

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Sections 44520 and 44559.14 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 8 of the California Pollution Control Financing Authority Act (the “Act”).¹ The Authority’s Capital Access Program (“CalCAP”) was authorized through Senate Bill 837, signed by Governor Brown on June 27, 2016, to implement the California Seismic Safety Capital Access Loan Program (the “CalCAP/ Seismic Safety Program”) that requires alternate provisions to be written into regulation as authorized in Section 44559.11 and Section 44559.14 (e) of the Act.

Authority and Reference

Authority: Sections 44520, 44559.5 and 44559.11, Health and Safety Code. Section 44520 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, 44559.5 and 44559.11 of the Act authorize the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Authority: Sections 44559.14 of the Health and Safety Code. Section 44559.14 of the Act authorizes the Authority to administer the California Seismic Safety Capital Access Loan Program to assist residential property owners and small business owners in seismically retrofitting residences and small businesses. The intent of the Act is not to assist with the physical expansion of small businesses and residences. Section 44559.14 of the Act also authorizes the Authority to adopt emergency regulations in accordance with Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and “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”.

Reference: Sections 18613, 18613.4, 18613.5, 18613.7, 44559.1, 44559.2, 44559.3, 44559.5 and 44559.11 of the Health and Safety Code; Section 13340 of the Government Code. These Emergency Regulations implement, interpret and make

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 8 is codified at Health and Safety Code section 44559 through 44559.14.

specific Sections of the Act by adopting Sections 8078.15, 8078.16, 8078.17, 8078.18, 8078.19, 8078.20, and 8078.21 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest

Existing law establishes the Capital Access Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital. (Health and Safety Code, § 44559)

The proposed additions to the regulations allow the Authority to include alternate provisions specific to the California Seismic Safety Capital Access Loan Program (“CalCAP/Seismic Safety Financing Program”) within CalCAP’s existing Small Business Loan Program. The proposed regulations will create a self-sustaining program to provide loans to assist residential property owners and small business owners in financing the costs of seismically retrofitting residences and small businesses, meeting specified criteria, with priority on soft-story buildings and unreinforced brick and concrete buildings. The CalCAP/Seismic Safety Financing Program will provide a credit enhancement to support private bank loans to qualified residential property owners and qualified commercial property owners to make improvements to substantially mitigate seismic damage.

Pursuant to Title 1, Division 1 of the California Code of Regulations Section 12(b), the proposed regulations repeat and rephrase existing law to provide clarity to the CalCAP/Seismic Safety Financing Program’s participating financial institutions and qualified borrowers.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

The Proposed Amendments and Objectives for Each Section are as Follows:

§ 8078.15. Definitions.

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the CalCAP/Seismic Safety Financing Program.

§ 8078.16. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the CalCAP/Seismic Safety Financing Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the CalCAP/Seismic Safety Financing Program.

§ 8078.17. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and terms of the enrollment. For an application to be deemed complete, the lender must submit information concerning the borrower and the project, and submit a lender certification that the application meets the CalCAP/Seismic Safety Financing Program's policies and regulations. In addition the borrower must self-certify on several aspects of the project as well as provide specific requested information regarding the project.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the CalCAP/Seismic Safety Financing Program.

§ 8078.18. Loss Reserve Accounts

This section describes the establishment of loss reserve accounts for participating financial institutions, and guidelines governing reporting and use of funds deposited in the loss reserve accounts.

Necessity. A description of how loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8078.19. Claim for Reimbursement

This section describes how participating financial institutions are to make claims for reimbursement for loans enrolled in the CalCAP/Seismic Safety Financing Program.

Necessity. The proposed regulation is necessary to provide a description regarding how participating financial institutions can file a claim for reimbursement on enrolled loans.

§ 8078.20. Subrogation

This section describes the procedure for the Authority's right to subrogation of participating financial institution's collateral during the claim process, should the situation arise.

Necessity. A description on how the Authority is to secure recovery under any collateral or security documents to which the Authority has been subrogated will help the Authority enforce its rights.

§ 8078.21. Termination and Withdrawal from Program

This section describes how a participant in the Program can withdraw or be terminated as a Participating Financial Institution. It also references how to handle the balance of the Loss Reserve Accounts.

Necessity. The proposed regulation is necessary to provide a description on how a Participating Financial Institution can withdraw from the program. It is also necessary as it describes how the Executive Director can terminate participation of a Participating Financial Institution in the Program.

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.