



## CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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September 10, 2024

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**EXECUTIVE DIRECTOR**  
Sheila Tobias-Daniel

### **California Pollution Control Financing Authority The California Capital Access Program Notice of 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

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with the Secretary of State for one hundred and eighty (180) days. Within the 180-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 adopt the emergency regulations in accordance with its authority under Health and Safety Code Section 44520(b). The proposed emergency regulations adopts Article 7 Section **§8078.36** 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 will be heard by the Authority at a public hearing on September 17, 2024 at 10:30 A.M. in Room 102 at 901 P Street, Sacramento, California 95814.

Sincerely,

DocuSigned by:

*Shela Tobias-Daniel*

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Shela Tobias-Daniel  
Executive Director

Enclosures: Finding of Emergency

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### Proposed Text of Regulations

cc: Theodore "Ted" Ballmer, CPCFA Legal Counsel  
Christina Sarron, Deputy Executive Director  
Doreen Smith, CalCAP Program Manager  
Isabel Becerra, CalCAP Program Manager  
Lauren Dominguez, 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 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 proposed amendments to the regulations are to adopt language to use funds from alternative sources, including to implement a new loan participation program as more particularly described in Sec. 3006 of the State Small Business Credit Initiative (SSBCI) Act within the CalCAP Small Business Program (“CalCAP”).

#### **Authority and Reference**

Authority: Sections 44520 and 44559.11, Health and Safety Code.  
Section 44520(a) of the California Pollution Control Financing Authority Act (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

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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.

preservation of the public peace, health and safety or general welfare.” Section 44520(b) of the Act authorizes the Authority to adopt necessary regulations relating to the Capital Access Loan Program established by the Act (CalCAP). Section 44559.11 authorizes the Authority by regulation to adopt pursuant to subdivision (b) of Section 44520 alternative provisions as necessary to enable the Authority to participate in an alternative funding source program.

Reference: Sections 44525, 44526(e)-(f), 44559(a)-(b), 44559.1, 44559.6 and 44559.11 of the Health and Safety Code; 12 U.S. Code Section 5703(b)(4). These Emergency Regulations implement, interpret and make specific these Sections of the Act by adding Section 8078.36 of Title 4, Division 11, Article 7 of the California Code of Regulations to ensure that the state, through the Authority, make maximum, efficient use of capital access programs enacted by all federal and state agencies whose goals may be advanced by providing funding to CalCAP, including the receipt of federal funds in conformance to the requirements established by the U.S. Department of the Treasury and its State Small Business Credit Initiative.

### **Informative Digest**

Existing law establishes the Capital Access Loan Program (CalCAP) 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.)

In addition, the Authority may from time to time have access to funding to provide capital in partnership with specified financial institutions through various financing mechanisms for small business growth and expansion. (Health and Safety Code, §44559.11 (a).) Existing law authorizes the Authority by regulation adopted pursuant to subdivision (b) of Section 44520 to establish alternative provisions as necessary to enable the Authority to participate in an alternative funding source program. (Health and Safety Code, §44559.11 (b).).

The proposed amendment to the regulations will add language providing for the methods and means in which to receive and deploy such funds, including conforming to the U.S. Department of the Treasury and its State Small Business Credit Initiative (SSBCI) Program requirements for the implementation of a Loan Participation Project (LPP). The LPP is an additional financing tool that CPCFA anticipates will target and help California community banks and other lenders in meeting their leverage ratio and liquidity.

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:**

**§ 8078.36. Alternative Funding Source.**

This section was added to describe what the Authority will do if the Authority secures funding from an external source, including in the form of a payment to a participating lender for the purchase of a loan, in whole or in part, to a qualified small business referred to as a loan participation project (LLP). The Authority may identify potential sources of alternative funding source programs, including federal, state, and local utility entities.

At present, federal funds are available through the Federal State Small Business Credit Initiative (SSBCI) pursuant to the American Rescue Plan Act of 2021 (H.R. 1319, Public Law No. 117-2). Each funder has their own goals and requirements for eligibility; however, a funder's requirements will never supersede or amend, and instead will only be layered on top of CalCAP's existing eligibility criteria and requirements. This potential variability makes it necessary to have a new section that specifies, generally, what will happen when the Authority secures alternative source funding and how lenders can participate, while establishing a standardizing and consistent process.

Section 8078.36 (a). This subsection is added to indicate that Authority may from time to time gain access to alternative source funding, to whom such funds may be deployed, and for what purpose.

Necessity. This provision is necessary to specify where alternative source funding may come from for public transparency. It is also necessary to clarify that the Authority may accept funds from the Federal State Small Business Credit Initiative (SSBCI) pursuant to the American Rescue Plan Act of 2021 (H.R. 1319, Public Law No. 117-2).

Section 8078.36(b). This subsection is added to describe what the Authority will do in the event funding is secured from an alternative funding source. If the Authority is able to secure this external funding, it will work with the funding source to develop an overview of alternative funding source program terms and eligibility requirements (a “term sheet”), including information about (A) the amount of funding available, (B) target interest rates, (C) if applicable, the maximum amount of funding available per loan, (D) eligibility criteria, and (E) the process by which lenders may apply to participate, including how the funding shall be calculated and disbursed. This section is further added to describe how the Authority will adopt that term sheet via formal resolution of the Authority’s governing board.

Necessity. This provision is necessary to specify the information that will be developed and made publicly available about the alternative funding source program via a “term sheet”. This information shall include information about the amount of funding available, target interest rates, any maximum amount of funding available per loan (if applicable), eligibility criteria, and the process by which lenders may apply to participate. This provision is further necessary to establish that the Authority will utilize the public process of a board meeting to publish the terms of participating in the alternative funding source program and that the details will be made available to the public and interested parties. This

ensures that the terms of each new or amended term sheet is transparently discussed and affirmed through the public forum of the Authority's governing board.

Section 8078.36(c). This subsection is added to describe how the Authority may contract with a third-party to administer the alternative funding source program.

Necessity. This provision is necessary to allow the Authority to better achieve the purpose of goals of this Article and to accelerate the deployment of new sources of external funds, including the SSBCI funding.

Section 8078.36(d). This subsection is added to ensure that an alternative funding source program shall not contradict or override existing requirements and criteria within this Article.

Necessity. This provision is necessary to affirm that a participating lender must agree to the terms and processes outlined in the term sheet, and that their participation in the alternative funding source program is contingent upon their ability to meet the requirements of the funding; provided that the alternative funding source program will never contradict existing requirements described in CalCAP criteria and requirements.

### **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.

## **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.

#### **§ 8078.36. Alternative Funding Source.**

(a) The Authority may from time to time have access to external funding, including from the Federal State Small Business Credit Initiative (SSBCI) pursuant to the American Rescue Plan Act of 2021 (ARPA) for a loan participation project (LPP), enabling the Authority to provide capital through various financing mechanisms for small business growth and expansion.

(b) When the Authority gains access to external funds, the Authority shall develop and adopt by resolution the terms and conditions describing the alternative funding source program, including the following information:

i. The total amount of funding available.

ii. The target interest rate.

iii. If applicable, the maximum amount of funding available per Eligible Loan.

iv. An indication of loan eligibility, borrower eligibility, or other eligibility criteria shall qualify as an Eligible Loan.

v. Terms for the process by which PFIs may apply to participate in the alternative funding source program, and how the funding shall be calculated and disbursed.

(c) The Authority may contract with a third-party administrator to:

i. Provide operational capacity, skills, relationships, and expertise to manage the alternative funding source program;

ii. Provide the Authority with all necessary data and information needed for reporting;

iii. Assist with loan participations and coordination between the Authority and PFIs;

iv. Collaborate and partner with California community banks and other State agencies to market and advertise the alternative funding source program;

v. Create and develop an accessible digital database to collect loan requests for screening and pre-qualification; and coordinate the selection, assembly, and management of the PFI.

(d) The terms of an alternative funding source program shall not contradict or override existing requirements and criteria described in this Article.

Authority: Sections 44520 and 44559.11, Health and Safety Code. Reference: Sections 44525, 44526(e)-(f), 44559(a)-(b), 44559.1, 44559.6 and 44559.11; 12 U.S.C. sections 5701-5710.