

## **Proposed draft regulations for 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

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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.

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### **§ 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.

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- (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.

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(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 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;

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- (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 Loan Loss Reserve Account shall be

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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.

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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.