

# CalCAP for Small Business Program

## Borrower Certification

Capital Programs & Climate Financing Authority (CPCFA)

**California Capital Access Program (CalCAP)**

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**Your loan is being enrolled in the California Capital Access Program (CalCAP). You are the “Borrower”. By signing this document below, you certify to the following:**

- Borrower is a small business concern as defined in 4 CCR §8070(t) of the California Code of Regulations which state:
  - (t) “Qualified Business” and “Small Business Concern” means a business as set forth in Health and Safety Code Section 44559.1 subdivision (i) and (m), that is not dominant in its field of operation, and that together with affiliates, has 500 or fewer employees. \* (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.
  - (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.
- “Primary business location in California” as defined in 4 CCR §8070(o) of the California Code of Regulations means that a business will be deemed to be located in California if either:
  - (1) a majority of the employees of the business are located in California; or
  - (2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.

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- Borrower obtained a loan that is for a business activity that has its primary economic effect in California as defined in 4 CCR §8070(q) of the California Code of Regulations which state:

(q) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:

At least 51 percent of the total revenues of the business activity are generated in California; or

At least 51 percent of the total jobs of the business activity are created or retained in California.

- The loan or investment proceeds will be used solely for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).

- The loan proceeds will be used for a business activity permitted under 4 CCR §8070(u) of the California Code of Regulations which state: (u) "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 the maximum commitment. "Qualified Loan" does not include any of the following:

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

(2) A loan to finance Passive Real Estate Ownership.

(3) A loan for the Refinancing of debt already held by the Participating Financial Institution other than a

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prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.

(4) A loan, the proceeds of which will be used

(A) to provide any of the following businesses or facilities, regardless of the source of funds used for the Authority's Contribution:

(i) massage parlor, sauna or hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, liquor store, bar, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, a store or other facility whose principal business is religious, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, or shooting range or gallery.

(ii) a business engaged in speculative activities that develop profits from fluctuations in price rather than through the normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of legitimate risk management strategies to guard against price fluctuations related to the regular activities of the business;

(iii) a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;

(iv) a business engaged in pyramid sales plans, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

(v) a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6;

(vi) businesses that may be restricted by federal law;

(vii) activities that relate to acquiring or holding passive investments such as commercial real estate

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ownership, the purchase of securities, and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995. P.L. 104-65, as amended;

(viii) financing a non-business purpose;

(ix) supporting existing extension of credit, including prior loans, lines of credit or other borrowings that were previously made available as part of a substantially similar governmental small business credit enhancement program.

(B) to provide any of the following facilities when the Authority's Contribution will be paid for with fees from the issuance of tax-exempt bond sales, all items listed in (A) and: a store whose principal business is the sale of alcoholic beverages for consumption off premises, private or commercial golf course, country club, spas that provide massage services, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), suntan facility, airplane, aircraft, skybox (or other private luxury box), health club facility.

(C) in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.

(5) any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.

(6) any loan that exceeds \$5,000,000.

(7) any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower (including all related entities among which a common enterprise exists) to have a total enrolled principal amount in excess of \$2,500,000 at any Participating Financial Institution over a three-year period.

• The Participating Financial Institution must obtain written certification from the Borrower as stated in 4 CCR §8072(c)(18) of the California Code of Regulations which state:

(A) The loan will be used solely for a business purpose;

(B) The loan will not be used to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

(C) The loan will not be used to repay taxes held in trust or escrow;

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(D) The loan will not be used to refinance or reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(E) purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.

(F) The loan will not be used to finance ineligible businesses or facilities identified in Section 8070;

(G) The Borrower is not:

(i) an executive officer, director, or principal shareholder of the Participating Financial Institution;

(ii) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or

(iii) a related interest of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.

For the purposes of the above conflict of interest certification, the terms "executive officer," "director," "principal shareholder," "immediate family," and "related interest" refer to the same relationship to the lender as the relationships described in 12 C.F.R. part 215.

- Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of the CPCFA.
- Borrower has no legal, beneficial or equitable, interest in the fees or the contribution.
- The maximum loan amount is \$5,000,000 and the Borrower is limited to a maximum of \$2,500,000 enrolled over a 3 year period.
- Borrower was notified, in writing, if the participating financial institution's share of the fees for the qualified loan were paid by the Borrower.

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- Borrower has secured or made application for all applicable licenses or permits needed to conduct its business.
- Borrower has received the CPCFA/CalCAP Privacy Notice.
- A business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business. For purposes of Tribal SSBCI programs, “gaming activities” includes only “class II gaming” and “class III gaming” as these terms are defined under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

### **Whenever the loan is related to Federal Funds, the following Borrower assurances apply:**

No principal of the private entity borrower has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender 7 Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, “principal” is defined as “if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

**Business Name** (please print):

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**Legal Name of Borrower or Investee** (please print):

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**Individual’s Title** (as it pertains to the business):

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**Lender Loan #:**

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Signature of above Individual:

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Date:

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When complete, please send to: [CalCAP@treasurer.ca.gov](mailto:CalCAP@treasurer.ca.gov)