

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CalCAP Program Staff Summary
Meeting Date: October 17, 2018

Request for Consideration and Approval of Amendments of the Regulations for the California Americans with Disabilities Act Small Business Capital Access Loan Program and the California Seismic Safety Capital Access Loan Program to Conform to the Recent Statutory Changes under Assembly Bill 1547 and other Technical Amendments

Prepared by: *Bianca Smith and Doreen Smith*

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”) and the California Seismic Safety Capital Access Loan Program (“CalCAP/Seismic Safety Program”) in order to implement the recent statutory changes under Assembly Bill 1547 (Quirk-Silva)(Statutes of 2018, Chapter 645)(“AB 1547”). The emergency regulations will also make non-substantive, technical changes to references listed in the California Capital Access Program’s Electric Vehicle Charging Station Financing Program (CalCAP/EVCS Financing Program or CalCAP/EVCS) regulations.

Assembly Bill 1547 (chaptered on September 21, 2018 as urgency legislation), expands the definition of small business for the purposes of the CalCAP/ADA Program to include businesses that have 30 or fewer full-time equivalent employees, or have less than five million dollars (\$5,000,000) in total gross annual income from all sources. For the purposes of the CalCAP/Seismic Safety Program, AB 1547 modifies the definition of a qualified building, and will no longer require a qualified small business or a qualified residential property owner to occupy a qualified building in order to be eligible under the program, thus authorizing a qualified loan under the program to be used to finance passive real estate ownership. The definition of a seismic retrofit construction was also amended by AB 1547 to include strengthening a building’s lateral load resisting system. The emergency regulations will also change mistaken references in the CalCAP/EVCS Financing Program regulations. 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.

Agenda Item 4.D.

Senate Bill 1553 (“SB 1553”), signed by Governor Brown in October 2017, expanded the definition of small business for the purposes of the CalCAP/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 CalCAP/ADA program. Prior to AB 1553, eligibility for the CalCAP/ADA program limited the small businesses annual gross revenues to \$1 million or less. SB 1553 also authorized the Authority to use Small Business Assistance Fund (“SBAF”) monies to incentivize participation in the CalCAP/ADA loan loss reserve program. The certificate of compliance for the permanent regulations implementing these changes was filed with OAL on September 26, 2018.

The proposed amendments to the regulations implements the change made in AB 1547 to modify the definition of a “small business” to include a business which has either a maximum number of 30 full-time employees OR which has a gross annual revenue of \$5 million or less. This will align the program with federal tax credit requirements. It is anticipated that this modification will expand the number of businesses that qualify for loans under the CalCAP/ADA program, resulting in participating lenders having larger and more diverse loan portfolios.

Senate Bill 837, passed by the Legislature and signed by Governor Brown in June 2016, provided CPCFA a one-time \$10 million appropriation to create the CalCAP/Seismic Safety Program. Under this legislation, CPCFA is authorized to develop and implement a new credit enhancement program based on the CalCAP model, specifically for private lending supporting residential property owners and small business owners in seismically retrofitting residences and small businesses with a priority on soft-story buildings, unreinforced brick and concrete buildings. The Program includes funding for registered mobilehomes and qualified multiunit housing buildings. The statute directed CPCFA to conduct a rulemaking to establish specific program rules and procedures. The statute also directed CPCFA to establish a sustainable program feature that recaptures unclaimed funding relating to matured loans to be used to support future loans beyond the \$10 million initially appropriated.

Assembly Bill 1547 makes important changes to the program to assist borrowers and lenders with participation in the program. The proposed amendments to the regulations implement the statutory changes to modify the term “qualified building” to mean a residential or commercial building identified by the local building code official as a building in need of seismic retrofitting and either a building of a type that is potentially vulnerable in the event of a catastrophic earthquake or a building constructed before 1981; and to modify the definition of “Qualified small business”, “Qualified residential property owner”, and “Qualified commercial property owner” to no longer require the owner to occupy a qualified building in order to be eligible under the program. Thus, a qualified loan under the program can be used to finance passive real estate ownership. The proposed amendments to the regulations would also add strengthening a building’s lateral load resisting system to the definition of “Seismic retrofit construction” to conform to standard building industry language. It is anticipated that these modifications will expand the number of businesses that qualify for loans under the CalCAP/Seismic Safety Program, resulting in participating lenders having larger and more diverse loan portfolios.

The remaining non-substantive, technical changes make corrections to the regulations in CPCFA’s existing CalCAP/EVCS program.

Proposed Amendment to Regulation. Staff proposes to amend CPCFA’s regulations by amending sections 8078.3(h), 8078.3(i), 8078.3(j), 8078.8(l), and 8078.15(g), 8078.15(i), 8078.15(j), 8078.15(k), and 8078.15(n) as follows (additions are underscored and deletions are in strikethrough):

§8078.3(h) “Program” means the Electric Vehicle Charging Station Financing Program established pursuant to the Interagency Agreement between the Authority and the Energy Commission. Where the term “Program” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(~~pr~~).

§8078.3(i) “Qualified Business” means any entity eligible under section Health and Safety Code section 44559.1(i) and (m) that together with its affiliates has 1,000 or fewer employees, and that is not dominant in its field of operation. Where the term “Qualified Business” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(~~st~~).

§8078.3(j) Where the term “Qualified Loan” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(~~tu~~).

§8078.8(l) “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~~ Thirty or fewer ~~full-time equivalent~~ employees; or
- (2) Less than five million dollars (\$5,000,000) in total gross annual income from all sources; and
- (3) Does not provide overnight accommodations.

§8078.15(g) “Qualified building” means a ~~building in California that is certified by the appropriate local building code enforcement authority for the jurisdiction in which the building is located as hazardous and in danger of collapse in the event of a catastrophic earthquake~~ residential or commercial building that is identified by the local building code official for the jurisdiction in which the building is located as a building in need of seismic retrofitting and is either a building of a type that is potentially vulnerable in the event of a catastrophic earthquake or a building constructed before 1981. A “Qualified building” may be a single-family residence, multiunit housing building, multiunit housing building with commercial space, or mobilehome, manufactured home, and multifamily manufactured home installed in accordance with Section 18613 of the Health and Safety Code.

§8078.15(i) “Qualified small business” means a business referred to in subdivisions (i) and (m) of Section 44559.1 of the Health and Safety Code that owns ~~and occupies, or intends to occupy,~~ a Qualified building regardless of owner occupancy, notwithstanding the restriction on passive real estate ownership in subparagraph (B) of paragraph (2) of subdivision (j) of Section 44559.1. ~~for the operation of the business, that is not dominant in its field of operation, and that together with affiliates, has 500 or fewer employees.~~

§8078.15(j) “Qualified residential property owner” means either an owner ~~and occupant~~ of a residential building that is a Qualified building or a Qualified small business that owns one or more

residential buildings, including a multiunit housing building that is a Qualified building, notwithstanding the restriction on passive real estate ownership in subparagraph (B) of paragraph (2) of subdivision (j) of Section 44559.1.

§8078.15(k) “Qualified commercial property owner” means either an owner ~~and occupant~~ of a commercial building that is a Qualified building or a Qualified small business that owns one or more commercial buildings that is a Qualified building.

§8078.15(n) “Seismic retrofit construction” means alteration performed on or after January 1, 2017, of a qualified building or its components to substantially mitigate seismic damage. “Seismic retrofit construction” includes, but is not limited to, all of the following:

- (1) Anchoring the structure to the foundation.
- (2) Bracing cripple walls.
- (3) Bracing hot water heaters.
- (4) Installing automatic gas shutoff valves.
- (5) Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage.
- (6) Anchoring fuel storage.
- (7) Installing an earthquake-resistant bracing system for mobile homes that are registered with the Department of Housing and Community Development.
- (8) Strengthening a building’s lateral load resisting system.

Need for Regulations. Changes to the Authority’s CalCAP/ADA and CalCAP/Seismic Safety regulations are necessary for consistency with new legislation and to expand and clarify program features. Changes to the Authority’s CalCAP/EVCS Financing Program regulations are necessary to conform with existing CalCAP regulations. The proposed regulations provide the necessary details for the changes in the administration of the CalCAP/ADA, CalCAP/Seismic Safety programs and CalCAP/EVCS Financing 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 number of employees from 15 to 30 for a small business to qualify for the CalCAP/ADA program. It also allows the small business income and maximum employee number to be interchangeable for program eligibility.
- Modification of the definition “Qualified building” for the CalCAP/Seismic Safety program to identify the type of building eligible under the program to include property potentially vulnerable in an earthquake or constructed before 1981.
- Removal of the occupancy requirement from the definitions of a “Qualified small business”, a “Qualified residential property owner”, and a “Qualified commercial property owner” of a qualified building to authorize a qualified loan under the program to be used to finance passive real estate ownership.
- Add strengthening a building’s lateral load resisting system to the definition of “Seismic retrofit construction” to conform to standard building industry language.

- Correction of mistaken references in the CalCAP/EVCS Financing Program.

Regulatory Process. On October 9, 2018, 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. If a change is substantial, but not sufficiently related to the original proposal, an additional 45-day notice must be published. 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

October 9, 2018	5 working day Notice posted on CPCFA website and sent to Interested Parties.
October 17, 2018	CPCFA Meeting – Resolution for Proposed Regulations.
October 18, 2018	Emergency regulations filed with OAL.
October 23, 2018	Public comment period ends.
October 28, 2018	OAL review period ends. If approved, the emergency regulations are filed with the Secretary of State and are in effect.
April 28, 2019	Emergency regulations expire.

Permanent Regulations

November 13, 2018	The Rulemaking File and Notice of Publication are filed with the OAL. The Notice of Proposed Regulatory Action is issued.
November 26, 2018	OAL publishes Notice of Proposed Rulemaking and 45-day public comment period begins.
January 10, 2019	Public comment period ends.
January 17, 2019	Submit permanent regulation package to OAL for 30-day review*.
February 20, 2019	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. If a change is substantial, but not sufficiently related to the original proposal, an additional 45-day notice must be published.

Recommendation. Staff recommends approval of Resolution No. 18-02-002 to authorize staff to undertake the emergency and regular rulemaking proceedings and other related actions for the CalCAP/ADA program, the CalCAP/Seismic Safety Program and CalCAP/EVCS Financing Program.

RESOLUTION NO. 18-02-002

REQUEST FOR CONSIDERATION AND APPROVAL OF AMENDMENTS OF THE REGULATIONS FOR THE CALIFORNIA AMERICANS WITH DISABILITIES ACT SMALL BUSINESS CAPITAL ACCESS LOAN PROGRAM AND THE CALIFORNIA SEISMIC SAFETY CAPITAL ACCESS LOAN PROGRAM TO CONFORM TO THE RECENT STATUTORY CHANGES UNDER ASSEMBLY BILL 1547 AND OTHER TECHNICAL AMENDMENTS

October 17, 2018

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 Americans with Disabilities Act Capital Access Loan Program, California Seismic Safety Capital Access Loan Program and the California Capital Access Program's Electric Vehicle Charging Station Program, to implement program changes adopted by Assembly Bill 1547 (Quirk-Silva)(Statutes of 2018, Chapter 645), and other technical corrections to existing CalCAP regulations are required; and

WHEREAS, the Notice of Emergency Regulations was posted on October 9, 2018 pursuant to Government Code section 11346.1(a)(2)

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

Section 1. The proposed emergency regulations presented at the October 17, 2018 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

Agenda Item 4.D.

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.