

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CalCAP Program Staff Summary
Meeting Date: December 12, 2017

Request for Consideration and Approval of Amendments of the Regulations for the California Americans with Disabilities Small Business Capital Access Loan Program to Conform to the Recent Statutory Changes under Assembly Bill 1553

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Summary. Staff requests approval to adopt emergency regulations for the California Americans with Disabilities Act (“ADA”) Small Business Capital Access Loan Program (“CalCAP/ADA Program” or “CalCAP/ADA”) in order to implement the recent statutory changes under Assembly Bill 1553 (“AB 1553”). AB 1553 (chapters on October 10, 2017), expands the definition of small business for the purposes of the ADA program to include businesses with less than \$5 million in total gross annual income, and authorizes the California Pollution Control Financing Authority’s (“CPCFA” or “Authority”) to use Small Business Assistance Fund (“SBAF”) monies to incentivize participation in the CalCAP/ADA loan loss reserve program. Upon the Board’s approval, staff will file the proposed amended regulations with the Office of Administrative Law (“OAL”) through the emergency and regular rulemaking processes.

Background. CPCFA’s mission is to promote access to capital through the delivery of diverse financing options to California. In 1994, the Legislature authorized CPCFA to develop and implement the California Capital Access Program (“CalCAP”), a credit enhancement program to provide loss reserve funding to participating lenders making qualifying loans to California small businesses. Assembly Bill 1230 (“AB 1230”), passed by the legislature and signed by Governor Brown in October 2015, provided CPCFA a one-time \$10 million appropriation to create the CalCAP/ADA Financing Program. Permanent regulations implementing the new credit enhancement program based on the CalCAP model, specifically for private lending supporting physical alterations, retrofits, signage and other improvements to small business facilities to increase access and comply with the ADA, were approved by OAL and filed with the Secretary of State on May 8, 2017.

The proposed amendments to the regulations allow the Authority to expand the definition of small business for the purposes of the ADA program to include businesses with less than \$5 million or less in total gross annual income, thereby expanding the types of businesses that qualify for funding under the ADA program. Prior to AB 1553, eligibility for the CalCAP/ADA program limited the small businesses annual gross revenues to \$1 million or less.

The proposed amendments to the regulations also authorize the Authority to use SBAF monies to incentivize participation in the CalCAP/ADA loan loss reserve program. The SBAF fund maintained by CPCFA is used primarily for offsetting the cost of bond issuances incurred by qualifying small businesses. Prior to receiving federal funding, CPCFA also used the SBAF monies to support the contributions for loans enrolled in its CalCAP for Small Business Lending Program. The revenue into the fund is established by fees paid by large businesses requesting allocation for tax-exempt bonds through CPCFA.

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Current CalCAP/ADA regulations require that small businesses obtain a Certified Access Specialist (“CASp”) Report in order to qualify for a CalCAP/ADA loan to ensure that the loan proceeds are being used for tenant improvements necessary for compliance under the ADA. The Authority has consulted with accessibility experts, who were reluctant to provide specific data regarding the cost of a CASp Report due to a range of factors that can impact the costs of such report (square footage of the facility, specific areas that need to be inspected, education level of CASp inspector, etc.), but indicated that an amount between \$1,000 to \$3,000 for a CASp report appears reasonable.

Given the intent of the CalCAP/ADA program as a lending program to assist very small businesses to become more accessible to their customers, CPCFA staff has consulted with state and local agencies and organizations to identify ways to motivate small businesses to take on additional debt in support of making their business facilities more accessible to people with disabilities, when it is hard to quantify whether there will be a direct increase in their gross business receipts. As such, the Authority is proposing to reduce the out-of-pocket cost to the business owner by reimbursing the small business owner for the cost of the CASp Report, prepared by certified inspectors under the standards of the Division of the State Architect, once the loan is enrolled in the CalCAP program.

With the intent to offset the costs for small businesses that are trying to become ADA compliant while also trying to prevent an overcharge of the CASp report cost, CPCFA is proposing to limit the reimbursement amount of the CASp report costs to a maximum of 5% of the enrolled loan amount. The maximum loan amount eligible for enrollment in the CalCAP/ADA Program is \$50,000.00 and the maximum CPCFA reimbursement amount for a CASp report cannot exceed \$2,500.00.

The current balance in SBAF is \$ \$13.7 million as of September 18, 2017. Based on current bond program project flow for small businesses, and corresponding revenues from large business issuances, CPCFA staff estimates that the expenditures associated with reimbursements for CASp reports would not represent a disproportionate draw on the SBAF funds and would not impact the availability of SBAF funds for small businesses seeking reimbursement for the costs of bond issuances.

The amount of SBAF funds proposed to be allocated for the reimbursement of CASp report costs is \$100,000.00. If all loans to be enrolled in the CalCAP/ADA Program would be for the maximum eligible amount of \$50,000.00, the proposed allocated SBAF funds could be used to reimburse 40 loans. In the event all the allocated SBAF funds for CASp report reimbursement would be used, CPCFA would request an additional amount of SBAF funds based on internal data that is not available currently.

Proposed Amendment to Regulation. Staff proposes to amend CPCFA’s regulations by adding and amending sections 8078.8(d), 8078.8(k), 8078.8(l), 8078.10(h), and 8078.10(i) as follows (additions are underscored and deletions are in strikethrough):

(d) “CASp Report” and “CASp Inspection Report” means a written inspection report pursuant to Section 55.53 of the California Civil Code.

§8078.8(k) “Reimbursement” and “Reimbursement for CASp Report” means the amount of all or part of the CASp Report cost reimbursed upon loan enrollment by the Authority to the Qualified Business. The Reimbursement cannot exceed 5% of the loan amount enrolled in the Program and is issued pursuant to Section 8078.10(h).

§8078.8(4)(1) “Small Business” or “Qualified Business” means a business referred to in Section 44559.1 (i) and (m) of the Health and Safety Code, that meets the following additional criteria:

- (1) Fifteen or fewer full-time equivalent employees;
- (2) Less than ~~one~~ five million dollars (\$5,000,000) in total gross annual income from all sources; and
- (3) Does not provide overnight accommodations.

§8078.10(h) Upon enrollment in the CalCAP/ADA Program, the borrower can request a Reimbursement by submitting a CASp Report Reimbursement request to the Authority, which shall include the following information:

(1) Borrower’s name, address, phone number and e-mail address.

(2) Loan amount enrolled in CalCAP, loan disbursement date, and invoice for the cost of the CASp Inspection Report.

(3) A copy of the Notice of Access Inspection completed by the CASp pursuant to Civil Code Section 55.53.

(4) Borrower’s agreement to provide additional information to the Program Trustee if requested prior to the issuance of the Reimbursement amount.

§8078.10(i) Upon verification of the eligibility of the Borrower's Reimbursement request the Authority shall instruct the Program Trustee to disburse the Reimbursement to the borrower within thirty (30) days.

Need for Regulations. Changes to the Authority’s CalCAP regulations are necessary for consistency with new legislation, to clarify program features, and to describe the CASp Report reimbursement requirements. The proposed regulations provide the necessary details for the changes in the administration of the CalCAP/ADA program.

Summary of Regulations. The proposed amendments to the regulations include:

- Redefinition of the term “Small Business” or “Qualified Business” to reflect an increase in the gross revenue qualification criteria from one million (\$1,000,000) or less to five million (\$5,000,000) or less.
- Requirements of reimbursement of the CASp Report costs and the maximum reimbursement amount. The regulations describe the required information and documentation for the reimbursement of the CASp fees to the borrower.

Regulatory Process. On December 5, 2017, staff posted a Notice of Emergency Regulations to provide the required opportunity for the public, including stakeholders, to comment on the proposed text of the regulations and finding of emergency for five (5) working days.

Upon the Authority’s adoption of these amendments to the regulations as proposed, emergency and regular rulemaking packages will be filed with OAL according to the established rulemaking process. The public may comment on the proposed emergency regulations within five (5) calendar days after the Authority files the regulations with OAL for review. OAL has up to ten (10) calendar days to review emergency regulations. Assuming OAL approves the emergency regulations, the emergency regulations are effective for 180 days during which the Authority will begin the regular rulemaking process to conform the emergency regulations as permanent.

To begin the regular rulemaking process, the Authority will prepare a notice of proposed rulemaking to be published in the California Regulatory Notice Register (“Register”), mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The notice starts a 45-day public comment period and will include a public hearing. After that time, staff will review and respond to any comments and, if staff substantively modifies the present form of the regulations, staff will present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. A regular rulemaking file will be submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act. After OAL approval, the regulations will be effective 30 days after the regulations are filed with the Secretary of State.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

December 5, 2017	5 working day Notice posted on CPCFA website and sent to Interested Parties
December 12, 2017	CPCFA Meeting – Resolution for Proposed Regulations
December 18, 2017	Emergency regulations filed with OAL.
December 22, 2017	Public comment period ends.
January 1, 2017	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
June 27, 2018	Emergency regulations expire.

Permanent Regulations

February 27, 2018	The Rulemaking File and Notice of Publication are filed with the OAL. The Notice of Proposed Regulatory Action is issued.
March 9, 2018	OAL publishes Notice of Proposed Rulemaking and 45-day public comment period begins.
April 23, 2018	Public comment period ends.
April 30, 2018	Submit permanent regulation package to OAL for 30-day review*
May 29, 2018	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period.

Recommendation. Staff recommends approval of Resolution No. 17-02-002 to authorize staff to undertake the emergency and regular rulemaking proceedings and other related actions for the CalCAP/ADA program.

RESOLUTION # 17-02-002 OF THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY AUTHORIZING AMENDMENTS TO THE REGULATIONS FOR THE CALIFORNIA CAPITAL ACCESS AMERICANS WITH DISABILITIES ACT FINANCING PROGRAM

December 12, 2017

WHEREAS, pursuant to Health and Safety Code section 44520, the California Pollution Control Financing Authority (the "Authority") is authorized to adopt regulations to carry out its duties and powers under the California Pollution Control Financing Authority Act;

WHEREAS, Health and Safety Code section 44520 further authorizes the Authority to adopt regulations relating to small business as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for such purposes the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare; and

WHEREAS, emergency and permanent amendments to the regulations are necessary for the California Capital Access Americans with Disabilities Act Financing Program;

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed emergency regulations presented at the December 12, 2017 meeting are hereby approved in substantially the form submitted by Authority staff. The Chair, Executive Director, and Deputy Executive Director are each hereby authorized, jointly and severally for and on behalf of the Authority, to submit such emergency regulations with the supporting documentation required by law to the Office of Administrative Law and comply with the Administrative Procedure Act. Additionally, the Chair, Executive Director, and Deputy Executive Director are each hereby authorized, jointly and severally for and on behalf of the Authority, to proceed with the procedures required by the Administrative Procedure Act to adopt the emergency regulations as permanent regulations.

Section 2. The Chair, Executive Director, and Deputy Executive Director are each hereby authorized and directed, jointly and severally, to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents, including STD399 and STD400, that he or she may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.