

**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: 8078.1

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2022-1024-01

OAL Matter Type: Emergency (E)

This emergency rulemaking action adopts a new regulation to specify the State Small Business Credit Initiative Program requirements for loans enrolled in the Capital Access Loan Program so as to conform to U.S. Treasury Department requirements for utilization of federal funds.

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 11/3/2022 and will expire on 5/3/2023. The Certificate of Compliance for this action is due no later than 5/2/2023.

Date: November 3, 2022


Dale Mentink
Assistant Chief Counsel

For: Kenneth J. Pogue
Director

Original: Shela Tobias-Daniel, Executive
Director

Copy: Kamika McGill

EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2022-1024-01E	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2022 OCT 24 AM 11:00

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

NOV 03 2022

1:55 PM

NOTICE	REGULATIONS
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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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	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)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTIONS(S) (Including title 26, if toxics related)	ADOPT	AMEND	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) 4	Sections 8078.1		

om
per agency request
11/3/22

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			<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 type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only		
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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)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON Kamika McGill	TELEPHONE NUMBER (916) 653-0289	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kamika.mcgill@treasurer.ca.gov
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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 10/19/2022
TYPED NAME AND TITLE OF SIGNATORY Shela Tobias-Daniel, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 03 2022

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.

§ 8078.1. Federal Capital Access Program and Funding.

(a) Where the Contribution comes from funds provided under the State Small Business Credit Initiative enacted pursuant to the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2) the following shall apply, notwithstanding any other provision of this article, to the extent allowed by the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2) (American Rescue Plan Act):

(b) "Participating Financial Institution" also includes all those listed in Health and Safety Code Section 44559.1(d) and all certified community development financial institutions whether or not organized for profit.

(c) The Participating Financial Institution must obtain written assurance from the Borrower that:

(1) the loan will be used solely for a business purpose;

(2) the loan will not be used to repay delinquent federal or jurisdiction income taxes unless the borrower has a payment plan in place with the relevant taxing authority;

(3) the loan will not be used to repay taxes held in trust or escrow (e.g. payroll or sales tax);

(4) the loan will not be used to reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance;

(5) the loan will not be used to purchase any portion of the ownership interest of any owner of the business;

(6) the loan will not be used for business purposes prohibited by the U.S. Treasury;

(7) the loan will not be used to finance ineligible businesses;

(8) no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act 42 U.S.C. §16911);
and

(9) the Borrower is not:

(A) an executive officer, director, or principal shareholder of the Participating Financial Institution;

(B) a member of the immediate family of an executive officer, director, or principal shareholder of the Participating Financial Institution; or

(C) a related interest or immediate family member of such executive officer, director, principal shareholder, or member of the immediate family of the Participating Financial Institution.

(d) Ineligible businesses include the following business types:

(1) a business engaged in speculative activities that develop profits from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business through the normal course of trade;

(2) a business that earns more than half of its annual net revenue from lending activities, unless the business is a Community Development Financial Institution that is not a depository institution or a bank holding company;

(3) a business engaged in pyramid sales plans, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

(4) a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses;

(5) a business deriving more than one-third of gross annual revenue from legal gambling activities; or

(6) other businesses that are restricted by federal fund law or the Department of Treasury.

(e) The Participating Financial Institution must provide written assurance affirming the following:

(1) the Qualified Loan has not been made in order to place under the protection of the CalCAP prior debt that is not covered under CalCAP and that is or was owed by the Borrower to the Participating Financial Institution or to an affiliate of the Participating Financial Institution;

(2) the Qualified Loan is not a refinancing of a loan previously made to the borrower by the Participating Financial Institution or an affiliate of the Participating Financial Institution; 21

(3) no principal of the Participating Financial Institution has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. §16911));

(4) the Participating Financial Institution will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right of Financial Privacy Act (12 U.S.C. §3401 et seq.) as applicable; and

(5) the Participating Financial Institution is in compliance with the requirements of 31 C.F.R. §103.121.

(f) Federal capital access funds shall not be used for the following:

(1) activities that relate to acquiring or holding passive investments in real estate, the purchase of securities; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995. P.L. 104-65, as amended (2 U.S.C. 1602(7));

(2) financing a non-business purpose;

(3) covering the unguaranteed portions of an SBA loan unless CalCAP receives prior written consent of the U.S. Treasury;

(4) supporting existing extension of credit, including but not limited to prior loans, lines of credit or other borrowings that were previously made available as part of a state small business credit enhancement program.

(g) The federal Matching Contribution shall be equal to the sum of the Fees paid by the Borrower and Participating Financial Institution, unless another amount is allowed by the American Rescue Plan Act.

(h) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds, unless another amount is allowed by the American Rescue Plan Act.

(i) Any Borrower or Participating Financial Institution fees assessed by the Authority as allowed by the American Rescue Plan Act may be deposited in a Loss Reserve Account.

(j) Claims for reimbursement may be processed according to the requirements of the American Rescue Plan Act.

Note: Authority cited: Sections 44520 and 44559.5(f), Health and Safety Code. Reference: Sections 44559.2, 44559.4 and 44559.11, Health and Safety Code.