

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CalCAP Program Staff Summary
Meeting Date: August 16, 2016

Request for Consideration and Approval of Amendment of the Regulations for the California Capital Access Financing Program to Implement the California Americans with Disabilities Act Small Business Capital Access Loan Program

Prepared by: *Bianca Smith*

Summary. Staff requests Board approval of the emergency rulemaking process pertaining to the launch of the California Americans with Disabilities Act Small Business Capital Access Financing Program (“CalCAP/ADA” or “Program”). Staff is proposing to file emergency regulations to amend the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations by including §§ 8078.8 – 8078.14 to implement the new CalCAP/ADA Program under the model of the existing CalCAP Loan Loss Reserve Program. Upon the Board’s approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. CPCFA’s mission is to promote access to capital through the delivery of diverse financing options to California. In 1994, the Legislature authorized CPCFA to develop and implement the California Capital Access Program (CalCAP), a credit enhancement program to provide loss reserve funding to participating lenders making qualifying loans to California small businesses. Assembly Bill 1230, passed by the legislature and signed by Governor Brown in October 2015, provided CPCFA a one-time \$10 million appropriation to create the CalCAP/ADA Financing Program. Under this legislation, CPCFA is authorized to develop and implement a new credit enhancement program based on the CalCAP model, specifically for private lending supporting physical alterations, retrofits, signage and other improvements to small business facilities to increase access and comply with the Americans with Disabilities Act. The statute directs CPCFA to conduct rulemaking to establish specific Program rules and procedures. The statute also directs CPCFA to establish a sustainable Program and describes a Program feature that recaptures unclaimed funding relating to matured loans to be used to support future loans beyond the \$10 million initially appropriated.

Proposed Amendment to Regulation. Staff proposes to amend CPCFA’s existing regulations by including new Sections §8078.8 – 8078.14 as shown in Attachment A.

Need for Emergency Regulations. Proceeding with emergency rulemaking is required by the legislation establishing the CalCAP/ADA Program. Section 44559.13(d) directs the Authority to implement the Program by pursuing the emergency regulations authorized by Section 45520(b) of the existing CalCAP statute, for CalCAP programs funded by sources other than CPCFA’s own small business assistance funds.

Summary of Regulations. The proposed regulations describe specific elements tailored to CalCAP/ADA, consistent with the intent of AB 1230, which are different than the existing CalCAP program, such as the definition of a qualifying small business, eligible costs, the CalCAP/ADA contribution rate, the recapture provision, and other technical requirements the borrowers must meet.

The regulations necessary to administer the CalCAP/ADA Financing Program include:

- Definitions that apply specifically to the CalCAP/ADA Financing Program, including the following:
 - eligible small business size of fifteen (15) or fewer full time employees (FTE);
 - small business facility of 10,000 square feet or less;
 - annual gross revenues of \$1,000,000 or less;
 - no overnight accommodations; and
 - eligible loan amount enrolled in the CalCAP/ADA Program of \$50,000 or less;
- Certified Access Specialist (CASp) Report and Cost Estimate requirements for loan enrollment to ensure that the use of loan proceeds is allocable to physical alterations necessary for compliance with the Americans with Disabilities Act;
- Establishing loan loss reserve funds with a borrower's contribution between 2 and 3.5 percent of the Qualified Loan, matched by an equal lender's contribution, plus a CalCAP/ADA contribution equal to four times the amount of the lender's contribution, plus an additional CalCAP/ADA contribution equal to the lender's contribution if the enrolled loan is in a disadvantaged community;
- Establishing a maximum of sixty (60) month term that a loan can be enrolled in the Program; and
- Recapture of the CalCAP/ADA Contribution(s) at the time the loan is paid off or sixty (60) months after the loan is enrolled, whichever comes first.

Informal Public Outreach. On July 8, 2016, CPCFA posted a draft of the proposed regulations on its website and announced the posting on its listserv, inviting public comment on the text. Additionally, staff conducted in-person stakeholder convenings in Los Angeles, Oakland and Fresno, plus a statewide webinar, describing the program and requesting input on the regulations. The current text of the proposed regulations include the comments received from this public outreach.

Regulatory Process. On August 9, 2016, staff posted a Notice of Emergency Regulations to provide the required five-day opportunity for the public including stakeholders to comment on the proposed text of the regulations and finding of emergency. At the Board meeting on August 16, 2016, staff will brief the Board regarding any comment received.

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 or deny emergency regulations. Assuming OAL approves this amendment as an emergency, the emergency regulations are effective for 180 days during which 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 45-day public comment period. After that time, staff will review and respond to any comments

and, if staff modifies the present form of the regulations, it will 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 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 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 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

August 9, 2016	5-day Notice posted on CPCFA website and sent to Interested Parties.
August 16, 2016	The Board adopts the emergency regulations.
August 17, 2016	Emergency regulations filed with OAL.
August 22, 2016	Public comment period ends.
August 27, 2016	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
February 23, 2017	Emergency regulations expire.

Permanent Regulations

September 30, 2016	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.
October 1, 2016	OAL publishes Notice and 45-day public comment period begins.
November 15, 2016	Public comment period regarding proposed regulations ends.
November 16, 2016	Deliver permanent regulation package to OAL for 30-day review*
December 16, 2016	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

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

Agenda Item 4.C

November 16, 2016	Proposed regulation amendments are modified and Notice of Proposed Changes is issued to initiate a 15-day comment period.
December 1, 2016	15-day comment period ends.
December 2, 2016	Deliver permanent regulation package to OAL for 30-day review.
January 1, 2017	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Permanent regulations become effective.

Recommendation. Staff recommends approval of the proposed resolution to adopt regulations concerning the CalCAP/ADA Financing Program and to authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to implementing the California Americans with Disabilities Act Small Business Capital Access Financing Program pursuant to AB 1230.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY AUTHORIZING AMENDMENT OF THE REGULATIONS FOR
THE CALIFORNIA CAPITAL ACCESS FINANCING PROGRAM TO
IMPLEMENT THE CALIFORNIA AMERICANS WITH DISABILITIES ACT
SMALL BUSINESS CAPITAL ACCESS LOAN PROGRAM
August 16, 2016**

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 as emergency regulations 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 August 16, 2016 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.



CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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MEMBERS
JOHN CHIANG, CHAIRMAN
State Treasurer
BETTY YEE
State Controller
MICHAEL COHEN
Director of Finance
EXECUTIVE DIRECTOR
Reneé Webster-Hawkins

August 9, 2016

**California Pollution Control Financing Authority
The California Americans with Disabilities Act
Small Business Capital Access Financing Program
Notice of Emergency Regulations**

The California Pollution Control Financing Authority (CPCFA), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code, proposes to adopt the proposed regulations after considering all comments, objections, and recommendations regarding the proposed action.

CPCFA proposes to adopt Article 7 Sections 8078.8–8078.14 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the establishment of the California Americans with Disabilities Act Small Business Capital Access Financing Program, to be administered by the CPCFA’s California Capital Access Program (the “Program”). These regulations are anticipated to be approved by the Office of Administrative Law on an emergency basis no later than September 1, 2016.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency regulation action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

In accordance with its authority under Health and Safety Code Section 44520(b), CPCFA is proposing to adopt the regulations as emergency regulations. Attached to this Notice is the specific regulatory language of CPCFA’s proposed emergency action and Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on CPCFA’s website at the following address: <http://www.treasurer.ca.gov/cpcfafa/index.asp>. If you prefer to receive a hard copy of the

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proposed emergency regulations please contact Betina Brantley at (916) 651-6432 and a copy will be provided at no cost.

The regulations will be presented to the CPCFA Board for approval at a public meeting to be held on August 16, 2016 at 10:30 A.M. in Room 150 at 801 Capitol Mall, Sacramento, California 95814.

Sincerely,

Reneé Webster-Hawkins
Executive Director

Enclosure(s): Proposed Text of Regulations
Finding of Emergency

cc: Robert Hedrick, CPCFA Legal Counsel
Patricia Tanous, Treasury Program Manager II
Bianca Smith, CalCAP Program Manager

RWH: ew

Proposed Regulations Implementing the CalCAP/ADA Program

§ 8078.8 Definitions.

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Americans with Disabilities Act Small Business Capital Access Financing Program. To the extent the definitions contained herein conflict with definitions contained in Section 8070, the definitions in this section shall control for purposes of the Program.

- (a) “Americans with Disabilities Act” or “ADA” means the federal Americans with Disabilities Act (42 U.S.C Sec. 12101 et seq.) and amendments thereto.
- (b) “Certified Access Specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5 of the Government Code.
- (c) “CalCAP/ADA Contribution” means the Contribution(s) made by the Authority from the California Americans with Disabilities Act Small Business Capital Access Financing Program Fund established pursuant to Section 44559.13(b)(2) of the Health and Safety Code.
- (d) “CASp Report” means a written inspection report pursuant to Section 55.53 of the California Civil Code.
- (e) “Cost Estimate” means a written proposal or estimate of the costs of materials, services and other expenses to complete some or all of the physical alterations or retrofits identified in the CASp Report, as provided by the CASp or by a licensed contractor.
- (f) “Eligible Costs” means and includes all or any part, as defined in subdivision (b)(3) of Section 44559.13 of the Health and Safety Code, of the price of construction, purchase price of real or personal property, the price of demolishing or removing any buildings or structures, the price of all machinery and equipment, the amount of financing charges and interest prior to, during, and for a period not to exceed the later of one year or one year following completion of construction, as determined by the authority, the price of insurance during construction, the amount of funding or financing noncapital expenses, the amount of reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements, the price of engineering, financial, and legal services and other service contracts, the price of plans, specifications, studies, surveys, estimates, administrative expenses, and any other expenses of funding or financing, that are necessary and allocable to the eligible project, and shall not include costs not directly related to physical alterations necessary for compliance with the Americans with Disabilities Act.
- (g) “Eligible Project” means the physical alterations or retrofits to an existing small business facility as defined in subsection (l) necessary to ensure that the facility is in compliance with the Americans with Disabilities Act as identified in a CASp report on the facility, and the financing necessary to pay eligible costs of the project.

- (h) “Program” or “CalCAP/ADA Financing Program” or “CalCAP/ADA Program” or “CalCAP/ADA” means the California Americans with Disabilities Act Small Business Capital Access Loan Program, referred to herein as the California Americans with Disabilities Act Small Business Capital Access Financing Program, established pursuant to the Section 44559.13 of the Health and Safety Code. Where the term “Program” is used in Sections 8078.8 to 8078.14 inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p).
- (i) “Qualified Loan” means a loan or portion of a loan as defined in Section 44559.1 subdivision (j)(1) of the Health and Safety Code, where the proceeds of the loan or portion of the loan are limited to the Eligible Costs for an Eligible Project under this Program, where the loan or portion of the loan does not exceed fifty thousand dollars (\$50,000), and where the term of loss coverage for each qualified loan is no more than sixty (60) months. “Qualified Loan” does not include any of the following:
- 1) Any portion of a loan to the extent the same portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program; and
 - 2) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$50,000.
- (j) “Recapture” means the withdrawal of CalCAP/ADA Contribution amounts on an annual basis when enrolled loans mature or after sixty (60) months from the date of enrollment, whichever occurs first. Recapture is not applicable for Contributions on charged off loans for which a claim has been approved.
- (k) “Small Business” or “Qualified Business” means a business referred to in subdivisions (i) and (m) of Section 44559.1, that meets the following additional criteria:
- 1) Fifteen or fewer full-time equivalent employees;
 - 2) Less than one million dollars (\$1,000,000) in total gross annual income from all sources; and
 - 3) Does not provide overnight accommodations.
- (l) “Small Business Facility” or “Facility” means an existing small business facility of less than 10,000 square feet plus common areas and publicly or privately owned access points such as sidewalks and parking lots, if responsibility for those areas has been shifted to the small business owner pursuant to local ordinance or an enforceable lease agreement.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.3, 44559.5, and 44559.11, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code, Section 4459.5 of the Government Code, Section 55.53 of the California Civil Code.

§ 8078.9 Application by Financial Institution.

Financial Institutions shall follow the procedures set forth in Section 8071 in making application to become Participating Financial Institutions in the Program.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code.

§ 8078.10 Loan Enrollment.

- (a) The terms and conditions of the Qualified Loans, including rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.
- (b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:
 - (1) by notifying the Authority in writing, within 15 business days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and
 - (2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held either by the Participating Financial Institution or the Program Trustee.
- (c) A Participating Financial Institution may enroll all or any portion of a Qualified Loan in the Program by submitting a CalCAP/ADA Loan Enrollment Application which shall include the following information:
 - (1) The official business name of the Borrower, including a “Doing Business As” if any, and the business address.
 - (2) Name and title of individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower(s).
 - (3) Brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues.
 - (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Costs.

- (5) Location(s) of the Small Business Facility.
- (6) Amount of the Qualified Loan being enrolled in the Program, and total loan amount if different, and the Participating Financial Institution loan number.
- (7) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
- (8) Date of the Qualified Loan.
- (9) Interest rate applicable to the Qualified Loan.
- (10) Term or maturity date of the Qualified Loan.
- (11) Whether the loan is for alteration(s) or retrofit(s) of a Small Business Facility located in a Severely Affected Community.
- (12) Number of full-time equivalent employees currently employed by the Borrower.
- (13) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (14) The Participating Financial Institution's certification upon enrollment of a Qualified Loan that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project.
- (15) The Participating Financial Institution's certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (16) The Participating Financial Institution's certification that the total amount of loans for the borrower enrolled in the CalCAP/ADA program does not exceed \$50,000.
- (17) The Participating Financial Institution's certification that it has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the CalCAP/ADA Contribution.
- (18) The Participating Financial Institution's certification that the Borrower has provided a CASp Report and a Cost Estimate and that the physical alterations or retrofits to be financed are included in the CASp Report.
- (19) The Participating Financial Institution's certification that the Borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) or alteration(s).

- (20) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.
- (21) The Participating Financial Institution shall be authorized to certify to the information requested by subsections (12), (13), (14), (18) and (19) above based upon the Participating Financial Institution's established due diligence and underwriting standards, and shall maintain substantiating documentation in the Borrower's loan file.
- (22) Certification from the Participating Financial Institution that it has not, and will not, enroll the Qualified Loan, or any portion thereof, in any other Capital Access Loan Program for Small Business offered by the Authority as long as funds are available for this Program.
- (23) Certification from the Participating Financial Institution that it has provided the Borrower the CPCFA's Privacy Notice for the CalCAP/ADA Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the CalCAP/ADA Financing Program informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:
 - (A) To consultants, auditors or contractors retained by the CPCFA where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement;
 - (B) To another governmental entity where required by state or federal law; or
 - (C) As otherwise required by law.
- (24) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:
 - (A) That it satisfies the definitions in Sections 8078.8(f), 8078.8(g), 8078.8(i), 8078.8(k) and 8078.8(l) of the California Americans with Disabilities Act Small Business Capital Access Financing Program Regulations;
 - (B) The facility is located within the boundaries of the State of California;
 - (C) The Borrower has legal control of the facility for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;
 - (D) The Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA;

- (E) The Borrower has no legal, beneficial, or equitable interest in the CalCAP/ADA Contribution;
 - (F) If the physical alteration(s) or retrofit(s) financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the loan in this Program is limited to Eligible Costs necessary and allocable to the Eligible Project;
 - (G) The Borrower will provide all applicable licenses or permits needed for construction related retrofit(s) or alteration(s) to the Participating Financial Institution;
 - (H) The Borrower has provided a CASp report and a Cost Estimate to the Participating Financial Institution and that the physical alterations or retrofits to be financed are included in the CASp Report;
 - (I) The Borrower's certification that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project;
 - (J) The Borrower agrees to allow CPCFA staff or its designee to inspect the project site;
- (d) Upon enrollment of a Qualified Loan, the Participating Financial Institution shall elect a Contribution between 2 and 3.5 percent of the Qualified Loan, and shall deposit the Participating Financial Institution's and Borrower's Contributions each in the elected amount into the Participating Financial Institution's Loss Reserve Account established for the CalCAP/ADA Program pursuant to Section 8078.11.
- (e) Upon verification of the deposit of the Participating Financial Institution's and Borrower's Contributions, all Qualified Loans shall receive a CalCAP/ADA Contribution equal to four times the amount of the Participating Financial Institution's Contribution.
- (f) All Qualified Loans that support Eligible Projects located in a Severely Affected Community shall receive an additional CalCAP/ADA Contribution in the amount equal to the Participating Financial Institution's Contribution.
- (g) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed sixty (60) months from the date of first disbursement of the Qualified Loan.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code.

§ 8078.11 Loss Reserve Accounts

- (a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loss Reserve Account for that Participating Financial Institution for this Program for the following purposes:
 - (1) To receive deposits from the Participating Financial Institution Contributions, the Borrower Contributions and the CalCAP/ADA Contributions; and
 - (2) To pay claims in accordance with Section 8078.12.
- (b) All moneys in a Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided by these regulations. Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loss Reserve Account all interest and income that has been credited to the Loss Reserve Account. The Executive Director shall be authorized to withdraw Contributions improperly deposited in a Loss Reserve Account.
- (c) The Executive Director shall be authorized to Recapture the CalCAP/ADA Contribution from the Loss Reserve Account when the corresponding Qualified Loan matures or at five years from the date of enrollment, whichever occurs first.
- (d) On an annual basis after March 31, CPCFA will send a notice to the Participating Financial Institution listing the CalCAP/ADA Contribution amounts that will be recaptured based on the status of the loan(s) at the end of the previous calendar year.
- (e) If any Loss Reserve Account is held at a Participating Financial Institution, the Participating Financial Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.
- (f) The Participating Financial Institution shall provide reports on a quarterly basis to CPCFA no later than 15 days after the end of each quarter, listing the status of all enrolled loans, claims and recoveries whether or not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code.

§ 8078.12 Claim for Reimbursement.

Participating Financial Institutions shall follow the procedures set forth in Section 8074 in making claims for reimbursement for loans enrolled in the California Americans with Disabilities Act Small Business Capital Access Financing Program. Any references to Section 8072 shall be replaced with Section 8078.10.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code.

§ 8078.13 Subrogation.

The procedures for subrogation set forth in Section 8075 shall be followed for loans enrolled in the California Americans with Disabilities Act Small Business Capital Access Financing Program.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code.

§ 8078.14 Termination and Withdrawal from Program.

The procedures for termination and withdrawal from the program set forth in Section 8076 shall be followed for loans enrolled in the California Americans with Disabilities Act Small Business Capital Access Financing Program.

Note: Authority cited: Sections 44520, 44559.5(f), 44559.11(b), and 44559.13 Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code, Section 12101 of Title 42 of the United States Code.

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the “Authority”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Necessity

These Emergency Regulations are necessary to implement, interpret, and make specific Article 8 of the California Pollution Control Financing Authority Act (the “Act”).¹ The Authority’s Capital Access Program (“CalCAP”) was authorized through Assembly Bill 1230, signed by Governor Brown on October 27, 2015, to implement the California Americans with Disabilities Act Small Business Capital Access Financing Program (the “CalCAP/ADA Program”) that requires alternate provisions to be written into regulation as authorized in Section 44559.11(a) of the Act.

Authority and Reference

Authority: Sections 44520(a), 44520(b), and 44559.5(f), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.” Section 44520(a) and 44559.5(f) of the Act authorizes the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Authority: Sections 44559.11(a), Health and Safety Code. Section 44559.11(a) of the Act authorizes the Authority to receive funding from any federal or state agency whose goals may be advanced by contributing funding to the Capital Access Program.

Authority: Sections 44559.1(m) of the Health and Safety Code. Section 44559.1(m) of the Act defines small business concern as “the same meaning as in Section 632 of Title 15 of the United States Code, and authorizes the Authority to further define a small business concern if the definition is provided in the regulations of Authority.

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 8 is codified at Health and Safety Code section 44559 through 44559.12.

Authority: Sections 44559.13 of the Health and Safety Code. Section 44559.13 of the Act authorizes the Authority to assist small businesses in complying with the Americans with Disabilities Act. The intent of the act is not to assist with the physical expansion of the business.

Reference: Sections 44559-44559.11 of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by adopting Sections 8078.8, 8078.9, 8078.10, 8078.11, 8078.12, 8078.13, and 8078.14 of Title 4, Division 11, Article 8 of the California Code of Regulations.

Reference: Sections 12101 of Title 42 of the United States Code References the federal Americans with Disabilities Act and amendments thereto.

Reference: Sections 4459.5 of the Government Code References the Certified Access Specialist, which is any person who has been certified pursuant to Section 4459.5 of the Government Code.

Reference: Section 55.53 of the California Civil Code References a Certified Access Specialist Report, which is a written inspection report pursuant to Section 55.53 of the California Civil Code.

Informative Digest

Existing law establishes the Capital Access Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital. (Health and Safety Code, § 44559)

The proposed additions to the regulations allow the Authority to include alternate provisions specific to the California Americans with Disabilities Act Small Business Capital Access Financing Program (“CalCAP/ADA Financing Program”) within CalCAP’s existing Small Business Loan Program. The proposed regulations will create a self-sustaining program to incentivize participating lenders to provide loans to assist small businesses in financing the costs of projects that alter or retrofit existing small business facilities, meeting specified criteria, to comply with the federal Americans with Disabilities Act.

The Proposed Amendments and Objectives for Each Section are as Follows:

§ 8078.8. Definitions.

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the CalCAP/ADA Financing Program.

§ 8078.9. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the CalCAP/ADA Financing Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the CalCAP/ADA Financing Program.

§ 8078.10. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the CalCAP/ADA Financing Program's policies and regulations. In addition the borrower must self-certify on several aspects of the project as well as provide specific requested information regarding the project.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the CalCAP/ADA Program.

§ 8078.11. Loan Loss Reserve Accounts.

This section describes the establishment of loan loss reserve accounts for participating financial institutions, and guidelines governing use of funds deposited in the loan loss reserve accounts.

Necessity. A description of how loan loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8078.12. Claim for Reimbursement

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the CalCAP/ADA Program.

Necessity. The proposed regulation is necessary to provide description on participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8078.13. Subrogation

This section describes the procedure for the Authorities right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated.

§ 8078.12. Termination and Withdrawal from Program

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loan Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

Mandate on Local Agencies or School Districts

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.