Achieving the goal identified in subparagraph (A) requires the Legislature to engage with the authority on the impact of current SSBCI funded programs in meeting the needs and removing the barriers to accessing capital by small businesses throughout the state and with SEDI-eligible businesses.

(3) The authority shall periodically report on the deployment of SSBCI funds. The first report shall be one year following the initial transfer of the SSBCI funds to California. The second report shall include data from tranche 1 and the third report shall include tranche 1 and tranche 2 data. These reports shall include, but are not limited to, information related to:

(i) Size of business by assets

(ii) Size of business by # of employees

(iii) The demographic and geographic make-up of businesses served

(iv) Industry sectors

(v) Number of jobs created

(vi) Number of jobs retained

(vii) Increase in Lender Participation

(viii) Leverage Ratio: private dollars expended per public dollars

(ix) The tenure of the businesses served, including start-ups, businesses that have been open from 2 to 5 years, businesses open from 5 to 10 years of businesses, and businesses that have been in business for over 10 years.

(x) Summary of the reasons and the number of businesses that have applied and been turned down for a loan, even with the credit enhancement.

(4) The authority shall, beginning on April 10, 2023, and annually thereafter, post on its internet website a copy of the annual report the authority filed with the US Treasury. The authority may redact from the report any sensitive information such as commercial or financial information about small businesses, or information that involves privacy, security, and proprietary business interests. The authority shall provide the Legislature, upon request, with a copy of the quarterly reports the state filed with the US Treasury.

~~(1) Notwithstanding any limitations in this article, moneys received or derived from the State Small Business Credit Initiative (Public Law 111-240) shall be transferred to the State Small Business Credit Initiative Account within the Small Business Expansion Fund beginning on July 1, 2031, and by no later than December 1, 2032.~~

~~(2) The Board of Directors of the California Infrastructure and Economic Development Bank may set an earlier date for the initiation of the transfer required pursuant to paragraph (1) if the earlier date is consistent with the terms of the contract between the authority and a participating financial institution pursuant to Section 44559.2.~~

SEC. 7. Section 44559.11 of the Health and Safety Code is amended to read:

44559.11. (a) It is the intent of the Legislature to ensure that the state, through the authority, 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.

(b) (1) In furtherance of this intent, and notwithstanding any other provision of this article, when the contributions required pursuant to Section 44559.4 are entirely funded by a public or quasi-public entity other than the authority's fee revenue under Sections 44525 and 44548, the authority may, by regulation adopted pursuant to **subdivision (d) of Section 44520 or** subdivision (e) of Section 44559.14, establish alternate provisions as necessary to enable the authority to participate in the alternative funding source program, including implementing loan loss reserve programs to benefit any individual person engaged in qualifying activities in furtherance of the public or quasi-public entity's policy objectives in the state that require financing.

(2) If the authority establishes alternate provisions pursuant to paragraph (1), the authority shall separately account for and report on these programs. Fee revenues of the authority received pursuant to Sections 44525 and 44548, or revenues recaptured from loss reserve accounts where the initial deposit was derived from fee revenues received pursuant to Sections 44525 and 44548, shall not be comingled with funds that were derived from the State Small Business Credit Initiative (Public Law 111-240).