

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

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Commissioner of Business Oversight

IN REPLY REFER TO:
FILE NO: PRO 02/17

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**INVITATION FOR COMMENTS ON PROPOSED RULEMAKING
IMPLEMENTATION OF AB 1284
LICENSURE OF PACE PROGRAM ADMINISTRATORS UNDER THE
CALIFORNIA FINANCING LAW
(PRO 02/17)**

BACKGROUND

On October 4, 2017, Governor Brown signed AB 1284 (Chapter 475, Statutes of 2017). The bill renames the California Finance Lenders Law to the California Financing Law. This change became effective upon signing, and sets forth a licensing scheme for property-assessed clean energy (PACE) program administrators. A “program administrator” is a person administering a PACE program on behalf of a public agency. (Fin. Code, § 22018.) A PACE program is a program where financing is provided for the installation of efficiency improvements on real property and funded through property assessments, as authorized by specified laws. (Fin. Code, § 22016.) AB 1284 places licensure and oversight of program administrators under the Department of Business Oversight (“Department”).

While lending laws typically require licensure of brokers, AB 1284 does not require licensure of the persons who solicit homeowners to enter into PACE financing agreements. Instead, the licensed program administrator is responsible for enrolling and overseeing these solicitors.

For program administrators, AB 1284 does the following:

- Sets forth minimum standards for licensure
- Requires the maintenance of books and records
- Requires an annual report
- Prohibits various acts intended to protect property owners
- Requires a program administrator to enroll PACE solicitors and PACE solicitor Agents, as defined to include those soliciting property owners to enter into PACE financing agreements

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- Requires training of solicitors
- Requires a program administrator to monitor a solicitor's compliance with specified property owner protections
- Requires an evaluation of a property owner's ability to pay future PACE assessments
- Authorizes a regulatory compliance examination of a program administrator
- Authorizes enforcement actions for the failure to comply with the new regulatory requirements

Further, AB 1284 authorizes the Department to enforce SB 242 (Chapter 484, Statutes of 2017) and some provisions in the Streets and Highways Code, which set forth additional protections for property owners entering into PACE financing agreements. Among other protections, these provisions require property owners to be provided certain financial disclosures, and require program administrators to conduct recorded oral confirmations of terms.

Program administrators are subject to newly enacted requirements under AB 1284 at various times. Licensure is required on January 1, 2019.

INVITATION FOR COMMENTS

The Department seeks input from stakeholders in developing regulations to implement AB 1284. Interested parties may submit comments related to any area under which the Department has authority to adopt rules. In addition, the Department has identified various areas where rulemaking may be appropriate, desirable or necessary. Below, the Department has formulated topics and questions to assist interested parties in providing input on rulemaking. However, stakeholders are not limited to providing comments in the areas identified by the Department, and may comment on any potential area for rulemaking.

POTENTIAL TOPICS FOR RULEMAKING

Definitions

AB 1284 establishes terms under the CFL that identify the individual and entities that fall within the Department's jurisdiction. Are additional definitions needed? For the terms already defined, are any of the definitions unclear, and if so, why? Can the definitions be read to encompass an individual or entity not intended to be regulated under the licensing scheme? Does any definition result in ambiguity regarding whether an individual or entity falls within it?

Applications

The Department has an existing CFL application that contains general information necessary for the licensure of an individual or entity providing financial services to consumers. What types of information are unique to program administrators that a regulator would want included in an application, and why?

Annual Report Data

AB 1284 requires a program administrator to submit an annual report to the Department. What information should the Department be gathering from a program administrator, and why?

Advertising Standards

AB 1284 prohibits false, misleading, or deceptive advertising. Are there any advertising practices that raise consumer protection concerns? Why? What are ways the Department can protect against misleading advertising that is not initiated by a program administrator?

Books and Records

AB 1284 requires a program administrator to maintain books and records. What books and records are unique to the PACE industry? How long should these records be maintained? Why?

Complaint Processes and Procedures

What are reasonable processes that can be implemented to help a consumer resolve his or her complaints? Have homeowners encountered hurdles to having their complaints addressed? What are these hurdles, and what processes can eliminate them? Why?

Unfair Business Practices

AB 1284 prohibits a program administrator from engaging in unfair business practices. Are there any unfair business practices occurring? How can they be prevented?

Periodic Review Standards

AB 1284 requires a program administrator to conduct a periodic review of its PACE Solicitors at least every two years for compliance with the requirements of AB 1284. What should be required in this review? Why?

Solicitor Enrollment Standards or Processes

AB 1284 sets forth enrollment standards for PACE solicitors and PACE solicitor agents. What types of acts or practices, and how often must they occur before a program administrator should deny enrollment to a PACE solicitor or PACE solicitor agent? Why?

Solicitor Monitoring Standards

AB 1284 requires a program administrator to monitor a PACE solicitor and PACE solicitor agent's compliance with applicable law. What types of procedures provide for this monitoring? Why?

Cancelling Enrollment and Notifying the Department

AB 1284 requires a program administrator to establish and implement a process for canceling the enrollment of a PACE solicitor or PACE solicitor agent, and to notify the Department. What reasonable standards should be included in this process? Why?

Education Program

AB 1284 requires a program administrator to provide each PACE solicitor agent with six hours of education on specified topics. What minimum standards should this training include? Why?

Underwriting

AB 1284 contains minimum standards that a property, a property improvement, and a borrower must meet to qualify for a PACE assessment agreement. Do any of these standards require clarification, and if so, which ones, and why?

SB 242

AB 1284 authorizes the Department to require licensee compliance with the requirements of SB 242 (except the reporting requirement), and the financial disclosure requirements, and minimum standards, set forth in Streets and Highways Code sections 5898.16 and 5898.17. Are there any requirements in these laws that require clarification by rulemaking?

Exemptions from Enrollment

AB 1284 authorizes the Commissioner to exempt any class of persons from the enrollment requirement for PACE solicitors and PACE solicitor agents. Is there any class of persons that should be exempt? Is there a public benefit to having a solicitor for a commercial assessment agreement undergo six hours of training directed at protecting consumers?

For all rulemaking recommendations, the Department requests commenters consider and comment on how the recommendations will impact the availability and cost of PACE financing, and whether the benefits of the recommended rules outweigh the cost.

TIME FOR COMMENTS

The Department invites interested parties to submit comments by January 5, 2018.

WHERE TO SUBMIT COMMENTS

You may submit comments by any of the following means:

Electronic

Comments may be submitted electronically to regulations@dbo.ca.gov. Include PRO 02/17 (PACE) in the subject line, and copy Colleen Monahan at colleen.monahan@dbo.ca.gov.

Mail

Department of Business Oversight, Legal Division
Attn: Mark Dyer, Regulations Coordinator
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CONTACT PERSONS

Questions regarding this invitation for comments may be directed to Colleen Monahan, Senior Counsel, at (916) 323-7384 or colleen.monahan@dbo.ca.gov