

**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: 8078.8, 8078.10

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2018-0926-03

OAL Matter Type: Regular Resubmittal (SR)

This action submitted by the California Pollution Control Financing Authority expands the definition of "small business" and allows reimbursement to Borrowers for the cost of the Certified Access Specialist Report.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 11/2/2018.

Date: November 2, 2018



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Renee Webster-Hawkins,
Executive Director

Copy: Bianca Smith

REGULATIONS SUBMISSION RESUBMITTAL

(See instructions on reverse)

For use by Secretary of State only.

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2018-0313-01	REGULATORY ACTION NUMBER 2018-0926-03SP	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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

NOV 02 2018
1:45PM

2018 SEP 26 P 12:09
OFFICE OF
ADMINISTRATIVE LAW

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 <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER 2018-12-2
			PUBLICATION DATE 03-23-18

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California Americans with Disabilities Small Business Capital Access	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-1213-05E, 2018-0529-01C
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND 8078.8, 8078.10
TITLE(S) 04	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	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"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" 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)	

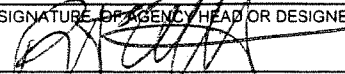
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) August 31, 2018 - September 17, 2018	per agency request 11/2/18
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5. EFFECTIVE 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 Bianca Smith	TELEPHONE NUMBER (916) 653-5408	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) bsmith@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 9/24/2018
TYPED NAME AND TITLE OF SIGNATORY Renee Webster-Hawkins, Executive Director	

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ENDORSED APPROVED

NOV 02 2018

Office of Administrative Law

§ 8078.8. Definitions.

In addition to the definitions in Section 8070, the following definitions shall apply only to the California Americans with Disabilities Act Small Business Capital Access Financing-Loan Program, Sections 8078.8 to 8078.14 inclusive. To the extent the definitions contained herein conflict with definitions contained in Section 8070, the definitions in this section shall control for purposes of the California Americans with Disabilities Act Small Business Capital Access Financing-Loan Program.

(a) "Americans with Disabilities Act" or "ADA" means the federal Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.) and amendments thereto.

(b) "Certified Access Specialist" or "CASp" means any person who has been certified pursuant to Section 4459.5 of the Government Code.

(c) "CalCAP/ADA Contribution" means the Contribution(s) made by the Authority from the California Americans with Disabilities Act Small Business Capital Access Financing Program Fund established pursuant to Section 44559.13(b)(2) of the Health and Safety Code.

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

(e) "Cost Estimate" means a written proposal or estimate of the costs of materials, services and other expenses to complete some or all of the physical alterations or retrofits identified in the CASp Report, as provided by the CASp or by a licensed contractor.

(f) "Eligible Costs" means and includes all or any part, as defined in subdivision (b)(3) of Section 44559.13 of the Health and Safety Code, of the price of construction, purchase price of real or personal property, the price of demolishing or removing any buildings or structures, the price of all machinery and equipment, the amount of financing charges and interest prior to, during, and for a period not to exceed the later of one year or one year following completion of construction, as determined by the authority, the price of insurance during construction, the amount of funding or financing noncapital expenses, the amount of reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements, the price of engineering, financial, and legal services and other service contracts, the price of plans, specifications, studies, surveys, estimates, administrative expenses, and any other expenses of funding or financing, that are necessary and allocable to the eligible project, and shall not include costs not directly related to physical alterations necessary for compliance with the Americans with Disabilities Act.

(g) "Eligible Project" means the physical alterations or retrofits to an existing small business facility as defined in subsection (l) necessary to ensure that the facility is in compliance with the Americans with Disabilities Act as identified in a CASp report on the facility, and the financing necessary to pay eligible costs of the project.

(h) "Program", and "CalCAP/ADA Financing Program" and "CalCAP/ADA Program" and "CalCAP/ADA" mean the California Americans with Disabilities Act Small Business Capital Access Loan Program, referred to herein as the California Americans with Disabilities Act Small Business Capital Access Financing Program, established pursuant to the Section 44559.13 of the Health and Safety Code. Where the term "Program" is used in Sections 8078.8 to 8078.14 inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p) of the California Code of Regulations Title 4, Division 11, Article 7.

(i) "Qualified Loan" means a loan or portion of a loan as defined in Section 44559.1 subdivision (j)(1) of the Health and Safety Code, where the proceeds of the loan or portion of the loan are limited to the Eligible Costs for an Eligible Project under this Program, where the loan or portion of the loan does not exceed fifty thousand dollars (\$50,000), and where the term of loss coverage for each qualified loan is no more than sixty (60) months. "Qualified Loan" does not include any of the following:

(1) Any portion of a loan to the extent the same portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program; and

(2) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$50,000.

(j) "Recapture" means the withdrawal of CalCAP/ADA Contribution amounts on an annual basis when enrolled loans mature or after sixty (60) months from the date of enrollment, whichever occurs first. Recapture is not applicable for Contributions on charged off loans for which a claim has been approved.

(k) "Reimbursement" and "Reimbursement for CASp Report" mean the amount of all or part of the CASp Report cost reimbursed upon loan enrollment by the Authority to the Qualified Business. The Reimbursement shall not exceed 5% of the loan amount enrolled in the Program and is issued pursuant to Section 8078.10(h).

~~(k)~~(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 both of the following additional criteria:

(1) Has thirty Fifteen or fewer full-time equivalent employees; or has less than five million dollars (\$5,000,000) in total gross annual income from all sources; and

~~(2) Less than one million dollars (\$1,000,000) in total gross annual income from all sources; and~~

~~(3) Does not provide overnight accommodations.~~

~~(4)~~(m) "Small Business Facility" or "Facility" means an existing small business facility of less than 10,000 square feet plus common areas and publicly or privately owned access points such as sidewalks and parking lots, if responsibility for those areas has been shifted to the small business owner pursuant to local ordinance or an enforceable lease agreement.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code. Reference: Sections 44559.1, 44559.3, 44559.5, and 44559.11 and 44559.13, Health and Safety Code; 42 U.S.C. Section 12101; ~~Section 4459.5, Government Code; and Section 55.53, Civil Code.~~

§ 8078.10. Loan Enrollment.

(a) The terms and conditions of the Qualified Loans, including rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.

(b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:

(1) by notifying the Authority in writing, within 15 business days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and

(2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held either by the Participating Financial Institution or the Program Trustee.

(c) A Participating Financial Institution may enroll all or any portion of a Qualified Loan in the Program by submitting a CalCAP/ADA Loan Enrollment Application which shall include the following information:

(1) The official business name of the Borrower, including a "Doing Business As" if any, and the business address.

(2) Name and title of individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower(s).

(3) Brief description of the Borrower's business and regular activities and either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues.

(4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Costs.

(5) Location(s) of the Small Business Facility.

(6) Amount of the Qualified Loan being enrolled in the Program, and total loan amount if different, and the Participating Financial Institution loan number.

- (7) Whether the Qualified Loan is secured, unsecured, or a term loan.
- (8) Date of the Qualified Loan.
- (9) Interest rate applicable to the Qualified Loan.
- (10) Term or maturity date of the Qualified Loan.
- (11) Whether the loan is for alteration(s) or retrofit(s) of a Small Business Facility located in a Severely Affected Community.
- (12) The Participating Financial Institution's certification as to the number of full-time equivalent employees currently employed by the Borrower.
- (13) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (14) The Participating Financial Institution's certification upon enrollment of a Qualified Loan that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project.
- (15) The Participating Financial Institution's certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (16) The Participating Financial Institution's certification that the total amount of loans for the Borrower enrolled in the CalCAP/ADA program does not exceed \$50,000.
- (17) The Participating Financial Institution's certification that it has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the CalCAP/ADA Contribution.
- (18) The Participating Financial Institution's certification that the Borrower has provided a CASp Report and a Cost Estimate and that the physical alterations or retrofits to be financed are included in the CASp Report.
- (19) The Participating Financial Institution's certification that the Borrower will provide all applicable licenses or permits needed for the construction related retrofit(s) or alteration(s).
- (20) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.
- (21) The Participating Financial Institution shall be authorized to certify to the information requested by subsections (12), (13), (14), (18) and (19) above based upon the Participating

Financial Institution's established due diligence and underwriting standards, and shall maintain substantiating documentation in the Borrower's loan file.

(22) Certification from the Participating Financial Institution that it has not, and will not, enroll the Qualified Loan, or any portion thereof, in any other Capital Access Loan Program for Small Business offered by the Authority as long as funds are available for this Program.

(23) Certification from the Participating Financial Institution that it has provided the Borrower the CPCFA's Privacy Notice for the CalCAP/ADA Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the CalCAP/ADA Financing Program informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:

(A) To consultants, auditors or contractors retained by the CPCFA where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement;

(B) To another governmental entity where required by state or federal law; or

(C) As otherwise required by law.

(24) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:

(A) That, when applicable, it satisfies the definitions in Sections 8078.8(f), (g), (i), (k) and (l) of the California Americans with Disabilities Act Small Business Capital Access Financing Program Regulations;

(B) The facility is located within the boundaries of the State of California;

(C) The Borrower has legal control of the facility for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;

(D) The Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA;

(E) The Borrower has no legal, beneficial, or equitable interest in the CalCAP/ADA Contribution;

(F) If the physical alteration(s) or retrofit(s) financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the loan in this Program is limited to Eligible Costs necessary and allocable to the Eligible Project;

(G) The Borrower will provide all applicable licenses and permits needed for construction related retrofit(s) or alteration(s) to the Participating Financial Institution;

(H) The Borrower has provided a CASp report and a Cost Estimate to the Participating Financial Institution and that the physical alterations or retrofits to be financed are included in the CASp Report;

(I) The Borrower's certification that the proceeds of the loan will be used for the Eligible Costs of an Eligible Project;

(J) The Borrower agrees to allow CPCFA staff or its designee to inspect the project site;

(d) Upon enrollment of a Qualified Loan, the Participating Financial Institution shall elect a Contribution between 2 and 3.5 percent of the Qualified Loan, and shall deposit the Participating Financial Institution's and Borrower's Contributions each in the elected amount into the Participating Financial Institution's Loss Reserve Account established for the CalCAP/ADA Program pursuant to Section 8078.11.

(e) Upon verification of the deposit of the Participating Financial Institution's and Borrower's Contributions, all Qualified Loans shall receive a CalCAP/ADA Contribution equal to four times the amount of the Participating Financial Institution's Contribution.

(f) All Qualified Loans that support Eligible Projects located in a Severely Affected Community shall receive an additional CalCAP/ADA Contribution in the amount equal to the Participating Financial Institution's Contribution.

(g) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed sixty (60) months from the date of first disbursement of the Qualified Loan.

(h) Upon enrollment in the CalCAP/ADA Program, the Borrower may 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/ADA Program, 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) Statement that the Borrower agrees to provide any additional information regarding the use of proceeds under the loan to the Program Trustee, if requested prior to the issuance of the Reimbursement amount.

(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) business days.

Note: Authority cited: Sections 44520, 44559.5, 44559.11 and 44559.13, Health and Safety Code.
Reference: Sections 44559.2, and 44559.4 and 44559.13, Health and Safety Code; and 42 U.S.C. Section 12101.