

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Proposed Regulatory Action

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”) proposes to amend Sections 8078.8 - 8078.10 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the administration of the California Americans with Disabilities Small Business Capital Access Loan Program. These Proposed Regulations are necessary to ensure that changes authorized through Assembly Bill 1553, signed by Governor Brown on October 10, 2017, are implemented in furtherance of the California Americans with Disabilities Act Small Business Capital Access Loan Program (the “CalCAP/ADA Program” or “CalCAP/ADA”). The Proposed Regulations have been approved by the Office of Administrative Law (“OAL”) on an emergency basis, and this proposed rulemaking would make these changes permanent.

Authority and Reference

Authority: Sections 44520, 44559.5, 44559.11 and 44559.13 Health and Safety Code. Sections 44520, 44559.5, 44559.11 and 44559.13 of the Health and Safety Code authorize the Authority to adopt regulations relating to small business financing.

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. Sets forth pertinent details regarding the content and scope of a Certified Access Specialist (“CASp”) inspection, including the role of the CASp in assessing whether the inspected premises meet the construction-related accessibility standards.

Informative Digest/Policy Statement Overview

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 amendments to the regulations will allow the Authority to include provisions specific to the California Americans with Disabilities Act Small Business Capital Access Loan Program (“CalCAP/ADA Program”). The proposed regulations will expand the definition of small business for the purposes of the CalCAP/ADA program to include businesses with less than \$5 million in total gross annual income. In addition, the proposed regulation will allow the Authority to include a reimbursement to the borrower for the cost of the Certified Access Specialist (“CASp”) Report to incentivize participation in the CalCAP/ADA Program.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

Anticipated Benefits of the Proposed Regulations:

The broad objective of the regulations is to provide access to capital and economic incentives for small businesses concerning physical alterations or retrofits necessary for compliance with the federal Americans with Disabilities Act (“ADA”). It is anticipated that with the proposed regulations, expanding the definition of small business to include businesses with less than \$5 million in total gross annual income will help increase access and compliance with ADA for more types of small businesses in California. The regulations also aim to incentivize participation in the CalCAP/ADA Program and compliance with the ADA by allowing the Authority to reimburse the small business owner for the cost of the CASp Report.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

After conducting a review for any regulations that would relate to or affect these areas, the Authority has determined that the proposed regulations are not inconsistent or incompatible with existing regulations.

§ 8078.8 Definitions.

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

Section 8078.8(d). Adds the term “CASp Inspection Report” to the definition as it can be used interchangeably with the term CASp Report.

Section 8078.8(h). Updates the name of the Program to conform to the statute.

Section 8078.8(k). Adds the term “Reimbursement” and “Reimbursement for CASp Report” defined as the amount that may be reimbursed to the Qualified Small Business by the Authority. The Reimbursement can not exceed 5% of the loan amount enrolled in the CalCAP/ADA program. A range of factors can impact the costs of a CASp report like square footage of the facility, specific areas that need to be inspected, and license level of CASp inspector. The reimbursement amount of the CASp report cost is limited to a maximum of 5% of the enrolled loan amount in an effort to prevent an overcharge of the CASp report cost.

Section 8078.8(1)(2). Updates the definition of “Small Business” or “Qualified Business” to expand the criteria for qualified businesses to be eligible for the CalCAP/ADA Program to have a total gross annual income to less than \$5million according to the statutory changes.

Necessity. The proposed amendments are necessary to include definitions specific to the CalCAP/ADA program and for consistency with the statutory changes.

§ 8078.10 Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment and reimbursement.

Section 8078.10(h). Provides the required information and documentation a Borrower must submit to the Authority in order to request a Reimbursement for the CASp Report cost. The required information is necessary to determine the maximum reimbursement amount for an eligible Borrower.

Section 8078.10(i). Provides the timeframe and process for the Authority to effectuate the reimbursement. This gives the Borrower an expected timeframe to receive the payment and holds the Authority to a timely standard.

Necessity. A description of the required information is necessary to specify the application contents that must be provided in order for the Authority to reconcile the reimbursement amount.

Disclosure Regarding the Proposed Action

The Authority has made the following determinations regarding the effect of the Proposed Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630: None.

Other non–discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business: The proposed regulations will not have an effect on small business because the program is voluntary for any small business that seeks to apply for financial assistance in physically altering or retrofitting its small business facility for compliance with the federal ADA.

Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

Assessment regarding effect on jobs/businesses: The proposed regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment: The broad objective of the regulations is to provide access to capital for small businesses in order to make modification to their business buildings to be compliant with the federal ADA.

The proposed regulations will have some safety benefits and welfare for California residents because it assists businesses in making reasonable accommodations for people with disabilities. The Authority does not expect that the proposed regulations will impact the state's environment because the proposed regulations are intended to help meet Federal, State and local goals associated with reasonable accommodations for people with disabilities and incentivize participation in CalCAP/ADA.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the proposed regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the proposed regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Proposed Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries, and any questions regarding the substance of the Proposed Regulations must be submitted or directed to:

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Regulations to the Authority. The written comment period on the Proposed Regulations ends at **5:00 p.m. (PT) on May 7, 2018**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time and day in order to be considered by the Authority.

Availability of Initial Statement of Reasons And Text of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Second Floor, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the California Regulatory Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Proposed Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfa/index.asp>.

Public Hearing

CPCFA does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found on the Authority's website at <http://www.treasurer.ca.gov/cpcfa/index.asp>.