

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Proposed Regulatory Action

The Authority proposes to adopt Sections 8078.8-8078.14 of Title 4 of the California Code of Regulations (the “Proposed Regulations”) concerning the administration of the California Pollution Control Financing Authority’s California Americans with Disabilities Small Business Capital Access Loan Program (“CalCAP/ADA Program”). These Proposed Regulations are necessary to implement, interpret, and make specific Article 8 of the California Pollution Control Financing Authority Act (the “Act”). 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(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 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 44559.13 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 44559.1, 44559.2, 44559.3, 44559.5, and 44559.11 of the Health and Safety Code. These Proposed 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 7 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/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 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 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 (ADA). The CalCAP/ADA Financing Program will provide a credit enhancement to support private bank loans to small businesses to make required improvements. The businesses that qualify for the program are among the smallest and are at the most risk.

Pursuant to Title 1, Division 1 of the California Code of Regulations Section 12(b), the proposed regulations repeat and rephrase existing law to provide clarity to the CalCAP/ADA Financing Program's participating financial institutions and qualified borrowers.

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 assist small businesses in obtaining capital to make physical alterations or retrofits to existing small business facilities necessary to ensure that the facility is in compliance with the federal ADA and the financing necessary to pay eligible costs of the project. It is anticipated that this program will help reduce the number of physical barriers that restrict access for disabled persons to small business facilities, which may also provide additional revenue streams to the participating small business borrowers. This program also aims to help small businesses obtain the resources they need to avoid potential legal and financial hardships associated with non-compliance with the ADA.

Determination of Inconsistency/Incompatibility with Existing State Regulations: Pursuant to Title 1, Division 1 of the California Code of Regulations Section 12(b), the proposed additions to the regulations repeat and rephrase existing law to provide clarity to the CalCAP/ADA Financing Program's participating financial institutions and qualified borrowers.

Government Code Section 11346.5(a)(3)(D) requires that the notice of proposed rulemaking shall include, "an evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations." CPCFA staff reviewed the California Code of Regulations and found that the only inconsistencies are those that are allowed by Health and Safety Code 44559.11(b) which authorizes the Authority to adopt regulations to establish alternate provisions as necessary to enable the authority to participate in the CalCAP/ADA Program. The inconsistent but statutorily compatible regulations are as follows:

- (a) Section 8078.8 (i) and 8078.10 (g) which establish the maximum enrollment amount per borrower at \$50,000 and the maximum term of loss coverage at sixty months;
- (b) Section 8078.8 (k) which establishes the size of a Qualified Business at 15 or fewer full-time equivalent employees, establishes the allowable total gross annual income of the business from all sources at less than \$1,000,000, and prohibits businesses that provide overnight accommodations;
- (c) Section 8078.10 (d) and (e) which establish the contribution rates for the CalCAP/ADA Financing Program; and
- (d) Section 8078.8 (j) and 8078.11 (c) and (d) which establish and describe the process of recapture of the CalCAP/ADA Financing Program contributions on an annual basis.

The proposed sections above impose restrictions on eligible businesses and loans in order to ensure that public funding is available for the smallest, most vulnerable businesses in need of a credit enhancement to physically alter or retrofit their facilities for ADA compliance without impacting existing CPCFA programs. By increasing the contribution amounts compared to the Capital Access Loan Program for

Small Businesses, CPCFA seeks to incentivize participation in the program. CPCFA also aims to ensure that funding is continuously available to support additional loans to small businesses after the funds are initially deployed by establishing a maximum term of loss coverage and a subsequent recapture component.

While these sections are inconsistent with existing regulation, they are allowed because Health and Safety Code 44559.11(b) allows CPCFA to create alternate provisions in order to participate in a program with an alternate funding source, in this instance the sole funding source is the General Fund. Additionally, Health and Safety Code 44559.13 establishes most of these requirements and tasks CPCFA with drafting regulations to elaborate upon the requirements.

§ 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.

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, guidelines governing use of funds deposited in the loss reserve accounts, and lender reporting requirements.

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 a description on how participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8078.13. Subrogation

This section describes the procedure for the Authority’s 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 will help the Authority enforce its rights.

§ 8078.14. 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.

Disclosure Regarding the Proposed Action

The Executive Director of 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 enable small businesses who 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 increase the physical access and general well-being of disabled citizens.

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 shall 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. on March 20, 2017**. All the comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

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 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/cpcfai/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 at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.