

# CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

## TITLE 4, DIVISION 11, ARTICLE 7

### INITIAL STATEMENT OF REASONS

#### Introduction

Pursuant to Article 8, Section 44520 (b) of the Health and Safety Code, the California Pollution Control Financing Authority (the “Authority” or “CPCFA”) is authorized to adopt these regulations which are necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Existing law establishes the California Capital Access Program (“CalCAP”) 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 CalCAP/ADA Financing Program within CalCAP’s existing Small Business Loan and Independent Contributor Programs.

#### Statement of Benefits

The proposed regulations provide guidelines on the Authority’s creation of a financing program for the physical alterations or retrofits of existing small business facilities for compliance with the federal Americans with Disabilities Act (ADA). The proposed regulations help meet California’s and federal policy goals associated with reducing physical barriers that prevent access to certain small business facilities for disabled persons.

#### Section Analysis

##### § 8078.8. Definitions

§ 8078.8(a). This section defines “Americans with Disabilities Act”. It is needed in order to clarify to which act the Health and Safety Code and regulations are referring when they describe eligible costs and eligible projects.

§ 8078.8(b). This section defines “Certified Access Specialist” or “CASp”. It is needed in order to clarify who is qualified to prepare a Cost Estimate.

§ 8078.8(c). This section defines “CalCAP/ADA Contribution”. It is needed in order to clarify from which account the funds are deriving.

§ 8078.8(d). This section defines “CASp Report”. It is needed to clarify what type of report lenders are expected to collect and borrowers are expected to furnish.

§ 8078.8(e). This section defines “Cost Estimate”. It is needed to clarify what type of document lenders are expected to collect and borrowers are expected to furnish. It also clarifies who is qualified to provide the Cost Estimate to the borrower.

§ 8078.8(f). This section provides a definition for “Eligible Costs”. This is necessary so that borrowers, lenders, and stakeholders understand what types of costs are eligible to be enrolled in the Program.

§ 8078.8(g). This section provides a definition for “Eligible Project”. It is necessary to clarify for what purpose loan funds may be used and what type of report will identify ADA compliance deficiencies.

§ 8078.8(h). This section defines the term “Program”, and is necessary to provide clarity throughout the regulations and other program materials since the Authority administers many similar financing programs. It is also necessary to identify how the Program became established.

§ 8078.8(i)(1-2). This section defines “Qualified Loan”. This is necessary to establish the maximum enrollment amount per borrower and the maximum term of loss coverage as well as clarify that only the portions of loans that are related to Eligible Costs of Eligible Projects are eligible. This definition further serves to prohibit loans which are, were, or will be enrolled in any other government program substantially similar to the Program.

§ 8078.8(j). This section defines “Recapture”. This is necessary to clarify what recapture entails, when funds will be withdrawn, and which contributions are exempt from recapture.

§ 8078.8(k)(1-3). This section defines “Small Business” and “Qualified Business”. This is necessary because it imposes restrictions on which types of businesses are eligible borrowers in terms of the quantity of employees they have, the business’ total gross annual income from all sources, and whether or not the business provides overnight accommodations.

§ 8078.8(l). This section defines “Small Business Facility”. This is necessary because it clarifies that only improvements made to existing facilities are eligible, it imposes a restriction related to the square footage of the property, and it clarifies that costs related to making common areas and access points ADA compliant are also eligible if the small business owner is responsible for those areas.

#### **§ 8078.9. Application by Financial Institution**

This section describes how financial institutions may apply to participate in the CalCAP/ADA Financing Program. The content of the application has already been established in section 8071 of the regulations, but is restated in this section for clarity and continuity of the CalCAP/ADA Financing Program.

#### **§ 8078.10. Loan Enrollment**

§ 8078.10(a). This section clarifies who sets the terms and conditions of the Qualified Loans, which is necessary to ensure that the Authority does not get involved in the lender’s underwriting.

§ 8078.10(b)(1-2). This section describes the circumstances under which a Participating Financial Institution may enroll a Qualified Loan under the Program. This is necessary in order to set a standard by which the Authority may reject applications for enrollment if a lender fails to submit the application to the Authority in a timely manner or fails to transmit the appropriate fees and supporting documentation.

§ 8078.10(c)(1,3,6,8-10,13,15). These describe content required for the loan enrollment application, and have already been established in section 8072(c) of the regulations, but are restated in this section for clarity and continuity of the CalCAP/ADA Financing Program.

§ 8078.10(c)(2). This section requires the name of the responsible person signing for a loan, to specify the individual acting on behalf of the business.

§ 8078.10(c)(4). This section describes content required for the loan enrollment application already established in section 8072(c)(4) of the regulations, but adds “consistent with uses permitted as Eligible Project Costs”. This “consistent uses” portion was added to state to both borrowers and lenders that only eligible costs may be enrolled in the program.

**§ 8078.10(c)(5).** This section requires the borrower to disclose the location where the physical alterations or retrofits will be made. It is necessary to ensure the Small Business Facility is located in the state of California and to confirm the square footage of the property is less than 10,000 square feet.

**§ 8078.10(c)(7).** This section describes content required for the loan enrollment application already established in section 8072(c)(6) of the regulations, but changes the exempli gratia used to “secured, unsecured, and term loan”. The reason for the change from 8072(c)(6), was because some of the exempli gratia do not apply to the CalCAP/ADA Financing Program which does not allow lines of credit, or TRAC leases.

**§ 8078.10(c)(11).** This section requests to know whether the physical alterations or retrofits of a Small Business Facility will be located in a Severely Affected Community, and is necessary because the Authority deposits an additional contribution into the lender’s loan loss reserve account equal to the lender’s contribution when the installation is located in a Severely Affected Community. The Authority provides this incentive to assist those communities that suffer from areas of high unemployment. Severely Affected Community is defined in Title 4, Division 11, Article 7, Section §8070 (t).

**§ 8078.10(c)(12).** This section requests to know the quantity of full-time equivalent employees the borrower employs. This is necessary because the number of full-time equivalents cannot exceed fifteen (15) in the Program.

**§ 8078.10(c)(14).** This section requires the lender to certify that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project. This is necessary to ensure the public funds are used in an authorized manner.

**§ 8078.10(c)(16).** This section requires the lender to certify that the borrower does not have more than \$50,000 enrolled in the program, and is necessary to prevent a borrower from monopolizing the limited funding available in the program.

**§ 8078.10(c)(17).** This section describes content required for the loan enrollment application already established in Section 8072(c)(20), but changes “in the Fees or the Contribution” to “in the CalCAP/ADA Contribution”. The reason for the change is to provide specificity related to the contribution described.

**§ 8078.10(c)(18).** This section requires the lender to certify that the Borrower has provided a CASp Report and a Cost Estimate and that the CASp Report identifies the physical alterations or retrofits to be financed. This is necessary to ensure the loan proceeds are being used for eligible purposes and to ensure the lenders are collecting the proper supporting documentation on behalf of the Authority.

**§ 8078.10(c)(19).** This section requires the lender to certify the borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) or alteration(s). This is necessary to help ensure the Authority is not assisting projects that are illegal or may never reach completion due to lack of proper permitting or licensure.

**§ 8078.10(c)(20).** This section describes content required for the loan enrollment application already established in Section 8072 (c)(23), but changes “in applicable federal bank regulations” to “in applicable lender regulations”. This is necessary to ensure the lender acknowledges that it is a regulated lender. While the Authority initially reviews and approves every lending institution, this provision is an additional safeguard for the Authority if the lender ever falls out of its regulatory compliance whether it is a federal regulation or not.

**§ 8078.10(c)(21).** This section authorizes the lenders to accept the borrower’s self-representation that the loan meets the requirements of Section 8078.10(c)(12), (13), (14), (18) and (19) of the regulations. Section 12 states that the lender must certify to the number of full-time equivalent employees currently employed

by the borrower. Section 13 states that the lender must certify that the loan is a Qualified Loan and that the business receiving the loan is a Qualified Business. Section 14 states that the lender must certify that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project. Section 18 states that the lender must certify 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. Section 19 states that the lender must certify that the borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) or alteration(s). These provisions are needed to allow lenders the flexibility to accept the borrower's self-representation regarding Sections 12, 13, 14, 18, and 19 without requiring the lender to perform an impractical due diligence. Another reason the lender is allowed to base these certifications off of the borrower's self-certification is because the lender may not have access to all prior lending agreements in which the borrower has been involved, so the lender may be unable to verify that the borrower meets the definition of a Qualified Loan and does not have more than \$50,000 enrolled in the Program.

**§ 8078.10(c)(22).** This section requires the lender to certify that it has not and does not intend to enroll any portion of the loan in any other Capital Access Loan Program for Small Business which the Authority offers if funds are still available in the CalCAP/ADA Financing Program. This section is necessary because it is statutorily required through Health and Safety Code Section 44559.13(d)(4).

**§ 8078.10(c)(23)(A-B).** This section requires the lender to certify it has provided the borrower with CPCFA's privacy notice. This notice is required under the California Information Practices Act, civil code section 1798.17.

**§ 8078.10(c)(24)(A).** This section requires the borrower to self-certify that it satisfies the definitions in Sections 8078.8(f),(g),(i), (k) and (l) of the regulations. This is required to ensure the borrower has an understanding of the definitions and certifies to meeting them. It is also necessary to ensure that the Program funding is only being used to support qualified loans made for eligible costs of eligible projects at small business facilities owned by qualified businesses.

**§ 8078.10(c)(24)(B).** This section requires the borrower to self-certify that the small business facility is located within California. This is necessary because it is statutorily required by Health and Safety Code Section 44559.1 (j)(1).

**§ 8078.10(c)(24)(C).** This section requires the borrower to self-certify that the borrower has legal control of the facility for the length of the enrolled loan or longer and assumes financial liability of the loan. This is necessary because CPCFA does not intend to support loans made to businesses who do not or will not have legal control of the facility throughout the entire course of the loan or who will not assume financial liability of the loan.

**§ 8078.10(c)(24)(D).** This section requires the borrower to self-certify that it agrees to allow its lender to provide its financial records to CPCFA if requested by the Executive Director. This provision is necessary to allow CPCFA to obtain financial records in the course of a program audit, or in the event a dispute or investigation into a fraudulent loan enrollment or claim originates.

**§ 8078.10(c)(24)(E).** This section requires the borrower to self-certify it has no legal, beneficial, or equitable interest in the matching contribution. This provision comes from existing CalCAP regulations Section 8072(c)(20) and will help ensure that Program funds are not used for ulterior motives.

**§ 8078.10(c)(24)(F).** This section requires the borrower to certify to their understanding that costs that are related to a larger construction project which are not directly allocable or necessary to the Eligible Project are not permitted to be included in the enrolled amount. This is necessary to ensure that Program funds are only being used to support the portions of loans that are for Eligible Costs of Eligible Projects.

**§ 8078.10(c)(24)(G).** This section requires the borrower to self-certify that it will provide the Participating Financial Institution with all applicable licenses or permits needed for construction related retrofit(s) or alteration(s). This is necessary to help ensure CPCFA is not assisting projects that are illegal or may never reach completion due to lack of proper permitting or licensure.

**§ 8078.10(c)(24)(H).** This section requires the borrower to self-certify that it 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. This is necessary to ensure the loan proceeds are being used for eligible purposes and to ensure the lenders are collecting the proper supporting documentation on behalf of the Authority.

**§ 8078.10(c)(24)(I).** This section requires the borrower to self-certify that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project. This is necessary because it will help ensure that the Program funds are being used to support eligible loans.

**§ 8078.10(c)(24)(J).** This section requires the borrower to agree to allow CPCFA staff or a designee to inspect the project site. This is necessary to resolve potential compliance issues if one arises related to whether or not the loan proceeds were used consistent with the Program regulations.

**§ 8078.10(d).** This section describes the amount the participating financial institution and borrower are expected to deposit into the lender's loss reserve account. It is necessary to provide clarity to lenders regarding how much the borrower and lender must contribute in order to benefit from the Program and to clarify that the lender, rather than the Authority, decides the amount as long as it falls within the 2 to 3.5 percent range.

**§ 8078.10(e).** This section describes the percentage of funding that a qualified loan will receive from the Authority and is necessary to provide clarity to lenders on how much funds they can expect to receive in the reserve account. The Authority decided the CalCAP/ADA Contribution would be equal to four times the amount the Participating Financial Institution contributed based on input from stakeholders and lenders regarding the right balance of incentives while maximizing the available funding to support as many projects as possible. The Authority also based its proposed contributions off of the success of other CalCAP programs.

**§ 8078.10(f).** This section describes the percentage of funding that a qualified loan will receive from the Authority if the project site is located in a Severely Affected Community. It is necessary to provide clarity to lenders on how much funds they can expect to receive in the reserve account if the loan meets this additional requirement. The Authority decided the additional CalCAP/ADA Contribution would be equal to the Participating Financial Institution's Contribution based on input from stakeholders and lenders regarding the right balance of incentives while maximizing the available funding to support as many projects as possible.

**§ 8078.10(g).** This section limits the enrollment period in the Program to 60 months, and is necessary to ensure the Authority abides by the limitations set forth in Health and Safety Code 44559.13 (d)(5). It also serves to establish a date after which the Authority may recapture the funds it deposited into the loan loss reserve account.

#### **§ 8078.11. Loss Reserve Accounts**

**§ 8078.11(a)(1-2).** These sections describe the purposes of establishing a Loss Reserve Account for a Participating Financial Institution and are already established in a substantially similar form in existing regulation Section 8073(a). This is necessary in order to specify acceptable uses of the Loss Reserve Account.

**§ 8078.11(b).** This section establishes the Authority as the owner of all of the funds in the loss reserve account and describes the Executive Director's authority to withdraw improperly deposited funds or accrued interest that has been credited to the account. This section is necessary to ensure there is no misunderstanding among participating lenders regarding whether they own any of the funding placed into their reserve account and to notify them in advance of the circumstances under which the Executive Director may withdraw funds from the account.

**§ 8078.11(c).** This section states the Executive Director's authority to withdraw the Authority's contribution from the lenders' Loss Reserve Accounts when the loan matures or upon the termination of loan coverage, whichever is earlier. This is necessary to ensure there is no misunderstanding between CPCFA and the Participating Financial Institutions regarding whether the funds which were used to support loans that have already matured and for which claims have not been filed would remain in the lenders' accounts.

**§ 8078.11(d).** This section describes the measures CPCFA will take to notify Participating Financial Institutions of the dollar amounts which will be withdrawn from the Loan Loss Reserve Accounts due to the loans' eligibility for recapture. This is necessary in order to avoid misunderstandings with the lenders related to how much remains in the lender's Loan Loss Reserve Account for potential claims.

**§ 8078.11(e).** This section states that lenders that hold loss reserve accounts at their own institution must provide a monthly bank statement to CPCFA no later than the 15<sup>th</sup> of each month. This is necessary to allow CPCFA to reconcile and monitor the loss reserve account to ensure funds are not being withdrawn without CPCFA's authorization. CPCFA believes 15 days into the month is ample time for the lender to provide a bank statement balanced with CPCFA's need to timely monitor Loss Reserve Accounts held outside of the trustee.

**§ 8078.11(f).** This section states that lenders must provide a quarterly report listing all loans that are enrolled and all loans that are in default, and must be provided no later than 15 days after the end of the quarter. This is necessary to allow CPCFA to monitor loans that are in default to ensure funds are available for possible claims. CPCFA must be able to view these reports in a timely manner and CPCFA has determined that 15 days is sufficient time for lenders to provide the report.

#### **§ 8078.12. Claim for Reimbursement**

This section describes how financial institutions may file claims for reimbursement with CPCFA in the CalCAP/ADA Financing Program. The content of the claim application and claim procedure have already been established in Section 8074 of the regulations but is restated in this section for clarity and continuity of the CalCAP/ADA Financing Program.

#### **§ 8078.13. Subrogation**

This section describes the procedures for subrogation in the CalCAP/ADA Financing Program. The content of the subrogation procedures has already been established in Section 8075 of the regulations but is restated in this section for clarity and continuity of the CalCAP/ADA Financing Program.

#### **§ 8078.14. Termination and Withdrawal from Program**

This section describes the procedures for termination and withdrawal from the CalCAP/ADA Financing Program. The content of the termination and withdrawal procedures has already been established in Section 8076 of the regulations but is restated in this section for clarity and continuity of the CalCAP/ADA Financing Program.

## Reliance

The proposed regulations are the result of collaborative effort between the Authority, the Division of the State Architect, the California Commission on Disability Access, and interested parties through public workshops.

## Alternatives Considered

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed Adopted Regulations.

## Mandated Technology or Equipment

The CPCFA Executive Director has determined the proposed Adopted Regulations do not mandate the use of specific technologies or equipment.

## Economic Impact Statement

The CPCFA Executive Director has determined that the proposed Adopted Regulations will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons, because they do not impose any kind of restrictions or burdens on businesses or persons. The Program is voluntary and the regulations provide financial incentives to lenders to make loans to small businesses to physically alter or retrofit their facilities for compliance with the federal ADA. Furthermore, the CPCFA Executive Director has determined that the amended 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 other State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

**The creation or elimination of jobs within California:** The adoption of Sections 8078.8-8078.14 of the CPCFA Regulations are not expected to have a direct impact on the creation or elimination of jobs within the State of California, due to the limited amount of funding available to support small businesses and due to the nature of the uses of loan proceeds

**The creation of new businesses or the elimination of existing businesses within the State of California:** The proposed language in sections 8078.8-8078.14 of the CPCFA Regulations is not expected to have a direct impact on the creating of new businesses. However, the Authority anticipates the proposed language of the CPCFA Regulations will help prevent the elimination of existing businesses within the State of California because the Authority expects it will help small business owners obtain the capital they need to avoid potential costly litigation due to their facilities being out of compliance with the federal ADA.

**The expansion of businesses currently doing business within the State of California:** The adoption of Sections 8078.8-8078.14 of the CPCFA Regulations are not expected to have an impact on the expansion of businesses within the State of California. The program is designed to increase access to capital for small businesses seeking to physically alter or retrofit their existing small business facilities of less than 10,000 square feet to ensure that facility is in compliance with the Americans with Disabilities Act. Health and Safety Code Section 44559.13 explicitly states that it is not the intent of the Legislature to assist the physical

expansion of small businesses that includes modifications that comply with the Americans with Disabilities Act.

**The 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 enable small businesses which have difficulty obtaining financing to physically alter or retrofit their small business facilities for compliance with the federal ADA. It is anticipated that the increase in ADA compliant small business facilities will help meet California's and federal policy goals associated with reducing physical barriers that prevent access to certain small business facilities for disabled persons and will increase the general well-being of disabled citizens. The Authority anticipates that the proposed Adopted Regulations will have some worker safety benefits, including but not limited to reducing physical barriers and otherwise improving accessibility for disabled workers and California disabled residents as well. The Authority does not expect that the proposed Adopted Regulations will impact the state's environment.

#### **Documents Relied Upon**

CPCFA did not rely upon any documents when preparing the proposed Adopted Regulations for the CalCAP/ADA Financing Program.