

# 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”).<sup>1</sup> 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 US Code, and authorizes the Authority to further define a small business concern if the definition is provided in the regulations of Authority.

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.

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<sup>1</sup> 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.

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. The proposed regulations will create a self-sustaining program 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. Loss Reserve Accounts.**

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

Necessity. A description of how 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 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.