

## ASSEMBLY THIRD READING

AB 2314 (Petrie-Norris)

As Amended May 19, 2022

Majority vote

**SUMMARY**

This bill requires all loans which receive a loan guarantee issued under the state's Small Business Loan Guarantee Program or are enrolled in the California Capital Access Program (CalCAP) to meet specified fair lending practices, if the funding used to back those credit enhancements are moneys received by the state from the federal State Small Business Credit Initiative (SSBCI).

**Major Provisions**

- 1) Requires lenders who receive a loan guarantee from the Small Business Loan Guarantee Program using SSBCI funds to certify that the guaranteed loan meets the following conditions:
  - a) The guaranteed loan shall not require the borrower to sign a confession of judgment, as specified.
  - b) 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, to pay off the balance of the previous loan.
  - c) The final payoff amount of the guaranteed loan shall not vary based upon the source of the funds used to make the final payoff.
  - d) The guaranteed loan repayment information shall be sent to a commercial credit reporting agency, as defined, and credit data shall be consulted when underwriting the guaranteed loan.
  - e) The guaranteed loan's borrower and any guarantors shall be informed if a default is going to be reported to a commercial credit reporting agency, as specified.
  - f) The guaranteed loan shall fully disclose each separate fee and charge in a clear and transparent manner, as specified.
  - g) The guaranteed loan, if repaid through gross receipts, shall have a debt service coverage ratio of greater than 1.00 or shall be determined to have a credible path to a debt service coverage ratio of greater than 1.00 within the term of the financing.
  - h) The guaranteed loan shall require that information on prepayment and refinancing be provided to the borrower in timely manner.
- 2) Expands the requirements for a CalCAP qualified loan that is funded with SSBCI moneys:
  - a) Requires a qualified loan, including the qualified loan summary, include provisions that clearly identify each applicable financing fee and charge and each prepayment fee, charge, and penalty, as specified.

- b) Requires a qualified loan, if repaid through gross receipts, is a loan that has a debt service coverage ratio of greater than 1.00 or that is determined to have a credible path to a debt service coverage ratio of greater than 1.00 within the term of the financing.

Specifies that a CalCAP qualified loan that funded with SSBCI moneys does not include:

- c) A loan that requires the borrower to sign a confession of judgment, as specified.
  - d) A loan that 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.
  - e) A loan that 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.
- 3) Requires a financial institution who applies to be a CalCAP participating financial institution that is eligible to receive SSBCI moneys to commit to performing all of the following:
- a) Provide prepayment and refinance information to the borrower in a timely manner, as specified by the authority.
  - b) Ensure that qualified loan repayment information is sent to a commercial credit reporting agency, as defined, and credit data is consulted when underwriting the qualified loan.
  - c) Inform the borrower and any guarantors if it intends to report the repayment performance on the borrower's qualified loan to a commercial credit reporting agency if default occurs.
  - d) 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.
  - e) Disclose actual prepayment charges and penalties at the time of prepayment.

## COMMENTS

California is set to receive nearly \$1.2 billion in federal SSBCI funding. These funds are intended to be used by the state to expand access to capital (debt and equity), promote economic resiliency, and create new jobs.

California's application to the United States (US) Treasury proposes to divide these funds among three existing credit enhancement programs and a new venture program as follows: \$390.9 million to the existing Small Business Loan Guarantee Program; \$472.7 million to the existing California Capital Access Collateral Support Program; \$118.1 million to the existing CalCAP; and \$200 million to a new venture fund.

This bill sets fair lending standards for privately issued loans that receive SSBCI-funded credit enhancements. These standards generally align with those set in the Responsible Business Lending Coalition's [Small Business Borrowers' Bill of Rights](#), which has been endorsed by over 90 small business groups and is the first cross-sector consensus on the rights of small businesses-owners when accessing debt capital.

The Small Business Borrowers' Bill of Rights is driving public policy changes across the US with some or all the provisions being incorporated into enhanced predatory lending laws in Arizona, New York, and California. In California, the transparent pricing and term standards were included in SB 1235 (Glazer) in 2018. Among other provisions, SB 1235 required disclosure to the borrower of the total amount of funds provided; total dollar cost of financing; the loan term or estimated term; the method, frequency, and amount of payments; a description of prepayment policies; and the total cost of the financing, as specified. Supporters contend that this bill is needed because not all financial intuitions participating in the SSBCI-funded credit enhancement programs are covered by the requirements of SB 1235.

The Small Business Borrowers' Bill of Rights also influenced the development of the SSBCI guidelines, which emphasizes that SSBCI-supported transactions must include "disclosure by the lender or investor of all key terms in an easy-to-understand manner." The SSBCI guidelines also include two specific requirements from the Small Business Borrowers' Bill of Rights:

- 1) *Confession of Judgement*: SSBCI-supported transactions are prohibited from including confessions of judgment. "A confession of judgment is usually a contractual clause in which the debtor agrees to allow a creditor, upon the nonoccurrence of a payment, to obtain a judgment against the debtor, often without advanced notice or a hearing."
- 2) *Double Dipping*: SSBCI-supported transactions are prohibited from including prepayment or "double-dipping" fees. "Double dipping" occurs when a lender issues new credit to refinance prior credit without forgiving a portion of the fee already paid and results in the borrower paying a fee on top of a fee.

In addition, the SSBCI guidelines state that SSBCI disclosure requirements are to be considered a "minimum standard" and that these standards should not be viewed as superseding other disclosure requirements as set in federal and state laws and regulations.

This bill proposes to incorporate transparency and fair lending standards into the state's largest credit enhancement programs that are slated to receive nearly \$1 billion in SSBCI funding.

The policy committee analysis includes information on the SSBCI, the [joint legislative hearing](#) on the state's use of the SSBCI in creating a more inclusive economy, descriptions of the SSBCI-funded credit enhancement programs, Small Business Borrowers' Bill of Rights, and related legislation.

### **According to the Author**

"Thanks to new and innovative online financial products, many small businesses in California have a new lifeline that provides smaller yet vital cashflow that banks often cannot provide. However, due to a lack of regulation, many bad actors purposely hide critical information that small businesses rely on to raise capital, unexpectedly leaving them mired in debt and forcing them to close down businesses.

"In 2015, commercial lending stakeholders acknowledged that borrowers deserve transparent information to make educated decisions that are important to their cashflow and lifeline. As a result, this group formed the Responsible Business Lending Coalition and created the Small Business Borrower's Bill of Rights, the first cross-sector consensus on the rights that small business owners deserve and what lenders can do to uphold them. This bill requires any commercial financing products that leverage state funding – such as loan guarantee programs – to include several financing rights and protections pulled from the Small Business Borrower Bill

of Rights. In other words, if a lender wants to use taxpayer money to help a small business, they must do so responsibly."

### **Arguments in Support**

"According to CAMEO, the sponsor of this bill, "thanks to new and innovative online financial products, many small businesses in California have a new lifeline that provides smaller yet vital cashflow that banks often cannot provide. However, due to a lack of regulation, many bad actors purposely hide critical information that small businesses rely on to raise capital, unexpectedly leaving them mired in debt. Borrowers deserve transparent information to make educated decisions that are important to their cashflow and lifeline.

"To address this, AB 2314 requires lenders that utilize SSBCI money through CalCAP and the SBLGP to implement policy versions of the SBBBR [Small Business Borrowers' Bill of Rights]."

### **Arguments in Opposition**

There is no opposition on file for this bill.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) Costs of an unknown, but potentially significant amount, to I-Bank to implement and enforce new verification processes with lending partners. To the extent such processes cause delays in I-Bank's ability to issue loans quickly, this bill may also cause the SBLGP to miss federal deployment targets and new rounds of funding, since a state cannot receive its second or third tranches of funding until it expends, transfers or obligates 80% of the preceding allocation.
- 2) Costs of an unknown, but potentially significant amount to CPCFA, similar to I-Bank. CPCFA notes costs for additional staffing and training, likely from specialized technical experts such as bank auditors, to implement and enforce new lending verification processes would exceed federal allowable percentages for administrative costs. CPCFA would also likely incur costs to update program database systems.

*"Fiscal Comments" are prepared by the Assembly Committee on Appropriations and reflect the most current available fiscal assessment.*

## **VOTES**

### **ASM BANKING AND FINANCE: 12-0-0**

**YES:** Grayson, Chen, Bauer-Kahan, Cervantes, Choi, Mike Fong, Gabriel, Nguyen, Petrie-Norris, Stone, Wicks, Wilson

### **ASM JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY: 6-0-0**

**YES:** Cervantes, Choi, Petrie-Norris, Ramos, Smith, Villapudua

### **ASM APPROPRIATIONS: 12-0-4**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**ABS, ABST OR NV:** Bigelow, Megan Dahle, Davies, Fong

**UPDATED**

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