

**State of California
Office of Administrative Law**

In re:
California Pollution Control Financing
Authority

Regulatory Action:

Title 04, California Code of Regulations

Adopt sections:

Amend sections: 8070, 8072, 8073

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2023-0221-01

OAL Matter Type: Emergency Readopt (EE)

This emergency readoption removes the recapture mechanism designed to recycle contributions supporting future loan enrollments in the Capital Access Loan Program (CalCAP) for Small Business. This emergency is deemed pursuant to Health and Safety Code section 44520(b).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 3/3/2023 and will expire on 6/2/2023. The Certificate of Compliance for this action is due no later than 6/1/2023.

Date: March 3, 2023

 Digitally signed by Mark Storm
Date: 2023.03.03 12:10:46 -08'00'

Mark Storm
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Shela Tobias-Daniel, Executive
Director

Copy: Kamika McGill

STD. 400 (REV. 10/2019)

EMERGENCY

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2023-0221-01EE	EMERGENCY NUMBER
------------------	---------------------------------	---	------------------

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 03 2023

1:50 PM

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2023 FEB 21 PM4:11

NOTICE	REGULATIONS
--------	-------------

AGENCY WITH RULEMAKING AUTHORITY
California Pollution Control Financing Authority

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California Capital Access Program for Small Businesses	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S) 4	Sections 8070, 8072, 8073

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Kamika McGill	TELEPHONE NUMBER (916) 653-0289	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kamika.mcgill@treasurer.ca.gov
------------------------------------	------------------------------------	-----------------------	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 02/21/2023
TYPED NAME AND TITLE OF SIGNATORY Sheila Tobias-Daniel, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 03 2023

Office of Administrative Law

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations Division 11. California Pollution Control Financing Authority Article 7. Capital Access Program for Small Businesses

Text of Modified Regulations

Changes are illustrated with an underline for proposed additions,
and a strikethrough for proposed deletions.

§ 8070. Definitions.

In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:

(w) "Recapture" means the withdrawal of the Authority's Contributions pursuant to each program's rules set forth in Sections 8078.11, 8078.18, and 8078.25.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7, 44559.9 and 44559.12, Division 27, Health and Safety Code.

§ 8072. Loan Enrollment.

~~(k) Loan enrollments submitted on or after August 15, 2017 will be subject to Recapture as specified in Section 8073.~~

Note: Authority cited: Sections 44520 and 44559.5, Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.12, Health and Safety Code; and Section 1798.17, Civil Code.

§ 8073. Loss Reserve Accounts.

(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve Account upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below). Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of

the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the loss reserve all interest and income that has been credited to the Loss Reserve Account as set forth in Health and Safety Code Section 44559.3(d). The Executive Director shall be authorized to return to a Participating Financial Institution any Fees improperly deposited in a Loss Reserve Account. No Participating Financial Institution holding its Loss Reserve Account shall make any withdrawal from the account without written instruction from the Authority.

~~(g) The Executive Director is authorized to Recapture from each Loss Reserve Account the Authority's Contribution for each enrolled loan when the corresponding Qualified Loan matures or upon five years from the date of enrollment, whichever occurs first, and subject to each of the following conditions:~~

~~(1) Recapture shall be conducted on an annual basis following the end of each fiscal year based on the data reported in the Quarterly Reports submitted for the term ending June 30th.~~

~~(2) Recapture is not applicable for Contributions for Qualified Loans that are charged off as a result of a default, and have a pending or approved claim with the Authority, and are reported as such on the Quarterly Report.~~

~~(3) The Executive Director shall limit the amount of the annual Recapture of Contributions from each Loss Reserve Account if necessary to ensure that the balance remaining in that Loss Reserve Account immediately following Recapture is greater than a minimum threshold set as a percentage of the Outstanding Principal Balance of loans enrolled in the 60 months prior to each annual Recapture. Beginning in 2020, the minimum threshold shall be fifteen percent (15%).~~

~~(4) Recapture shall apply to each new Loss Reserve Account established on or after August 15, 2017.~~

~~(5) For Loss Reserve Accounts established before August 15, 2017, each Participating Financial Institution shall affirm in writing its election to continue enrolling loans in the Program subject to Recapture applicable to Contributions for all past and future Qualified Loans. This election may not later be withdrawn by the Participating Financial Institution. Loans enrolled on or after August 15, 2017 will be deemed ineligible if the Participating Financial Institution has not first submitted its election in writing. For any Participating Financial Institution that submits its election in writing after August 15, 2017, the Authority shall thereupon conduct Recapture for its Loss Reserve Account according to this subsection (g), and the Participating Financial Institution may thereupon submit new loan enrollments on or after the date of its written election. Nevertheless, Qualified Loans enrolled before August 15, 2017 will be supported by the Loss Reserve Account and the Participating Financial Institution will be eligible for claim reimbursement pursuant to Section 8074 for the previously enrolled Qualified Loans until maturity.~~

~~(6) The Authority shall deposit all Recaptured funds in the CalCAP for Small Business Loan Program Fund dedicated solely for future program and administrative expenditures of the CalCAP for Small Business Loan Program. The Authority may set aside up to 7 percent of all Recaptured funds for reasonable direct and indirect administrative costs of the Program.~~

(h)(g) The Authority may suspend enrollment of Qualified Loans upon written notice to the Participating Financial Institution at least ten (10) business days prior to the effective date of the suspension. Causes for suspension shall be for violations of applicable statutes or regulations. If the violations are not corrected within thirty (30) business days from the effective date of the suspension the Executive Director is authorized to terminate participation of a Participating Financial Institution in the Program. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans.

Note: Authority cited: Sections 44520 and 44559.5, Health and Safety Code. Reference: Sections 44559.3 and 44559.8, Health and Safety Code.