



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

NOTICE OF MODIFICATIONS TO PROPOSED REGULATIONS UNDER THE CALIFORNIA FINANCING LAW

PRO 02/17

Applications and Filings through NMLS and Licensure of PACE Program Administrators

To Interested Persons:

On October 25, 2019, the Commissioner of Business Oversight (Commissioner) published a Notice of Rulemaking Action to adopt and amend various regulations under the California Financing Law to implement AB 1284 (Dababneh, Chapter 475, Statutes of 2017), which renamed the “California Finance Lenders Law” the “California Financing Law” effective October 4, 2017, and which required a program administrator that administers a Property Assessed Clean Energy (PACE) program on behalf of a public agency to be licensed by the Commissioner under the California Financing Law. The regulatory changes also proposed transitioning all licensees under the California Financing Law onto the Nationwide Multistate Licensing System and Registry (NMLS), the national licensing database for providers of financial services and products.

After consideration of public comments, the Commissioner is proposing additional changes to the proposed amendments. A copy of the proposed revisions is being made available to the public in accordance with the requirements of Government Code section 11346.8(c). The text showing modifications is attached. The originally proposed additions are shown in single underline and the originally proposed deletions are shown in single strike-out. The additional changes proposed by this notice are shown by double underlining of additions and double strike-out of deletions. The public may submit comments on the proposed changes, as described more fully below.

DESCRIPTION OF CHANGES

Section 1404

The proposed amendments to subdivision (h) of rule 1404 regarding Form MU2 change the description of owners who are control persons to a person that owns or controls 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant or

licensee. The amendments to section 1404 also define “outstanding interests” to mean equity interests in a finance company (if the applicant or the licensee is a partnership) that have the power to: (1) vote to elect or direct the management of the applicant or the finance company, or (2) conduct or manage the lending activities of the finance company. The term “outstanding interests” does not include: (i) an equity interest in the partnership which represents only an economic interest such as a right to receive income and other distributions from the partnership, or (ii) an equity interest which does not give the owner or holder the right or ability, directly or indirectly, to elect or direct management of the applicant or the finance company, or (iii) equity interests where the owner or holder of such interests have entered into a written agreement whereby any right to vote such equity securities are disclaimed (such as an undertaking that any vote will mirror management’s vote or the vote of the rest of the finance company’s stockholders) or relinquished such that the owner or holder of such equity securities cannot, directly or indirectly, elect officers, directors, or management or otherwise direct, conduct or manage the lending activities of the applicant or finance company. The amendments provide a similar definition for equity interests in a program administrator.

The amendments to rule 1404 also define “outstanding equity securities” to mean securities of a corporation, trust, limited liability company, or association, including an unincorporated organization, that have the power to: (1) vote for or elect the management of the applicant or the finance company, or (2) direct, conduct or manage the lending activities or other operations of the finance company. The term “outstanding equity securities” does not include: (i) non-voting equity securities which represent only an economic interest or a right to receive income and other distributions, or (ii) equity securities which do not give the owner or holder the right or ability, directly or indirectly, to elect or direct management of the applicant or the finance company, or (iii) equity securities where the owner or holder of such securities have entered into a written agreement whereby any right to vote such equity securities are disclaimed (such as an undertaking that any vote will mirror management’s vote or the vote of the rest of the finance company’s stockholders) or relinquished such that the owner or holder of such equity securities cannot elect, directly or indirectly, officers, directors, or management or otherwise direct, conduct or manage the lending activities of the applicant or finance company. The amendments provide a similar definition for outstanding equity securities in a program administrator.

Section 1422

The proposed amendments to rule 1422, regarding the application under the California Financing Law, require new applications to be submitted through the NMLS on or after July 1,

2021. The amendments further change the description of 10 percent owners throughout the application to define them as (1) 10 percent owners of the outstanding interests of the applicant or (2) 10 percent owners of the outstanding equity securities of the applicant. For 10 percent or more owners of an applicant, the amendments waive the requirement that the owners submit fingerprints and Statement of Identity Questionnaires if the owner is a reporting company registered under section 12 or section 15(d) of the Securities Exchange Act of 1934.

Section 1422.4

Amendments to rule 1422.4, regarding electronic filings through the NMLS, provide that new applicants will begin using NMLS on or after July 1, 2021, and existing licensees must transition on or before December 31, 2021.

Section 1422.5

The proposed amendments to rule 1422.5, regarding applications through NMLS, change the description of 10 percent owners of an applicant throughout the application to define them as (1) 10 percent owners of the outstanding interests of the applicant or (2) 10 percent owners of the outstanding equity securities of the applicant.

Section 1422.5.1

The proposed amendments to rule 1422.5.1, regarding additional license application requirements for PACE program administrators, revise questions in the Request for Information form that a program administrator must submit with its license application, to align the questions with statutory changes.

Section 1620.02

The proposed amendments to rule 1620.02, regarding definitions, (1) delete the definitions of “ability to pay” and “authorized by a program administrator”; (2) revise the definition of “to solicit a property owner to enter into an assessment contract” to provide a two part definition, and adding exclusions for PACE financing arranged after a home improvement contract is ongoing, and for a trainee who silently observes; (3) clarify that administrative or clerical tasks include technical support; (5) clarify that status on the CSLB website is determinative of license or registration good standing; (6) clarify that the extinguishment of a PACE assessment includes satisfaction or cancellation of obligations; and (7) define “home improvement,” “home improvement contract,” “home improvement contractor,” and “home improvement salesperson” to have the same meanings as in the Contractors State License Law in the Business and Professions Code.

Section 1620.02.01

The proposed amendments to rule 1620.02.01, entitled exclusions, include (1) renumbering the rule as 1620.03; and (2) recharacterizing the exclusions from the definitions of PACE solicitor and PACE solicitor agent.

Section 1620.03

Proposed rule 1620.03, entitled obligations of program administrator, is deleted and instead the provisions are recharacterized in rule 1620.06.

Section 1620.05

Proposed amendments to rule 1620.05 regarding advertising standards change the rule by (1) recharacterizing the restrictions on advertising that is untrue, deceptive, or likely to mislead a property owner to provide that enrollment is conditioned on not advertising in such a manner; (2) recharacterizing the descriptions of untrue, deceptive, or misleading advertising to clarify that truthful advertising is not prohibited, and that the rule only covers advertising of PACE programs; (3) removing the provisions regarding professional designations; and (4) requiring limited character electronic advertising to include a link to the mandatory information that must be included in the rule.

Section 1620.06

The proposed amendments to rule 1620.06, regarding written disclosures, redraft the rule to address assessment contracts and disclosures. Subdivision (a) sets for the whether the assessment contract or disclosures may be provided electronically or in printed form, and follows the statutory requirements. Subdivision (b) sets forth requirements for documents provided electronically that are applicable if the program administrator does not also provide printed copies of documents to property owners. Paragraph (b)(1) requires the program administrator to ask and confirm with a property owner that the property owner has access to the internet, and agrees to accept the documents at an electronic mail address of the property owner's choosing. Paragraph (b)(2) requires the program administrator to confirm that the property owner's email address was not established during the solicitation for PACE financing by asking the property owner during the oral confirmation of key terms call under Streets and Highways Code section 5913 to confirm the property owner's email address, when it was created, and the person who created it.

Paragraph (b)(3) requires the program administrator to provide the documents to a property owner electronically in a manner that does not limit the time period that the property

owner has to access the electronic records, unless the program administrator notifies the property owner of this limitation and provides the property owner a printed copy of the documents. Paragraph (b)(4) requires the documents to be in a format that allows a property owner to download, save, and print on 8 ½ x 11-inch paper. Paragraph (b)(5) requires the program administrator to advise the property owner to print, read, and save a physical copy of the documents, and to save an electronic copy of the documents. Paragraph (b)(6) requires the program administrator to advise the property owner that the property owner may request a printed copy of the documents and to provide a property owner with the printed copy of the documents upon request. Paragraph (b)(7) requires the program administrator to retain evidence that the documents were received electronically by the property owner and provides that the evidence may be obtained during the oral confirmation of this information.

Subsection (c) provides that if the disclosure documents are provided attached to the assessment contract, the disclosure documents must be in front of the contract but may be preceded by a cover letter or other introductory information. Subsection (d) provides that if a program administrator obtains a property owner's signature through a PACE solicitor agent, the program administrator shall implement methods to ensure the signature belongs to the property owner, which may include, but is not limited to, any of the following: (1) confirming the identity of the property owner through identification presented by the property owner; (2) tracking IP geolocation information; (3) sending a confirming letter by postal mail; and (4) confirming the identity of the property owner and that the property owner will be the person signing the assessment contract during the oral confirmation of key terms, or conducting the oral confirmation of key terms through a video call and confirming with the property owner that the property owner will be the person signing the assessment contract.

Subdivision (e) provides that the oral confirmation of key terms under Streets and Highways Code section 1513 must be conducted in a manner intended to confirm the property owner understands the information. Paragraph (e)(1) provides that for purposes of confirming that at least one owner of the property has a copy of the contract assessment documents required in subparagraph (a)(1)(A) of Streets and Highways Code section 5913, the program administrator must confirm that the physical or electronic documents have been delivered to the property owner, and if the documents are delivered electronically, that the property owner has accessed the documents through a device other than through the PACE solicitor agent's electronic device, before proceeding with the remainder of the oral confirmation. Paragraph (e)(2) provides that if the program administrator determines that PACE solicitor agent is providing the property owner with answers during the oral confirmation, the program administrator shall

advise the property owner that the program administrator cannot confirm that the property owner understands the terms unless the property owner can respond without the assistance of the PACE solicitor agent. Paragraph (e)(3) provides that if the PACE solicitor agent is present during the oral confirmation of key terms, the program administrator shall confirm that the property owner consents to the PACE solicitor agent's presence. Paragraph (e)(4) provides that a program administrator may not proceed with the oral confirmation if the property owner objects to the presence of the PACE solicitor agent and the PACE solicitor agent remains present. Subdivision (f) provides that a program administrator shall provide in writing to every property owner who enters into an assessment contract the Department of Business Oversight's consumer services toll-free number ((866) 275-2677), email address (Ask.DBO@dbo.ca.gov), and website (dbo.ca.gov).

Section 1620.07

The proposed amendments to rule 1620.07 regarding books and records (1) clarify that books and records must be accessible at the main location; (2) provide cross references to the other rules that require documentation be maintained in a program administrator's books and records; (3) recharacterize the description of the documentation that must be maintained; (4) provide that a program administrator must maintain CSLB licensure or registration information, to the extent it exists and is accessible; (5) require evidence of receipt of delivery of the signed contract, if provided electronically; (6) require records be maintained evidencing the property market value at the time of the assessment contract; (7) require records be maintained evidencing the useful life of the measure; (8) require records be maintained on sources used to verify eligibility criteria; and (8) require the maintenance of the periodic review procedures.

Section 1620.08

Rule 1620.08, regarding complaint process and procedures, is proposed to be revised as follows. (1) The requirement to implement a complaint process is recharacterized to follow the statutory mandate of developing and implementing policies and procedures for responding to questions and addressing complaints as soon practicable. (2) The complaint process is clarified to provide that the program administrator must reach a final decision on a complaint. (3) The former description of resolution is revised to a final decision, and includes situations where the program administrator will take no further action on a complaint or where a complainant has abandoned a complaint. (4) With respect to inquiries, questions, requests and criticisms that are not treated as complaints, the amendments incorporate the requirement in Financial Code section 22683 that a program administrator respond to questions as soon as practicable and

interprets all of the property owner communications not constituting complaints as questions requiring a response.

(5) The amendments require a response or acknowledgement to inquiries, questions, requests and criticisms in one working day, consistent with the standard for questions in Streets and Highways Code section 5898.17. (6) The amendments provide that obligations towards complainants in the rule shall be equally applicable to authorized representatives of the complainant. (7) The provisions regarding notice to property owners are revised to recognize the notice regarding a customer service toll-free telephone number and email that is required under Streets and Highways Code section 5898.17, and to require the information be maintained on the program administrator's website. (8) The mandates in section 5898.17 to provide a toll-free telephone number and customer service email address, and to respond within one business day, are incorporated throughout the rule. (9) The amendments require written complaints to be acknowledged in writing. (10) The amendments allow for the oral confirmation of complaints received by telephone, and require that complainants be provided a method of identifying their complaint, such as a tracking number. (11) The provisions provide that the complaint process must be available in the language of the assessment contract and eliminate the requirement that the complaint process be available to persons with limited English proficiency.

(12) The rule requires a program administrator to ordinarily respond to requests for status updates within one business day. (13) The amendments provide that the investigation of a complaint should ordinarily not require more than thirty days, and if additional time is needed, the program administrator must advise the complainant. (14) The amendments provide that the complaint process must include a procedure for identifying and prioritizing complaints not resolved in thirty days, and no longer includes the term aging. (15) The amendment recharacterizes the requirements regarding expedited reviews to provide that expedited reviews are required for complainants with delinquent property tax assessments and delinquent mortgages from a third party lender or servicer advancing the payment of the PACE assessment. (16) The amendments revise the live representative requirement in recognition that a program administrator may be providing access to a representative through its customer service telephone number. (17) The amendments provide that an expedited review should ordinarily be conducted in a week, and the program administrator must advise the complainant if additional time is needed.

(18) The amendments require the tracking of whether the complainant has authorized a third party to assist or represent the complainant. (19) The amendments set forth the

requirement that the program administrator notify the property owner upon a final decision and the closing of a complaint. (20) The amendments require notice of the final decision for a written complaint to be in writing but allow a telephone complaint to be closed by telephone provided the program administrator offers to provide the final decision in writing. (21) The amendments provide that if the complaint results in changes to the assessment contract, the program administrator must send the information in writing to the complainant describing the changes, regardless of whether the complaint was submitted by telephone. (22) The amendments provide that both oral and written notices of complaint closures must include the Department's consumer services telephone number and website address. (23) The amendments provide that a program must correct errors identified during the review of the complaint. (24) The amendments provide that a program administrator need not correct the error of a property owner, but the exclusion is not applicable to fraud or forgery. (25) The amendments provide that if the program administrator determines that an error occurred in the making of the assessment contract or the administering of the PACE assessment, the program administrator must correct the error, notify the complainant of the correction and the effective date of the correction, and the contact information for further assistance, unless the error was made by the property owner. (26) The amendments define error as a mistake; the state of being wrong in conduct or judgment.

Section 1620.10

Proposed amendments to rule 1620.10, regarding dishonest dealings and misleading statements, amend the rule to (1) change the knowing standard to knows or should have known, for conduct constituting dishonest dealings; (2) clarifying that for an uninstalled product, the final payment to the PACE solicitor is made on the assessment contract; (3) remove the provision providing that interconnecting a utility grid is not an uninstalled product; (4) change the requirement that a program administrator implement policies and procedures to a requirement that the program administrator create and enforce policies and procedures; (5) change "misrepresenting" to "representing," where the act is a representation; (6) clarify that representations of eligibility for PACE financing constitutes dishonest dealings if a determination has not been made; (7) clarify that failing to complete the scope of work under a home improvement contract constitutes dishonest dealings; (8) recharacterize the misrepresentation regarding the transferability of assessment contracts; (9) recharacterize the misrepresentation about an increase in property value; (10) recharacterize the provision regarding retaliation to remove the superfluous explanatory provisions; and (11) recharacterize the provision regarding multiple assessment contracts for the same improvement.

Section 1620.11

Proposed amendments to rule 1620.11, regarding solicitor enrollment standards, amend the rule to (1) change the term “arranged” to “solicited” to align the activity to the statute; (2) clarify that program administrators may fund home improvement contracts solicited by persons not required to be enrolled; (3) provide that PACE solicitors must notify program administrators when a property owner is considering other PACE programs to avoid duplicate liens; (4) provide that a program administrator remains responsible for ensuring property owners receive PACE disclosures required by law; (5) clarify that the prohibition on beginning the home improvement project before the expiration of the three day right to cancel is not applicable when the property owner doesn’t apply for PACE financing until after the project begins; (6) clarify that PACE solicitors must require PACE solicitor agents to take the test required by Financial Code section 22681; (7) clarify that program administrators are to notify program administrators of complaints regarding the assessment contract that are unresolved for a month or more, (8) clarify that PACE solicitors only need to maintain advertising related to PACE financing; (9) recharacterize the provisions regarding the establishment and maintenance of a written process to evaluate readily and publicly available information on a PACE solicitor to more closely align with the statute; (10) remove the condition that other sources of public information be economically feasible for the program administrator; (10) provide that the review of a PACE solicitor include all the current and past licenses and registrations with the CSLB; (11) clarify that section 1620.13 sets forth the rules for making the findings required by subdivision(e) of Financial Code section 22680; (12) recharacterize the standards for evaluating background information on a PACE solicitor; (13) change NMLS ID to the Nationwide Multistate Licensing System Unique Identifier; and (14) provide that a PACE solicitor agent’s CSLB home improvement salesperson registration number must be reported to the Department if the PACE solicitor agent is registered.

Section 1620.12

Proposed amendments to rule 1620.12, regarding PACE solicitor agent enrollment standards, amend the rule to (1) clarify the criminal activity that should be identified during a background check; (2) clarify that other acts relevant to a background check may be ascertained through court filings or public records; (3) add CSLB license or registration denials to the background check; (4) for conditional enrollment, require the CSLB application process to be complete except for fingerprint background checks; (5) require a program administrator conducting a background check of a PACE solicitor agent to review information on the experiences of other program administrators, if available; (6) if a PACE solicitor agent is not a registered home improvement salesperson, require the program administrator to maintain in its books and records documentation on why registration is not required; (7) If a PACE solicitor agent is not registered or licensed with CSLB and is gathering financial information, require the program

administrator to implement procedures for the safe handling of the information, and maintain in its records government identification for the PACE solicitor agent.

Section 1620.13

Proposed amendments to rule 1620.13, regarding enrollment denials, more closely align the rule to the statute by including throughout the rule the provision providing that the process for enrolling a PACE solicitor include a review of readily and publicly available information regarding each PACE solicitor. The proposed amendments include the following additional changes: (1) With respect to clear patterns of complaints, the geographical limitation has been removed, and the condition that the omission be of a material fact is revised to follow the statutory language. (2) For complaints and violations of law, the recordkeeping provision is revised to require a program administrator to document its review process, findings, and reasons for determinations. (3) Throughout the section, the provisions attributing the acts of PACE solicitor agents to PACE solicitors is tempered in recognition that the section is applicable to enrollment denials, not ongoing monitoring, and therefore questions of whether a PACE solicitor agent is acting under the authority of the PACE solicitor should not be applicable because the PACE solicitor would not yet have enrolled PACE solicitor agents. (4) For purposes of determining a high likelihood that the PACE solicitor will not comply with applicable law, the amendments provide that relevant readily and publicly available information includes court records and business and consumer reviews, the PACE solicitor's compliance with the Contractors State License Law, including the requirements for a home improvement contractor, and complaints published by the Contractors State License Board. (5) The provision providing that a program administrator is not liable for failing to identify the specified practices by a PACE solicitor if the background check and enrollment process complies with other rules is deleted to ensure that the requirements are consistent with the statutory requirements.

Section 1620.14

Proposed amendments to rule 1620.14 regarding monitoring compliance restructure the rule by moving some provisions from rule 1620.13 (enrollment denial) and rule 1620.15 (periodic review standards) to more closely align with the statutory scheme in Financial Code section 22680. The amendments make the following changes: (1) Subdivision (a) is revised to provide that compliance process must comply with the requirements of the rule. (2) The provision regarding a risk-based, commercially reasonable procedure is revised to provide that the procedure includes different processes for monitoring and testing compliance with the law, and to provide that the sample shall ensure vulnerable populations such as seniors, non-English speakers, and low income populations are included. (3) The amendments require the program

administrator to have processes for monitoring whether the PACE solicitor is continuing to maintain the minimum qualifications for enrollment. (4) The amendments set forth additional areas for program administrator to monitor a PACE solicitor's compliance. (5) The amendments borrow from Financial Code section 22680 to provide that the procedure for regularly monitoring license and registration is part of the required compliance process. (6) The amendments provide that a program administrator may review license and registration standing quarterly. (7) The amendments add that the monitoring of licensure and registration include ensuring that individuals soliciting property owners are enrolled, have completed the training program, and are reported to the Department. (8) The amendments clarify that program administrators must have a process for canceling the enrollment of a PACE solicitor or PACE solicitor agent who fails to maintain the minimum qualifications of Financial Code section 22680 or who is violating the California Financing Law. (9) The amendments recharacterize the record keeping requirement to reflect that the monitoring is ongoing and not a single documented event.

Section 1620.15

Proposed amendments to rule 1620.15 regarding period review standards make various changes. The amendments remove provisions in paragraphs (1) through (3) and (7) through (8) of subdivision (b) related to a PACE solicitor and a PACE solicitor agent's compliance with laws beyond solicitation activities. These oversight requirements are instead recharacterized in rule 1620.14 regarding monitoring compliance. The amendments clarify that the program administrator's review of PACE solicitor advertising for representations regarding the PACE program that are untrue. The amendments clarify that the program administrator's review of a PACE solicitor's controls over compliance with solicitation requirements may be tailored based on the size of the PACE solicitor and the volume of PACE business conducted by the PACE solicitor. The amendments further require the program administrator to use the information on the controls maintained by the PACE solicitor in determining the level of monitoring required for the PACE solicitor.

With respect to the review of samples of assessment contracts, the amendments (1) provide that the review may include contacting property owners; (2) provide that the review must confirm that the installed efficiency improvements are those represented to the program administrator; (3) clarify that any confirmation of the completion of work is limited to work under the home improvement contract that was financed through the assessment contract; (4) provide additional detail to the methods for determining sampling sizes; (5) authorize a program administrator to establish its own review rather than the sampling of assessment contracts; (6) requires the program administrator to document its periodic review findings and if the program

administrator establishes its own method for reviewing assessment contracts, to document its processes; (7) requires the periodic review, the findings, and the procedures used to be documented in the program administrator's records; (8) requires the periodic review process to include the cancellation of enrollment if the review identifies that the PACE solicitor is failing to maintain the minimum qualifications for enrollment; (9) provides that the periodic review is limited to solicitation activities; and (10) authorizes program administrators to conduct joint periodic reviews.

Section 1620.16

Proposed amendments to rule 1620.16 regarding the cancellation of enrollment of a PACE solicitor or PACE solicitor agent clarify that the written process for cancelling enrollment is for PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required under the California Financing Law.

Section 1620.17

Proposed amendments to rule 1620.17 regarding the education training of a PACE solicitor agent expand and clarify the provisions of the rule. The changes do the following: (1) revise the name of the regulation to "training program" to reflect the statute; (2) set forth the three parts of a training program consistent with the statute; (3) authorize updates to training material to be provided through PACE solicitors; (4) expand the training on PACE programs and assessment contracts to require topics be covered including (i) the risk upon nonpayment of a tax assessment that a mortgagee will take over the payment, (ii) the roles of various public agencies, (iii) the treatment of PACE assessments by federal housing finance agencies, (iv) the risk of having to pay off a PACE lien in a property sale or a mortgage refinancing, (v) the risk of an increase to monthly mortgage payments to account for higher amounts escrowed in anticipation of increased property tax assessments, and (vi) the requirements set forth in division 7 of the Streets and Highways Code.

The amendments further make the following changes: (1) require the training include information on mandatory PACE disclosures including the Financing Estimate and Disclosure Form and the related disclosure under a home improvement contract of finance charges, the three-day Right to Cancel notice, and the oral confirmation of key terms telephone call; (2) require the training on ethics include the prohibition on specified incentives required by Streets and Highways Code section 5923 and Business and Professions Code section 7157, and the restriction on PACE pricing under Streets and Highways Code section 5926; (3) require the training on fraud prevention to include all of the topics previously optional, and further describe

that the training related to potential misrepresentations regarding “refinancing” and “home sales” is with respect to the potential impact of PACE assessments; (4) correct a citation under the consumer protection section; and (5) require the training under consumer protection to include information on the negative consequences of hard credit report inquiries, and the need to identify properties subject to reverse mortgages.

Section 1620.19

Proposed amendments to rule 1620.19 regarding the annual report are as follows. The submission of the aggregate information required by section 10085 of California Code of Regulations, title 4 is deleted, and the reporting of assessments by interest rate range is revised to reflect the same interest rate ranges as required in the annual report filed by other licensees under the California Financing Law.

Section 1620.21

Proposed amendments to rule 1620.21 recharacterize the provisions as follows. (1) The name of the regulation is changed to “Ability to Pay Determinations.” (2) Subdivision (a) is recharacterized to require program administrators to maintain written procedures for the determination that a property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment required under Financial Code sections 22686 and 22687, and provide that the procedures must include (i) the criteria used for identifying whether a property owner has sufficient residual income to meet basic living expenses; (ii) the criteria used for determining whether income is from a temporary source; (iii) The criteria used for determining whether assets are liquid; (iv) any assumptions included in the determination, such as the continuation of, or growth of, income, the continuation or extinguishment of debt, and the continuation or extinguishment of any basic household living expenses; and (v) if the program administrator allows exceptions to any of its criteria for determining a property owner’s ability to pay the property owner’s PACE assessment obligations, the nature of any permissible exceptions and the conditions allowing for the exceptions. (3) Subdivision (b) is narrowed to prohibit employee compensation contingent on a positive determination of a property owner’s ability to pay the PACE assessments, and those additional persons with the ability to overturn the initial approval or denial recommendation. Further, subdivision (b) makes clear that the restrictions do not prohibit general employee incentive plans or any other compensation plans that are not specifically based on positive ability to pay determinations.

Section 1620.22

Proposed amendments to rule 1620.22 regarding principles for determining property owner incomes do the following: (1) Clarify that a temporary source of income includes income that it reasonably may be concluded will not continue during the foreseeable future; (2) provide that if members of a property owner's household are paying rent or board to the property owner, the payments must be verified through a rental agreement and reasonably reliable third-party records, (3) confirm that rental income for properties other than the property owner's household may be included in determining income provided that the all property-related costs are considered as debt, (4) clarify that nonliquid assets include assets, such as funds in retirement accounts, that would result in a financial penalty for a property owner if withdrawn or liquidated, and (5) clarify that funds received from a reverse mortgage does not constitute income.

Section 1620.28

Proposed rule 1620.28 regarding the useful life of efficiency improvements is proposed to be amended. To align with subdivision (j) of Financial Code section 22684, the requirement that the program administrator base the useful life of an efficiency improvement on the equipment manufacturer or installer's specification is withdrawn. The proposed amendments further clarify that the useful life is established upon the date of the execution of the assessment contract.

Section 1620.29

Proposed rule 1620.29 regarding verifying the criteria in Financial Code section 22684 through commercially reasonable and available methods is proposed to be amended. The amendments are intended to (1) clarify that the criteria should be verified through an independent source where commercially reasonable and available, (2) clarify that the property owner may verify the information where provided by statute or where other commercially reasonable sources are unavailable, (3) add that the program administrator must confirm with the PACE solicitor that the solicitor is not aware of other PACE assessments, and (4) clarify that where presumed commercially reasonable sources are not used for verification, the program administrator identifies the sources in its books and records.

The initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available on the Department of Business Oversight's website at www.dbo.ca.gov, and from the Legal Division of the Department of Business Oversight. As required by the Administrative Procedure Act, the Legal Division maintains a hearing file containing all the information upon which the proposal is based. The rulemaking file is available

for public inspection during regular business hours. Comments or inquiries concerning these proposed regulation changes may be directed to Colleen Monahan at (916) 323-7384.

15-DAY COMMENT PERIOD

Any interested person may submit written comments regarding the changes from the originally proposed amendments by written communication addressed as follows:

Commissioner of Business Oversight
Attn: Regulations Coordinator, Legal Division
1515 K Street, Suite 200
Sacramento, CA 95814

Comments must be received by June 12, 2020. Written comments may also be sent by electronic mail to regulations@dbo.ca.gov with a copy to colleen.monahan@dbo.ca.gov or via fax at (916) 322-5875.

The proposed changes to the Commissioner's rules in the text accompanying this notice are not yet effective and will not be effective until approved by the Office of Administrative Law and filed with the Secretary of State in accordance with Government Code section 11349.3. Questions regarding the content of this notice may be directed to Colleen Monahan at (916) 323-7384.

Dated: May 27, 2020
 Sacramento, California