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**Executive Director**

April 19, 2023

**California Pollution Control Financing Authority  
The California Capital Access Program  
Notice of Intent to Readopt Emergency Regulations**

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the Health and Safety Code, proposes to adopt emergency regulations after considering all comments, including objections and recommendations, regarding the proposed action.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Upon filing, the Office of Administrative Law will have ten (10) calendar days to review and make a decision on the proposed emergency regulations. If approved by the Office of Administrative Law, the emergency regulations will become effective immediately upon filing with the Secretary of State for ninety (90) days. Within the 90-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during the regular rulemaking action.

CPCFA proposes to readopt the emergency regulations in accordance with its authority under Health and Safety Code Section 44520(a), 44520(b) and 44559.5(f). The proposed emergency regulations amends Article 7 Sections **§8078**, Title 4 of the California Code of Regulations concerning the California Capital Access Program.

Attached to this notice are the Finding of Emergency and proposed text of the emergency regulations. You may also review the Finding of Emergency and proposed text of the emergency regulations on CPCFA's website at the following address:

<https://www.treasurer.ca.gov/cpcfca/calcap/regulations.asp>.

If you prefer to receive a hard copy of the proposed emergency regulations, please contact Kamika McGill at (916) 653-0289.

The proposed emergency regulations were originally heard by the Authority at a public hearing on October 18, 2022, at 10:30 A.M. in Room 587 at 915 Capitol Mall, Sacramento, California 95814.

Sincerely,



Shela Tobias-Daniel  
Executive Director

Enclosures:        Finding of Emergency  
                         Proposed Text of Regulations

cc: Spencer Walker, CPCFA Legal Counsel  
Christina Sarron, Deputy Executive Director  
Doreen Smith, CalCAP Program Manager  
Isabel Becerra, CalCAP Program Manager

ST: ds/km

# FINDING OF EMERGENCY

## CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

### Finding of Emergency

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the “Authority”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

### Necessity

These Emergency Regulations are necessary to implement, interpret, and make specific Article 7 of the California Pollution Control Financing Authority (the “Authority”) Act (the “Act”).<sup>1</sup> The Authority’s Capital Access Loan Program (CalCAP) is the intended recipient of Federal funds. CalCAP anticipates receiving the Federal funds in the fall of 2022. Receipt of these funds will require amending the regulations to add U.S. Treasury requirements regarding the use of the federal funds.

CalCAP proposes to readopt these Emergency Regulations for an additional 90 days in order to complete the Certificate of Compliance. As required for readoption, CalCAP has made substantial progress with the Certificate of Compliance by submitting the Notice of Proposed Rulemaking package to the Office of Administrative; however, an additional period of time will allow for it to be completed and submitted to the Office of Administrative Law. The emergency circumstances remain unchanged, and none of the text has been changed.

### Authority and Reference

Authority: Sections 44520(a), 44520(b) and 44559.5(f), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as emergency regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.” Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program established by the Act (CalCAP).

Reference: Sections 44559-44559.9 of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by adding Section 8078.1 of Title 4, Division 11, Article 7 of the California Code of Regulations.

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<sup>1</sup> The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 7 is codified at Health and Safety Code section 44559 through 44559.9.

## **Informative Digest**

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

The proposed amendment to the regulations will add language conforming to the U.S. Treasury and the State Small Business Credit Initiative (SSBCI) Program requirements for loans enrolled in the CalCAP for Small Business Program.

**The Proposed Amendments and Objectives for Each Section are as follows:**

### **§ 8078.1. Federal Capital Access Program and Funding.**

Section 8078.1(a) through 8078.1(j). These sections add the U.S. Treasury requirements for loans enrolled under the State Small Business Credit Initiative enacted pursuant to the American Rescue Plan Act (H.R. 1319, Public Law No. 117-2).

Necessity. The proposed amendments are necessary to implement the requirements for enrolling loans in the CalCAP for Small Business Program utilizing federal funds.

### **Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations**

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

### **Mandate on Local Agencies or School Districts**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

### **Fiscal Impact**

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal

impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.

## 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.