STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2010-0615-02EE

For use by Office of Administrative Law (OAL) only

2010 JUN 15 PM 4:41

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: CA 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	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
California Capital Access Program for Small Business	2009-1209-02E

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND: Title 4, Division 11, Article 7, Section 8070, 8072, 8073, and 8074

TITLE(S)

REPEAL

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ 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.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☒ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

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)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective 30th day after filing with Secretary of State
- ☒ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Kamika McGill	(916) 654-2492	(916) 547-4521	kmcgill@treasurer.ca.gov

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: 6/15/10

TYPED NAME AND TITLE OF SIGNATORY: Michael Paparian, Executive Director

For use by Office of Administrative Law (OAL) only

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority
Article 7. Capital Access Program For Small Businesses

8070. Definitions. In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:
(a) "Borrower" means a Qualified Business which obtains a Qualified Loan from a Participating Financial Institution.
(b) "Early Stage Loan" means each of the first $500,000 of Qualified Loan made by a Participating Financial Institution.
(c) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.
(d) "Fees" or "Fee" means a non-refundable fees or fee as set forth in Health and Safety Code Section 44559.4(c).
(e) "Financial Institution" means an institution as set forth in Health and Safety Code Section 44559.1(d)
(f) "Independent Contributor" means any individual, company, corporation, institution, foundation, utility, government agency or other entity, including any consortium of these persons or entities, whether public or private (but excluding any Borrower), that, pursuant to the provisions of this Article, pays to a Loss Reserve Account the Matching Contribution and/or Fees payable by the Borrower and/or the Financial Institution.
(g) "Individual" means a natural person, together, if applicable, with any of his or her spouse, parents, siblings or children or the parents or spouse of any of them.
(h) "Law" means Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the California Health and Safety Code, as amended from time to time.
(i) "Loss Reserve Account" means an account held by a Program Trustee or by any Participating Financial Institution that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Section 8073.
(j) "Matching Contribution" means a contribution to a Loss Reserve Account as set forth in Health and Safety Code Section 44559.4(d)(1).
(k) "Money Market Fund" means an open-ended management investment company regulated under the Investment Company Act of 1940, as amended, which values its securities pursuant to Section 270.2a-7 of Title 17 of the Code of Federal Regulations.
(l) "Participating Financial Institution" means a Financial Institution that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.
(m) "Passive Real Estate Ownership" means ownership of real estate for the purpose of deriving income from speculation, trade or rental, but does not include any of the following:
(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or
(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase. For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be satisfied when a Participating Financial Institution makes a Qualified Loan to an Individual, or to a partnership or trust wholly owned or

controlled by one or more Individuals, for the purpose of financing property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and in such case the Qualified Loan will be deemed to be made also to such Qualified Business.
(n) "Primary business location in California" means that a business will be deemed to be located in California if either:
(1) a majority of the employees of the business are located in California; or
(2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.
(o) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:
(1) At least 51 percent of the total revenues of the business activity are generated in California; or
(2) At least 51 percent of the total jobs of the business activity are created or retained in California.
(p) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the Law.
(q) "Program Trustee" means a bank or trust company, or the State Treasurer, chosen by the Authority from time to time to hold or administer some or all of the Loss Reserve Accounts.
(r) "Qualified Business" means a Small Business Concern that meets both of the following criteria:
(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in California.
(2) It has its Primary business location in California.
(s) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. "Qualified Loan" does not include any of the following:
(1) A loan for the construction or purchase of residential housing.
(2) A loan to finance Passive Real Estate Ownership.
(3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.
(4) A loan, the proceeds of which will be used
(A) to provide any of the following facilities: any private or commercial golf course, country club, massage parlor, spas that provide massage services, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, racetrack, airplane, aircraft, skybox (or other private luxury box), health club facility, facility primarily used for gambling or to facilitate gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises, bars, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, any religious facility or organization, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, shooting range or gallery; or
(B) in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.

(5) any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.
(6) any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower (including all related entities among which a common enterprise exists) to have a total enrolled principal amount from all Participating Financial Institutions in excess of $1,500,000.
(t) "Severely Affected Community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act, Chapter 12.8 (commencing at Section 7070) of Division 7 of Title 1 of the California Government Code; any area, as designated by the Executive Director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended; and any other comparable economically distressed geographic area so designated by the Executive Director from time to time.
(u) "Small Business Assistance Fund" means a fund of that name created by the Authority.
(v) "Small Business Concern" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years.
(w) "Standards" means the criteria, limited to geographical area and/or type of business, to be used by an Independent Contributor in selecting businesses to assist through the Program.
Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7 and 44559.9 Division 27, Health and Safety Code.

§ 8072. Loan Enrollment.

(a) The terms and conditions of Qualified Loans, including interest 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 10 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, or from an Independent Contributor on behalf of the Borrower and/or the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held by either the Participating Financial Institution or the Program Trustee.
(c) The notification to the Authority shall include at least the following information:
(1) Name, D/B/A (if any), address, telephone and fax number of the Borrower.
(2) Brief description of the Borrower's business and either the SIC Code(s) or the NAICS Code(s) applicable to such business.
(3) Brief description of the Borrower's regular activities and the amount of its annual revenues.
(4) Brief summary of the intended use of the proceeds of the Qualified Loan.
(5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled).
(6) Type of the Qualified Loan (e.g., line of credit, term loan, equipment loan).
(7) Date of the Qualified Loan.

(8) Interest rate applicable to the Qualified Loan.
(9) Term of the Qualified Loan.
(10) Geographic location of the Qualified Business and the location of the facilities being financed if different.
(11) Whether the Qualified Business or the location of the facilities being financed is in a Severely Affected Community.
(12) Whether the loan is secured.
(13) Whether the loan is a refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing
(14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.
(15) Whether any portion of the Fees payable by the Borrower or the Matching Contribution was or is to be paid by an Independent Contributor; the identity of such Independent Contributor; and a certification that the Independent Contributor has approved the use of its funds to pay such Fees or Matching Contribution in connection with the Qualified Loan.
(16) Number of persons currently employed by the Borrower, and number of jobs expected to be created, retained or affected by the Qualified Loan.
(17) Certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
(18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.
(19) 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.
(20) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Matching Contribution.
(21) Certification that the principal amount of the loan (without regard to the amount to be enrolled) does not exceed $1,500,000.
(22) Certification that the Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid from loan proceeds.
(23) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable federal banking regulations.
The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17), (18) and (21) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.
(24) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has secured or made application for all applicable licenses or permits needed to conduct business.
(25) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.
(26) Certification that the Borrower does not meet the Participating Financial Institution's normal underwriting criteria for making loans of the type sought to be enrolled and that without enrollment, the Participating Financial Institution would not make a loan.

(d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its employees in California, the Participating Financial Institution shall be authorized to submit information to, and seek a determination from, the Executive Director that such Borrower has its Primary business location in California. Such determination shall be made by the Executive Director within 10 days of receipt of a written request from a Participating Financial Institution containing information about the business activities of the proposed Borrower.
(e) If a Borrower seeking a Qualified Loan from a Participating Financial Institution is an employee, member, director, officer, principle shareholder, or affiliate of the Participating Financial Institution, the terms and the conditions of the Qualified Loan and the internal procedures used to approve the Qualified Loan must comply with the following requirements:
(1) If the Participating Financial Institution is a federal-chartered bank, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 371c, 371c-1, 375a, and 375b of the Title 12 of the United States Code, and Sections 215.4 of Title 12 of the Code of Federal Regulations.
(2) If the Participating Financial Institution is a state-chartered bank, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 3370 et seq. of the Financial Code, and Sections 10.19300 to 10.19302 of Title 10 of the California Code of Regulations.
(3) If the Participating Financial Institution is a federal-chartered savings association, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Section 1468 of Title 12 of the United States Code.
(4) If the Participating Financial Institution is a state-chartered savings association, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Sections 6503 and 6529 of the Financial Code.
(5) If the Participating Financial Institution is a federal-chartered credit union, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1757 and 1761c of Title 12 of the United States Code and Section 701.21(d) of Title 12 of the Code of Federal Regulations.
(6) If the Participating Financial Institution is a state-chartered credit union, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 15050 of the Financial Code.
(7) If the Participating Financial Institution is a not-for-profit certified community development financial institution (CDFI), the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1805.807 of Title 12 of the Code of Federal Regulations.
(8) If the Participating Financial Institution is a lending institution as described in Section 44559.1(d)(2) of the Health and Safety Code, the Qualified Loan must be made in accordance with <u>any</u> applicable federal laws that regulate conflicts of interests and insider transactions and Section 120.140 of Title 13 of the Code of Federal Regulations.
(f)The Participating Financial Institution shall pre-qualify with the Authority any qualified loan with a principal amount of $500,000 or more. <u>Pre-qualifications shall be valid for six (6) months</u>.
(g)The Authority shall, upon receipt of documentation and Fees from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 10 business days after receipt by the Authority of all documentation and Fees required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized to review an application for enrollment submitted by a Participating

Financial Institution in advance of the making of the loan, and notify the institution whether such loan meets the requirements of the Law and this Article.
(h)Upon enrollment of a Qualified Loan, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and of the source of funds from which the transfer was made.
(i)The Participating Financial Institution shall notify the Authority within 60 days after any extension or renewal of any enrolled loan which does not increase the loan amount. If the amount is increased, or previously enrolled CalCAP loans are combined, a new loan enrollment form shall be submitted, and Fees (if applicable) shall be transmitted or deposited pursuant to Section 8072(b)(2) based on the increased amount.
(j) The Participating Financial Institution shall notify the Authority of the work-out status on Qualified Loans for which extension/renewal or charge off status is not yet clear. The "Notification of Work-Out Status" form provided by the Authority shall be used to notify the Authority. The Participating Financial Institution shall have up to 240 days from such initial notification to inform the Authority of re-enrollment or charge off.
(k) Without regard to the term of the loan, the term of enrollment in the Program shall not exceed ten years.
Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.2 and 44559.4, Division 27, Health and Safety Code.

8073. Loss Reserve Accounts.

(a) Upon the Executive Director's acceptance of an application under Section 8071, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:
(1) to receive all Fees deposited by the Participating Financial Institution, Borrowers and/or Independent Contributors;
(2) to receive Matching Contributions deposited by the Authority and/or Independent Contributors; and
(3) to pay claims in accordance with Section 8074.
(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by a Program Trustee.
(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing demand account or deposit account at a banking institution, or a Money Market Fund approved by the Executive Director, or a combination thereof, and earning a rate of interest that would be expected of accounts of similar type and size. The Loss Reserve Account shall be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Securities Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not deposit any Loss Reserve Account with a Participating Financial Institution if:
(1) there are any charges by the Participating Financial Institution for the establishment or maintenance of the Loss Reserve Account at such Financial Institution; or
(2) at the time the Loss Reserve Account is established with the Participating Financial Institution, it has a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank Financial Quarterly, or Credit Union Financial Profiles, or it has a rating below "11" from Highline Inc.'s Bank Quarterly or S&L Quarterly or successor publication approved by the Executive Director.
(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve

Account upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below). Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the loss reserve all interest and income that has been credited to the loss reserve account as set forth in Health and Safety Code Section 44559.3 (d). ~~moneys from the Loss Reserve Account to offset administrative costs associated with the Program, provided that the Executive Director shall not be authorized to withdraw more than 50 percent of all interest or income credited to the Loss Reserve Account~~. The Executive Director shall be authorized to return to a Participating Financial Institution any fees improperly deposited in a Loss Reserve Account.
(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with the approval of the applicable Participating Financial Institution, to assign, transfer, pledge or create security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including a trustee of a securitization trust or trusts) in connection with the securitization of all or a portion of the Participating Financial Institution's loans enrolled in the Program.
Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.3 and 44559.8, Division 27, Health and Safety Code.

8074. Claim for Reimbursement.

(a) A Participating Financial Institution shall notify the Authority within 30 days after it has charged off all or part of a Qualified Loan as a result of a default by the Borrower.
(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 30 days.
(c) The Authority shall pay claims within 30 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the representations and warranties provided by the Participating Financial Institution pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid.
(d) Claim reimbursement ~~of principal and interest~~ shall not exceed the enrolled amount of the qualified loan or loans that form the basis for the claim, except when reasonable out-of-pocket expenses are claimed.
(e) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:
(1) Name and number of the Participating Financial Institution.
(2) Name, address and telephone number of contact person.
(3) Name of the business receiving the defaulted Qualified Loan.
(4) Amount and date of the Qualified Loan and the Authority's loan number.
(5) Date of default.
(6) Amount of default.
(7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.

(8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 30 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.
(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.
(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.
(11) Statement whether the Qualified Loan qualifies under Section 8074(f).
(12) Certification that the Participating Financial Institution has given notice to the Authority of the initial enrollment of the loan and certification that either (A) the Participating Financial Institution has given notice to the Authority of any renewals or extensions of the loan, or (B) the loan was continuously renewed or extended within the Participating Financial Institution since the date of its initial enrollment.
(~~f~~e) Except as provided in Section 8074(f) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.
(~~g~~f) If a Qualified Loan (or any part of it) is among the first one million dollars of Qualified Loans made by a Participating Financial Institution and it suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.
(~~h~~g) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.
Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.
Reference: Section 44559.5, Division 27, Health and Safety Code.

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 Act (the "Act").[1]

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 amending Sections 8070, 8072, 8073, and 8074 of Title 4, Division 11, Article 7 of the California Code of Regulations.

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.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender's loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid by the lender to the loss reserve account at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d).) The funds held in the lender's loss

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[1] 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.

reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments streamline the required loan documentation, limit timeframes pre-qualifications and loans are valid, limit excessive claims, conform the regulations to the statutes. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

Section 8070 (s). Update the definition of "Qualified Loan" to exclude aircraft, spas that provide massage services, bars, and adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography): items that are not forth in Health and Safety Code Section 44559.1(j).

Section 8070 (k). Limit the term a loan can be enrolled in the CalCAP program to ten (10) years. Limiting the length of time a loan can be enrolled in CalCAP does not prevent Lenders from issuing loans with a term longer than ten (10) years.

Section 8072 (c). Add the words "any applicable" to the reference to federal safety and soundness standards. This change allows finance companies that are enrolled in CalCAP to comply with the standards applicable to them.

Section 8072 (e). Change the word "all" to "any" to the reference the applicable federal safety and soundness standards. This change allows finance companies that are enrolled in CalCAP to comply with the standards applicable to them.

Section 8072 (f). Limit the time a Pre-Qualification for a loan is valid to no more than six (6) months. CalCAP Regulations require loans of $500,000 or more to be Pre-Qualified. This process allows staff to verify that the total amount loaned to one particular borrower does not exceed $1.5 million in a three-year period. However, the existing regulation does not address the length of time a Pre-Qualification is valid.

Section 8072 (i). Eliminate the requirement for Lenders to provide the Authority with notification of extensions or renewal of any loan which does not increase the loan amount. Lenders will no longer need to provide the Authority with notice when loan terms are extended or if the loan amount has been reduced.

Section 8072 (i). Allow previously enrolled CalCAP loans to be combined.

Section 8073 (d). Conform the CalCAP Regulations to the Authority's Statutes as set forth by the CA Health and Safety Code Section 44559.3 (d). The current Regulation restricts the Executive Director to withdraw 50 percent of the interest; however, recent Statute changes allow the Authority to withdraw all interest or other income as set forth in CA Health and Safety Code Section 44559.3 (d).

Section 8074 (d). Limit the amount of principal and accrued interest reimbursable in a claim to the enrolled amount of the qualified loan or loans. Reasonable out-of-pocket expenses, as determined by the Executive Director, can still be claimed.

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.