

TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS
Title 10. Investment

Chapter 3. Commissioner of Business Oversight, Division of Corporations

**Subchapter 6. ~~California Finance Lenders Law (Finance Company Rules)~~
California Financing Law**

Article 15. PACE Program Administrators

§ 1620.01. General.

Articles 4, 5, 6, 7, 8, and 9 of this subchapter 6 of chapter 3 of title 10 are not applicable to a program administrator.

§ 1620.02. Definitions.

The following definitions are applicable to the administration of a PACE program.

(a) “Ability to pay” means the ability of a property owner to pay every PACE assessment on or before the final date to pay the assessment as scheduled, from the property owner’s income, without relying on the equity in a residential property owner’s home, as provided in Financial Code section 22687.

(b) “Authorized by a program administrator” means that the PACE Solicitor or PACE solicitor agent is enrolled with the program administrator. A PACE solicitor or PACE solicitor agent is also authorized by a program administrator if the program administrator funds a home improvement contract of the PACE solicitor.

(c) A program administrator does not include bond counsel, financial advisors, assessment engineers or administrators, trustees or other paying agents, investors, or staff of a public agency, unless, in addition to their role as bond counsel, financial advisor, assessment engineer or administrator, trustee or other paying agent, investor,

or staff of a public agency, they also contract with a public agency for the administration of a PACE program.

(d) (1) "To solicit a property owner" includes, but is not limited to, any of the following:

(A) Taking an application for financing through a PACE assessment.

(B) Inviting a property owner to apply for a PACE assessment.

(C) Asking a property owner whether the property owner is interested in a PACE assessment.

(D) Discussing the terms of a PACE assessment with a property owner.

(E) Describing the characteristics of a PACE assessment to a property owner.

(2) An individual who includes a PACE assessment in a list of two or more financing options available to a property owner, without providing any information on the program and without recommending the benefits of one financing option over another, does not solicit a property owner, provided that the individual does not engage in any other activity that constitutes soliciting a property owner under this subsection (d). The referral of a property owner to an enrolled PACE solicitor agent for information on the PACE program, after two or more financing options are identified, does not constitute solicitation of a property owner.

(3) An individual who identifies a PACE program as a form of financing of an efficiency improvement, and who does not identify any other form of financing, is soliciting a property owner for a PACE assessment, and must be enrolled with a program administrator as a PACE solicitor agent.

(4) An employee or subcontractor of a contractor who is performing labor on a job site for an efficiency improvement contract is not required to enroll as a PACE solicitor agent, provided that the employee or subcontractor does not engage in any of the activities in this subsection that constitute soliciting a property owner for a PACE

assessment.

(5) A publisher of a bona fide newspaper, news magazine, or industry publication of general, regular, and paid circulation, and the employees thereof, are not soliciting a property owner to enter into an assessment contract.

(6) A general Internet search engine, and the employees thereof, are not soliciting a property owner to enter into an assessment contract when providing general search results to the public, whether or not based on paid advertising, provided that the Internet search engine does not engage in any solicitation activities beyond providing search results which may include paid advertising.

(e) “A person who performs purely administrative or clerical tasks” includes (1) individuals who are not directly interacting with property owners, and (2) individuals whose interaction includes functions like communicating with property owners to gather documents and facilitate the processing of paperwork, provided that the individual does not otherwise solicit a property owner as defined in this section.

(f) Information is not “obtained in connection with advertising or soliciting a PACE program” if a PACE program is not mentioned or described during the marketing of a home improvement contract.

(g) “Administering a PACE program on behalf of a public agency” means managing a PACE program, or parts thereof, on behalf of a public agency.

(1) A building contractor is not administering a PACE program on behalf of a public agency if the building contractor solicits a property owner to enter into an assessment

contract for the purpose of financing a home improvement contract with the building contractor.

(h) “Property owner” means any owner of record of real property.

(i) “Sponsoring public agency” means a public agency that directly contracts with, and oversees, a program administrator, on behalf of other public agencies, or solely on its own behalf.

(j) “Maintain a license in good standing” means that a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

(k) “Extinguishment of a PACE assessment” means the property owner has satisfied all obligations under an assessment contract and no further amount related to the PACE assessment will appear on the property owner’s taxes.

(l) A “PACE solicitor” includes a contractor under chapter 29.1 of part 3 of division 7 of the Streets and Highways Code (beginning with section 5900). A “PACE solicitor agent” includes a third party under chapter 29.1 of part 3 of division 7 of the Streets and Highways Code (beginning with section 5900).

(m) “Thing of material value” does not include items of de minimis and nominal value such as pens, coffee mugs, tee shirts, light refreshments, a greeting card, a cup of coffee, a cookie, or the like.

(n) An eligible “efficiency improvement” means one or more permanent improvements fixed to real property financed through a PACE assessment. Such improvements shall provide a public benefit (such as saving energy and water) and be recognized by credible third-party standards and/or certification criteria by appropriate government

agencies and/or nationally recognized standards and testing organizations, including but not limited to, the U.S. Department of Energy, the U.S. Environmental Protection Agency, national research laboratories, state energy offices, and state building code divisions, for achieving higher levels of home energy efficiency, water efficiency, or seismic retrofits. Custom improvements meet eligibility requirements provided they are permanently affixed to the property and have quantifiable renewable energy generation, energy savings, water savings, or seismic components.

§ 1620.03. Obligations of Program Administrator.

- (a) Every program administrator shall maintain procedures established to ensure sufficient sources of capital to finance the efficiency improvements that it has obligated to finance.
- (b) Every program administrator implement procedures intended to ensure that each employee who performs a function on behalf of the program administrator under division 7 of the Streets and Highways Code or division 9 of the Financial Code is familiar with the laws, rules, and regulations governing the administration of a PACE program.
- (c) A program administrator shall implement a procedure intended to ensure that a property owner has a physical copy of the assessment contract, in the language the assessment contract was negotiated if such language is Spanish, Chinese, ~~-~~Tagalog, Vietnamese, or Korean, before the property owner signs the ~~-~~contract.
- (d) A program administrator shall implement a procedure intended to ensure that ~~-~~the confirmation of key terms call occurs during a time when the property owner is ~~-~~not physically present with the PACE solicitor or PACE solicitor ~~-~~agent.
- (e) Every assessment contract shall contain contact information, including the name, telephone number, mailing address, and website address, for the PACE solicitor, the

program administrator, the sponsoring public agency, and the Department of Business Oversight.

(f) A program administrator shall implement a procedure intended to ensure that **when if a** PACE solicitor or PACE solicitor agent represents that a property owner will achieve any energy savings from an efficiency improvement, then evidence supporting the energy savings representation, and documentation of any actual energy savings, if any, is **disclosed to the property owner and** maintained in the **program administrator's** books and records related to the property owner's assessment contract for the period of time set forth in section 1620.07 of these rules.

§1620.04. PACE Pricing, Energy Savings, Environmental Impacts and Job Creation.

Within 6 months of licensure, a program administrator shall implement a process to track **and report** price data for **the most commonly installed** PACE eligible efficiency improvements and products, including installation costs, labor time, and profit, based on the square foot of residential property obtaining the efficiency improvement, by zip code.

In addition, the program administrator shall implement a process to track and report key public benefit metrics such as estimated energy savings, environmental impacts, e.g. CO₂e emissions reduction, and job creation data for the most commonly installed PACE eligible efficiency improvements and products. Such metrics shall be developed and collected using industry standard methodologies. The data, including the methodologies and supporting assumptions and sources, shall be provided to the Commissioner upon request.

§ 1620.05. Advertising Standards.

(a) When advertising a PACE program, a program administrator shall not do any of the following, and a program administrator shall develop and implement policies and procedures intended to ensure that a PACE solicitor and PACE solicitor agent do not do any of the following:

(1) Advertise the program provides a tax benefit.

(2) Make statements, representations or omissions likely to lead a property owner to believe that the program is a free or subsidized government program, including but not limited to a statement that the state is financing the efficiency improvement.

(3) Make statements, representations or omissions likely to lead a property owner to believe that the program is a means-based government program.

(4) Make statements, representations or omissions likely to lead a property owner to believe that the property owner will not be obligated to repay the amount borrowed plus interest and fees.

(5) Advertise property improvements that are not efficiency improvements in the same advertisement.

(6) Use check facsimiles or any negotiable instrument to dramatize the amount of PACE program financing available.

(7) Suggest an efficiency improvement will result in an economic savings, suggest the savings will offset cost of the improvement, or otherwise lead a property owner to believe that efficiency improvement will pay for the PACE assessment.

(8) Violate, directly or indirectly, any state or federal “do not call” law, or anti-spam law.

(9) Use advertising that suggests or implies, or would lead a property owner to believe, that the advertising is from the government.

(10) Fail to identify the program administrator or the PACE solicitor responsible for the advertisement.

(b) A program administrator shall develop and implement policies and procedures intended to ensure that a PACE solicitor or PACE solicitor agent does not lead a property owner to believe that that the PACE solicitor or PACE solicitor agent has been certified to provide efficiency improvements under any PACE program.

(c) Every written advertisement must include the following disclosure in 12-point font: “[Program administrator] is a for-profit business and not a division of the government. The fees, interest rates, and terms of the PACE financing are determined by [Program Administrator]. The installation or construction of property improvements are provided by a for-profit business and not a division of the government. All pricing for work is at the sole discretion of the party performing the work.”

(d) A program administrator may not advertise, on its website or otherwise, businesses or individuals approved by the program administrator to provide efficiency improvements to the public, unless the business or individual is enrolled by the program administrator as a PACE solicitor or PACE solicitor agent.

§ 1620.06. Mandatory Brochure.

(a) Each program administrator shall provide every property owner a PACE brochure prior to entering into an assessment contract.

(1) The program administrator shall obtain the signed acknowledgement of receipt of the brochure from a property owner, and maintain evidence of the signed acknowledgement in the program administrator’s books and records.

(2) The program administrator shall obtain approval of the brochure from the Commissioner prior to use.

(3) The Commissioner may develop a standard brochure for every program

administrator to use, and may require that a program administrator use that brochure.

(b) The written acknowledgement from the property owner shall include a representation from the property owner that the brochure was received.

(c) The brochure shall include the following information:

(1) The impact an assessment contract will have on a property owner's ~~property taxes~~, including the addition of a new amount and a description of how the amount ~~will be determined~~.

(2) A description of the process for paying the assessment through property ~~taxes~~.

(3) The statutory penalty for failing to pay property taxes on ~~time~~.

(4) The statutory rate of interest for failing to pay property taxes on ~~time~~.

(5) The potential that a lender or home buyer may require the property owner ~~to pay off the PACE assessment if selling or refinancing the subject property~~.

(6) The risk of a tax sale for failing to pay the assessment contract, including ~~the timing of the sale and the minimum amount for which the property may be sold~~.

(7) A recommendation that a property owner consult a tax advisor to ~~determine whether the energy-related improvement provides any tax benefits~~.

(8) The minimum eligibility standards required to qualify for a PACE ~~assessment~~.

(9) The program administrator's website and telephone number for ~~additional information~~. The website address must direct the consumer to a page that ~~explains how PACE operates~~.

(10) The following additional explanations:

(A) The PACE assessment is not a government benefit and must be ~~repaid~~.

(B) The home improvement contract is through a private contractor and is ~~a separate agreement from the assessment contract~~.

(C) A homeowner may choose any licensed contractor or retailer to provide ~~the~~
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property improvement and products.

(D) The cost of property improvements offered by a contractor or retailer are set by the contractor or retailer, and not subsidized by the government.

(E) An explanation of the difference between the contractual assessment and the home improvement contract.

(F) An explanation of the difference between the program administrator, the PACE solicitor, and the sponsoring public agency.

(H) An explanation that most tax collectors will not accept partial payments of an assessment.

(I) An explanation of the potential impact on a mortgage impound account.

(J) An explanation of the key variables impacting realized energy savings from an efficiency improvement, e.g. weather conditions, energy usage patterns, utility rate changes, occupant behavior, and performance degradation of the improvements over time.

§ 1620.07. Books and Records.

(a) A program administrator shall maintain its books, records, and accounts at its main licensed location in California in accordance with good business practice.

(b) The records required to be maintained shall, at a minimum, include the following:

(1) The program administrator's financial statements prepared in accordance with generally accepted accounting principles.

(2) Complaints and related correspondence.

(3) Property owner correspondence.

(4) Assessment contracts.

(5) Documentation of ability to pay for each assessment contract.

(6) Documentation of home improvement agreements, contractor payments, any other invoices related to an individual assessment agreement.

(7) Oral confirmation of key terms records.

(8) Evidence supporting any energy savings representations to a property owner.

(9) Evidence of actual energy savings attributable to a PACE improvement, if any.

(10) Documentation regarding the useful life of efficiency improvements.

(11) Agreements with local agencies.

(12) Agreements with PACE solicitors and PACE solicitor agents.

(13) Enrollment records for PACE solicitors and PACE solicitor agents.

(14) Documentation of the background check of PACE solicitors and PACE solicitor agents.

(15) Documentation of monitoring PACE solicitor and PACE solicitor agent compliance, as required by section 1620.14(a)(1)(C) of these rules.

(16) Reports summarizing results of periodic reviews.

(17) Records of PACE solicitor agent training.

(18) Advertising.

(19) Procedures for handling complaints.

(20) Procedures for enrolling and terminating agents and solicitors.

(21) Procedures for determining a property owner's ability to pay.

(c) A program administrator must maintain financial statements in paragraph (1) for three years from the date of preparation.

(d) A program administrator must maintain the records in paragraphs (2), (3), (4), (5), (6), (7), (8), (9), and (10) for three years after the final assessment under the assessment contract is satisfied and extinguished.

(e) A program administrator must maintain agreements with local agencies in paragraph (11) during the term of the agreement plus three years.

(f) A program administrator must maintain records regarding solicitors and solicitor agents in paragraphs (12), (13), (14), (15), (16) and (17) for four years after the PACE solicitor or PACE solicitor agent is no longer enrolled.

(g) A program administrator must keep advertising in paragraph (18) for two years.

(h) A program administrator must keep all current procedures and must keep obsolete procedures for three years after revisions (paragraphs (19), (20), and (21)).

§ 1620.08. Complaint Processes and Procedures.

(a) Every program administrator shall establish and maintain a complaint process approved by the Commissioner under which a property owner may submit a complaint to the program administrator.

(1) The complaint process shall provide for adequate consideration, and appropriate resolution, of property owner complaints and resolution when appropriate.

(2) "Resolution" means the complaint has reached a final conclusion.

(b) Prior to the execution of the assessment contract, the program administrator shall notify the property owner of the availability of a process for complaints related to the PACE assessment.

(1) The notice shall include information on how a complaint may be submitted, including through an Internet website and by mail.

(2) The program administrator may accept complaints received by telephone.

(3) If a program administrator does not accept complaints by telephone, the program administrator shall implement a procedure intended to ensure that its complaint process provides access to persons unable to submit a complaint in writing or through the

Internet.

(4) A program administrator shall maintain a toll-free telephone number to answer property owner questions and inform property owners on how to submit a written complaint.

(5) The toll-free telephone number shall provide a property owner with the option of speaking with a live representative.

(c) The program administrator shall develop a form for property owners to submit complaints.

(d) The program administrator shall have a link to filing a complaint on the main page of its Internet website.

(1) The submission of an online complaint shall result in a copy of the complaint being transmitted back to an e-mail address provided by the property owner.

(a) (1) A program administrator shall provide a written acknowledgment within five calendar days of the receipt of a complaint.

(2) The acknowledgment shall advise the complainant of the following:

(A) That the complaint has been received.

(B) The date of receipt.

(C) The name and contact information of a single point of contact for the property owner who may be contacted about the complaint.

(e) The program administrator shall maintain a log of all complaints that includes the following information for each complaint:

(1) The date of receipt of the complaint.

(2) The name of the complainant.

(3) The complainant's address.

(4) The nature of the complaint.

(5) The nature of the resolution.

(6) The date of resolution.

(7) The name of the representative assigned to the complaint.

(f) A program administrator shall provide a complainant with a written response to a complaint that explains the reasons for the program administrator's resolution.

(g) A program administrator shall keep in its files all copies of complaints and responses for a period of five years after resolution.

(h) The complaint process shall require the program administrator to attempt to resolve complaints regarding PACE financing within 60 days.

(1) The program administrator shall maintain a record of the status of the complaint and, if applicable, the reason the complaint is outstanding more than 60 days.

(2) Each outstanding complaint shall have a status update no later than 30 days after the last status update, that identifies the specific action taken in the last 30 days to actively move the complaint to resolution.

(i) The complaint process shall include a requirement for expedited review for complaints involving delinquent assessments, foreclosures, and other imminent harm.

(j) Upon resolution of the complaint, the program administrator shall send a closing letter to the complainant that provides the following:

(1) PACE solicitor contact information.

(2) Sponsoring public agency contact information.

(3) Department of Business Oversight contact information for complaints.

(4) Contractors State License Board contact information for consumer complaints related to performance of the home improvement contract.

(k) The complaint process shall meet the linguistic and cultural needs of property owners.

(1) The process shall be designed with the intent of ensuring property owners have access to, and can fully participate in, the complaint process by providing assistance for those with limited English proficiency or with communication impairments, and those who may have difficulty understanding the terms of an assessment contract.

(2) Such assistance shall include, but is not limited to, translations of forms and correspondence, access to interpreters, and telephone relay systems and other devices that help disabled individuals communicate.

(l) If the complaint involves an issue of contractor workmanship and the contractor was (or should have been) a PACE solicitor enrolled by the program administrator, the program administrator shall verify all of the following:

(1) The efficiency improvements financed by the assessment contract were performed.

(2) The PACE solicitor installed the same products for which the PACE solicitor was paid.

(3) The efficiency improvements were completed.

(4) Any building permits were finalized.

(m) The complaint process must include a procedure for investigating complaints of fraud or forgery.

(n) A program administrator shall provide a property owner with records related to the property owner's assessment contract, including evidence supporting the energy savings representation, where applicable, and any related complaint records, within 15 days of a request.

(1) Nothing in this section shall restrict the ability of a property owner to obtain records through other lawful means.

Commented [BM1]: Energy savings underperformance has been a primary driver of property owner complaints to date. Providing the property owner with the PACE solicitor/agent's evidence supporting the energy savings representation (disclosed to the property owner prior to finance closing and maintained in the program administrator's books as set forth in 1620.03 section (f)) at the time of the complaint will go a long way to help resolve complaints based on energy savings underperformance.

§ 1620.09. Completion of Work.

(a) A program administrator shall obtain a copy of each home improvement contract from a PACE solicitor.

(b) Before providing the final payment on a home improvement contract for property secured by a PACE assessment, a program administrator shall obtain evidence from the PACE solicitor that every building permit required for the efficiency improvements under the home improvement contract has received final approval and been signed by a building inspector, as required by the local jurisdiction.

(c) If the financing is for a solar project that requires permission to operate from a utility company, the program administrator shall confirm that the property owner is able to obtain the necessary permission before providing final payment on the home improvement contract to the PACE solicitor.

§ 1620.10. Unfair Business Practices.

(a) The following activities constitute an unfair business practice by a program administrator, under Financial Code section 22061.

(1) Disclosing to a PACE solicitor or PACE solicitor agent the amount of PACE financing available to a property owner.

(2) Paying a PACE solicitor for unperformed work.

(3) Paying a PACE solicitor for an uninstalled product. For purposes of this paragraph, a warranty shall not constitute an uninstalled product.

(4) Paying a PACE solicitor for a product that materially differs in price from the product installed on the property, where the installed product costs less.

(5) Paying a PACE solicitor for work for which the solicitor has already received

payment from another source.

(6) Delaying the consummation of an assessment contract to postpone the property owner's obligation to pay the PACE assessments.

(b) A program administrator shall implement policies and procedures intended to ensure that neither a PACE solicitor nor a PACE solicitor agent does any of the following:

(1) Represents to a property owner that a PACE assessment may be repaid in any manner other than through the payment of property taxes.

(2) Represents to a property owner that the PACE program is a free or subsidized government program.

(3) Represents to a property owner that the PACE program is available to the property owner based on the property owner's age, race, ethnicity, or income status.

(4) Represents to a property owner that the property owner prequalifies for eligibility prior to the program administrator determining the property owner's ability to pay, as provided in Financial Code section 22687.

(5) Represents to a property owner that a home improvement is energy efficient unless scientific evidence generally accepted in the scientific community establishes the improvement is energy efficient.

(6) Represents to a property owner that a PACE assessment will result in a tax credit or tax benefit.

(7) Fails to complete the home improvement contract that is financed by the assessment contract.

(8) Represents to a property owner that a home improvement that is not an efficiency improvement may be financed through a PACE assessment, or otherwise

provided to a property owner who enters into an assessment contract.

(9) Represents to a property owner that the property owner will not be liable for the payment of the PACE assessments.

(10) Represents to the property owner that the assessment contract will transfer to the buyer upon the sale of the property.

(11) Misrepresents an increase in a property's market value as a result of the efficiency improvements.

(12) Participates in the evaluation of a property owner's ability to pay an assessment contract.

(13) Negotiates the terms of an assessment contract.

(14) Counsels a property owner on answers for the oral confirmation of key terms call, or the ability to pay determination.

(15) Misleads the property owner about the overall cost of the assessments.

(16) Suggests to the property owner that the payment may be made in monthly installments.

(17) Retaliates against a property owner for canceling the assessment contract during the three-day right to cancel period, including intimidating the property owner with hardship claims or threats.

(18) Charges higher prices for efficiency improvements than the regional market without economic justification.

(19) Includes home improvements not eligible for PACE financing in an assessment contract.

(20) Initiates assessment contracts with more than one pace administrator on the same property for the same efficiency improvements. This paragraph does not prevent a PACE solicitor or PACE solicitor agent from obtaining financing offers from more than one program administrator on behalf of a property owner, provided that the property owner only enters into one assessment contract to finance the efficiency improvements.

§ 1620.11. Solicitor Enrollment Standards or Processes.

(a) Every program administrator shall maintain a process for enrolling a PACE solicitor that complies with the requirements of this rule.

(1) A program administrator may not authorize a PACE solicitor or a PACE solicitor agent to solicit a property owner to enter into an assessment contract until the program administrator enrolls the PACE solicitor and PACE solicitor agent.

(b) The written enrollment agreement between the program administrator and the PACE solicitor shall include the following requirements:

(1) That the PACE solicitor maintains in good standing any necessary license from the Contractors State License Board.

(2) That the PACE solicitor complies with the laws regarding PACE programs, including those set forth in division 7 of the Streets and Highways Code, division 16 of the Public Resources Code, and division 9 of the Financial Code.

(3) The written agreement shall include the following terms:

(A) A PACE solicitor shall only offer a property owner an assessment contract for efficiency improvements approved under the PACE program.

(B) A PACE solicitor shall ensure that disclosures required by law or regulation are provided to property owners.

(C) A PACE solicitor may not directly or indirectly make any misrepresentations regarding PACE financing.

(D) A PACE solicitor may not begin work on a home improvement contract until the three-day right to cancel has passed.

(E) A PACE solicitor shall ensure a property owner receives a confirmation of key terms call prior to proceeding with work under a home improvement contract.

(F) A PACE solicitor shall be responsible for the actions of a PACE solicitor agent when the agent is acting on behalf of the PACE solicitor.

(G) A PACE solicitor shall require each PACE solicitor agent employed or retained by the PACE solicitor to undertake the training required by Financial Code section 22681.

(H) A PACE solicitor shall maintain a process for receiving and responding to property owner inquiries and complaints related to the assessment contract.

(I) A PACE solicitor shall notify the program administrator, in the manner provided by the program administrator, about complaints regarding the assessment contract.

(J) A program administrator shall prepare or approve all advertisements, marketing materials, and other information about the PACE program that is provided to property owners, including all documentation related to an assessment contract.

(K) A PACE solicitor shall maintain all advertising for at least 24 months.

(4) A PACE solicitor shall maintain a complaint process that meets the following requirements:

(A) The complaint process shall allow a property owner the opportunity to submit

a complaint related to an assessment contract by telephone, Internet and mail.

(B) A complaint is related to an assessment contract if:

(i) The complaint involves a representation that the efficiency improvements failed to perform as represented.

(ii) The complaint involves an issue related to the assessment contract.

(iii) The complaint involves representations made in the solicitation of the assessment contract.

(iv) The complaint involves the conduct of a PACE solicitor agent during the solicitation of an assessment contract.

(C) A property owner will receive a written acknowledgement of the receipt of the PACE complaint within 10 days which shall include the following.

(i) A single point of contact for the property owner, who may be a representative of the PACE solicitor, the program administrator, or the sponsoring public agency.

(ii) Contact information for the PACE solicitor, the program administrator, the sponsoring public agency, and the Department of Business Oversight.

(D) The complaint process shall require the timely written resolution of each PACE complaint.

(i) The written resolution shall notify the property owner of the ability to appeal the resolution to the program administrator if the property owner is unsatisfied with the resolution.

(E) The PACE solicitor shall notify the program administrator of each PACE complaint received, and provide a copy of the written resolution.

(F) If the complaint involves a representation made during the financing of an assessment contract, the PACE solicitor shall immediately refer the complaint to the program administrator for investigation and resolution.

(i) The PACE solicitor shall notify the consumer that the complaint was transferred to the program administrator, and provide a complaint reference number and point of contact.

(G)The program administrator shall intervene in investigating and resolving the complaint if the complaint resolution is unreasonably delayed, based on the facts of the complaint.

(c) A program administrator may, but is not required to, administer the complaint process on behalf of the PACE solicitor.

(1) A program administrator shall maintain records of the PACE solicitor's complaints and resolutions in the same manner as other books and records under rule 1620.07.

(2) The program administrator shall process complaints referred by a PACE solicitor in accordance with the program administrator's complaint process under rule 1620.08.

(d) A program administrator shall develop a process to evaluate publicly available information on a PACE solicitor to determine whether the sample size of information is statistically valid and provides reliable information on the expected future performance of a PACE solicitor and a PACE solicitor agent.

(1) To review readily and publicly available information with regard to each PACE solicitor, a program administrator shall establish and implement a process for reviewing the following.

(A) The Contractors State License Board's website.

(B) Consumer rating websites.

(C) The website of the Department of Business Oversight.

(D) Any other source identified by the program administrator, if economically feasible for the program administrator, such as subscription-based services or court records.

(2) The process established and maintained by the program administrator need not include a review of all publicly-available information, provided that the process is designed to include a review of a sufficient sampling of public sources of information that is likely to contain consumer feedback regarding the business practices of a PACE solicitor.

(3) The program administrator shall establish standards for evaluating public information obtained pursuant to this rule.

(4) The program administrator shall document the results of the review of publicly available information, and maintain the documentation in books and records as required by rule 1620.07.

(e) A program administrator shall notify the Commissioner of the enrollment of a PACE solicitor within 30 days of enrollment in the form required by the Commissioner, which may be in the form of an electronic transfer of data, and which may include personally identifying information.

§ 1620.12. Solicitor Agent Enrollment Standards or Processes.

(a) Every program administrator shall maintain a process for enrolling a PACE solicitor agent that complies with the requirements of this rule.

(b) The process for enrolling a PACE solicitor agent shall include a background check.

which may be accomplished through any of the following methods:

(1) The program administrator may rely on a background check conducted by the Contractors State License Board.

(2) The program administrator may utilize a third-party service that conducts employment background checks.

(3) The program administrator may establish a process to review the background of a PACE solicitor agent.

(c) If a program administrator establishes a process to review the background of a PACE solicitor agent, that process must meet the following requirements:

(1) The process must identify whether the PACE solicitor agent maintains a license or registration in good standing from the Contractors State License Board, or is otherwise exempt from, or is not subject to, licensure or registration.

(2) The process must be designed to identify whether the PACE solicitor agent has done any of the following:

(A) Been convicted of a crime as provided in subdivision (a)(1) of Business and Professions Code section 480.

(B) Engaged in any act involving dishonesty, fraud, or deceit as provided in subdivision (a)(2) of Business and Professions Code section 480.

(C) Engaged in any act that would constitute grounds for discipline under Financial Code section 22690.

(d) The enrollment process shall require the PACE solicitor agent completes the training required by Financial Code section 22681 and section 1620.17 of these rules prior to enrollment.

(1) A PACE solicitor agent shall complete the introductory training prior to soliciting a property owner to enter into an assessment contract.

(e) A program administrator may conditionally enroll a PACE solicitor agent if the program administrator complies with the following:

(1) The program administrator verifies that the PACE solicitor agent has applied for licensure or registration with the Contractors State License Board and is waiting for the processing of the registration and fingerprints.

(2) The program administrator independently conducts a background check of the PACE solicitor agent as provided in paragraphs (1) and (2) of subsection (b).

(3) The PACE solicitor agent has completed the introductory training required by Financial Code section 22681.

(f) A program administrator shall notify the Commissioner of the enrollment of a PACE solicitor agent within 30 days of enrollment in the form required by the Commissioner, which may be in the form of an electronic transfer of data, and which may include personally identifying information.

§ 1620.13. Enrollment Denial.

(a) A program administrator shall not enroll a PACE solicitor if as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds any of the following:

(1) A clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions.

(A) A clear pattern may be evidenced by more than one complaint regarding the PACE solicitor in the same geographical area that alleges deception, misrepresentation,

or omission of a material fact, or where the complaints contain information that suggests a pattern of dishonest business practices.

(B) In considering whether a clear pattern of a dishonest business practices exists, the program administrator may consider the volume of complaints relative to the size of the PACE solicitor, the egregiousness of the alleged conduct, the PACE solicitor's response to the allegations, and the PACE solicitor's subsequent resolution of the complaints.

(C) A program administrator shall keep in its books and records documentation regarding (i) the evaluation of consumer complaints against a PACE solicitor, and (ii) the rationale for the determination that the existence of more than one consumer complaint regarding dishonesty, misrepresentation, or omission of a material fact, with similar fact patterns in the same geographical area, does not constitute a clear pattern of a dishonest business practice.

(D) For purposes of establishing a clear pattern of consumer complaints about a PACE solicitor, complaints against a PACE solicitor agent employed or retained by a PACE solicitor, shall constitute complaints about the PACE solicitor.

(E) The acts of a PACE solicitor agent acting on behalf of a PACE solicitor shall not be considered when considering whether a clear pattern of consumer complaints is present, if all of the following conditions exist:

(i) The PACE solicitor did not know of past instances of the conduct giving rise to the complaint prior to the solicitation of the property owner, and did not recklessly disregard evidence that, upon investigation, would have revealed past instances;

(ii) The conduct giving rise to the complaint was not sanctioned or otherwise

expressly or implicitly authorized by the PACE solicitor; and

(iii) Upon receiving notice of the unauthorized conduct, the PACE solicitor took affirmative steps to remedy the harm caused by the conduct, and if warranted by the conduct, the PACE solicitor took timely steps to discontinue the engagement of the PACE solicitor agent in that capacity.

(2) A high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law.

(A) A high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law may be evidenced by the following:

(i) The PACE solicitor has made a false statement of a material fact to the program administrator.

(ii) The PACE solicitor has advised or knowingly permitted a property owner to make a false statement of a material fact to the program administrator.

(iii) The PACE solicitor, or an individual with control over the operations of the PACE solicitor, has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act and been held liable in a civil action, involving dishonesty, fraud, or deceit.

(iv) The PACE solicitor has had its license revoked by the Contractors State License Board or, within the past 36 months, has been disciplined by the Contractors State License Board for an act that directly resulted in harm to the public. This paragraph shall not include disciplinary action for failing to renew a license, failure to maintain books and records, failing to maintain a bond, failing to maintain insurance, or failing to maintain a minimum net worth.

(v) The PACE solicitor has a disciplinary action against it by another regulatory agency for fraud, misrepresentation, or deceit.

(vi) The PACE solicitor has engaged in elder abuse or vulnerable population abuse.

(3) A clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor.

(A) A clear pattern of a PACE solicitor failing to timely receive and respond to property owner complaints regarding the PACE solicitor may be established by actions by a PACE solicitor such as failing to record multiple complaints; failing to respond to multiple complainants over a sustained period of time, notwithstanding repeated contact by the complainants; or unreasonably delaying the response to, or investigation of, multiple complaints.

§ 1620.14. Monitoring Compliance.

(a) A program administrator shall establish and maintain a process to promote and evaluate the compliance of a PACE solicitor and PACE solicitor agent with the requirements of applicable law.

(1) The process shall include a risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of Financial Code section 22689, subdivision (a).

(A) A “risk-based, commercially reasonable procedure” includes, but is not limited to, a procedure that selects a sample of solicitors and a sample of efficiency improvements, based on factors or algorithms that are intended to identify noncompliance.

B A program administrator may test the compliance of PACE solicitors and PACE solicitor agents by posing questions to property owners during the oral confirmation of key terms required under Streets and Highways Code section 5913.

C A program administrator shall maintain the results of the compliance monitoring and testing in its books and records, as required by section 1620.07 of these rules.

(2) The process shall include a procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents.

A The regular monitoring of the license or registration status of a PACE solicitor or PACE solicitor agent does not require continuous monitoring.

B Except as provided in paragraph (3), a program administrator shall confirm the licensure or registration status of a PACE solicitor or PACE solicitor agent at the following times:

(i) When a PACE solicitor or PACE solicitor agent submits a property owner's application for an assessment contract to the program administrator.

(ii) When a program administrator approves the advertising of a PACE solicitor or PACE solicitor agent.

(iii) When a program administrator processes a complaint about a PACE solicitor or PACE solicitor agent.

(iv) When a program administrator enrolls a PACE solicitor or PACE solicitor agent.

(3) A program administrator that has a process for routinely monitoring the licensure or registration status of a PACE solicitor or PACE solicitor agent not less than once

every 30 days need not confirm licensure or registration status in the circumstances described in paragraph (2).

§ 1620.15. Periodic Review Standards.

(a) The periodic review of a PACE solicitor shall include the following.

(1) An analysis of whether the PACE solicitor maintains the minimum qualifications of Financial Code section 22680.

(2) An analysis of whether the PACE solicitor is complying with the terms of the written enrollment agreement between the program administrator and the PACE solicitor.

(3) Confirmation that the PACE solicitor continues to maintain in good standing a license from the Contractors State License Board.

(4) An analysis of whether the PACE solicitor has a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions. For purposes of this review, a clear pattern may be established by more than two complaints about a PACE solicitor in the same geographical area, or where the facts of the complaint indicate deception, misrepresentation, or omission of a material information.

(5) An analysis of whether the PACE solicitor has a clear pattern of failing to respond to complaints timely. For purposes of this review, a clear pattern may be established where three or more property owners, or 10 percent or more of the property owners served by the PACE solicitor, in the same geographical area, did not receive a reply to a written complaint, including a complaint received by e-mail, for 90 or more days. Acknowledging receipt of the complaint, through letter, e-mail, or phone call, shall

constitute a reply, provided the PACE solicitor's records indicate the PACE solicitor has actively investigated the matter since receiving the complaint. A clear pattern may also be established where the PACE solicitor fails to record multiple complaints; fails to respond to multiple complainants over a sustained period of time, notwithstanding repeated contact by the complainants; or unreasonably delays the response to, or investigation of, multiple complaints.

(6) An analysis of whether the PACE solicitor is complying with the procedural requirements of responding to consumer complaints instituted by the program administrator.

(7) A review of whether the individuals employed or retained by the PACE solicitor to solicit a property owner to enter into an assessment contract are enrolled by the program administrator as PACE solicitor agents.

(8) Confirmation that each PACE solicitor agent has completed the training required under Financial Code section 22681.

(9) A review of advertising related to PACE conducted by the PACE solicitor for compliance with the law.

(10) An analysis of the controls maintained by the PACE solicitor to ensure a PACE solicitor agent complies with the law that governs soliciting a property owner to enter into an assessment contract, including such controls as written procedures, supervision, reporting, and resolution of complaints.

(11) An analysis of the oral confirmation of key terms conducted with property owners solicited by the PACE solicitor or its agents, for patterns suggesting potential misrepresentations or omissions.

(12) An analysis of whether the PACE solicitor provides a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner.

(13) An analysis of whether the PACE solicitor commences work under home improvement contracts prior to the expiration of the right to cancel period set forth in subdivision (b) of Streets and Highways Code section 5897.16.

(14) If work is commenced prior to the expiration of the right to cancellation period, an analysis of whether the PACE solicitor is in compliance with Streets and Highways Code section 5940.

(b) In conducting a periodic review, the program administrator shall review a random sampling of PACE solicitor job files for home improvement contracts financed through PACE assessments to evaluate whether the PACE solicitor is in compliance with the requirements for financing through PACE assessments.

(1) The review shall include an analysis of whether the PACE solicitor is only using PACE financing for authorized efficiency improvements.

(2) The review shall confirm that the home improvement contract with the property owner covers the same work for which the program administrator paid the PACE solicitor.

(3) The review shall confirm that efficiency improvements installed are of the same quality and grade as those represented to the program administrator.

(c) A program administrator shall prepare a report summarizing the periodic review of the PACE solicitor, and retain this report in its books and records in accordance with section 1620.07 of these rules.

(1) For each area of review, the report shall confirm the review was conducted, and indicate whether or not the review resulted in any findings.

(2) The program administrator shall review the findings in the report to determine whether the PACE solicitor and the PACE solicitor agents continue to maintain the minimum qualifications under section 22680, or have violated the division, for the purpose of canceling enrollment.

(3) The program administrator shall share the findings with the PACE solicitor and require corrective action where warranted.

(4) The program administrator shall follow up to confirm required corrective actions are taken, and procedures are instituted to address shortcomings.

§ 1620.16. Canceling Enrollment.

(a) A program administrator shall establish and implement a process for canceling the enrollment of a PACE solicitor or PACE solicitor agent.

(b) The process shall include the following:

(1) Tracking the enrollment for each PACE solicitor and PACE solicitor agent.

(2) Notifying the Commissioner of any change to the enrollment status of each PACE solicitor and PACE solicitor agent.

(A) A program administrator shall notify the Commissioner of a change to the enrollment status of each PACE solicitor and PACE solicitor agent either by paper or through an electronic method, as determined by the Commissioner.

(B) The Commissioner may require a program administrator to notify the Commissioner of changes in status daily through an automated electronic file transfer, or may require continuous updates in real time, or may require notification on a periodic

schedule less frequent than real time or daily.

(C) If the enrollment of a PACE solicitor or PACE solicitor agent is canceled, the program administrator shall notify the Commissioner using one of the following categories to explain the reason for the cancellation.

(i) Demand to Discontinue Solicitation Activity: the Commissioner has demanded that the PACE solicitor or PACE solicitor agent discontinue solicitation activity under Financial Code section 22690, subdivision (c)(1)(C)(iii).

(ii) Demand to Stop Violating Division: the Commissioner has demanded that the PACE solicitor or PACE solicitor agent stop violating a provision of the Finance Lending Law under Financial Code section 22690, subdivision (c)(1)(C)(ii), and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(iii) Demand for Corrective Action: the Commissioner has demanded corrective action under Financial Code section 22690, subdivision (c)(1)(C)(i), and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(iv) Desist and Refrain Order: the Commissioner has ordered the PACE solicitor or PACE solicitor agent to desist and refrain from engaging in business as a PACE solicitor or PACE solicitor agent, or further violating the California Financing Law, or the rules thereunder, under Financial Code section 22690, subdivision (c)(2)(A), and where not ordered by the Commissioner, the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(v) Bar Order: the Commissioner has barred a PACE solicitor or PACE solicitor agent from directly or indirectly soliciting a property owner to enter into an assessment contract, under Financial Code section 22690, subdivision (c)(2)(B), and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(vi) Suspension Order: the Commissioner has suspended, for a period not exceeding 12 months, a PACE solicitor or PACE solicitor agent from directly or indirectly soliciting a property owner to enter into an assessment contract, under Financial Code section 22690, subdivision (c)(2)(B).

(vii) Discontinuance Order: the Commissioner has ordered the PACE solicitor or PACE solicitor agent to discontinue an unsafe or injurious practice under Financial Code section 22690, subdivision (d), and the program administrator, PACE solicitor, or PACE solicitor agent has cancelled enrollment of the PACE solicitor or PACE solicitor agent.

(viii) Failure to Maintain Minimum Qualifications: A program administrator has found that a PACE solicitor or PACE solicitor agent has failed to maintain the minimum qualifications under Financial Code section 22680, subdivision (f) and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(ix) Violation of Division: A program administrator has found that a PACE solicitor or PACE solicitor agent has violated a provision of the California Financing Law under Financial Code section 22680, subdivision (f), and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor

or PACE solicitor agent.

(x) Voluntary Withdrawal by Solicitor or Agent: A PACE solicitor or PACE solicitor agent has voluntarily withdrawn from enrollment, and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(xi) Failure to Comply with Terms of Enrollment Agreement with Program Administrator: A program administrator has found that a PACE solicitor or PACE solicitor agent has failed to comply with the terms of the enrollment agreement with the program administrator, and the program administrator, PACE solicitor, or PACE solicitor agent has canceled enrollment of the PACE solicitor or PACE solicitor agent.

(xii) Termination by Program Administrator for Business Reasons: The program administrator has disenrolled a PACE solicitor or PACE solicitor agent for reasons unrelated to the business practices of the PACE solicitor or PACE solicitor agent.

(c) A program administrator shall notify a sponsoring public agency and the Contractors State License Board of the cancelation of a PACE solicitor or PACE solicitor agent when the cancelation is for any reason other than “Voluntary Withdrawal by Solicitor or Agent,” or “Termination by Program Administrator for Business Reasons.”

§ 1620.17. Education Program.

(a) The training program for PACE solicitor agents established and maintained by the program administrator shall comply with the requirements of this rule.

(b) A program administrator may establish a training program by acquiring a training program from a third party.

Commented [BM2]: Should DBO clarify whether such training shall be required for each staff member of a PACE solicitor/agent that will be representing the firm in PACE solicitations with property owners, or rather just one staff member per PACE solicitor/agent company?

(1) A program administrator that acquires a training program from a third party must verify that the training program meets the minimum requirements of the California Financing Law and these rules.

(2) A program administrator may arrange with a third party to provide training to PACE solicitor agents.

(3) A program administrator that provides training to a PACE solicitor agent through a third party remains responsible for ensuring that each PACE solicitor agent completes the required six hours of education within three months of completing the program administrator's enrollment process.

(4) A program administrator must obtain approval from the Commissioner for a training program provided by a third party prior to using the training program.

(5) Upon notice to the Commissioner and approval by the Commissioner, a program administrator may use a training program that has been approved by the Commissioner for use by a different program administrator, provided that the program administrator establishing the training program consents to its use.

(c) Each program administrator shall keep evidence in its books and records, under rule 1620.07, that the Commissioner has approved the use of its training program.

(d) A PACE solicitor agent that has completed a training program for a program administrator within the past 48 months need not complete training for another program administrator, provided that the program administrator providing the training has consented to its use by the other program administrator.

(1) A program administrator shall keep in its books and records evidence, under rule 1620.07, that a PACE solicitor agent enrolled by the program administrator has

completed the required training, including the date of completion.

(2) Upon completion of a training program, a program administrator shall provide a PACE solicitor agent a certificate that documents completion of the training program, the date of completion, and the identity of all the program administrators for whom the certificate is applicable.

(3) A program administrator seeking to enroll a PACE solicitor agent who completed a training program more than 48 months ago shall require the PACE solicitor agent to complete the updated training on recent developments required by subsection (f).

(e) Each program administrator shall annually provide each enrolled PACE solicitor agent with information on changes to the PACE program and any changes to previous training material.

(1) The program administrator shall require the PACE solicitor agent to confirm receipt and review of the updated material prior to accepting a property owner's application for an assessment contract from the PACE solicitor agent.

(f) Every four years a program administrator shall require a PACE solicitor agent to complete a training update which shall include information on recent developments to PACE programs and reminders about practices that constitute unfair business practices under rule 1620.10. The length of the updated training shall not be less than is necessary to provide the updated information and reminders, and a PACE solicitor agent shall receive a certificate upon completion with the date of completion and the identity of all of the program administrators for whom the certificate is applicable.

(g) The six hours of education provided by the program administrator shall include the following topics and information:

- (1) PACE programs and assessment contracts. This module must include background on PACE programs that explains the following.
- (A) An explanation of PACE programs and assessments.
 - (B) The origin of PACE programs.
 - (C) The public benefits behind PACE programs.
 - (D) The consequences of the first lien position.
 - (E) The role of sponsoring public agencies.
 - (F) The treatment of PACE assessments by federal housing finance agencies.
 - (G) The risks to property owners.
 - (H) The potential barriers to property transfers.
 - (I) The potential concerns of mortgagees.
 - (J) The potential requirements of mortgagees.
 - (K) The requirements under division 7 of the Streets and Highways Code.
 - (L) The requirements under the California Financing Law, including the following:
 - (i) Enrollment
 - (ii) Training
 - (iii) Solicitation
 - (iv) Underwriting
 - (v) Advertising limitations
 - (vi) Complaints
 - (vii) Unfair business practices

(2) PACE disclosures. This module must provide training on the required financial disclosures when a property owner finances efficiency improvements through an assessment contract. This disclosure training must include information on the following.

- (A) Financial disclosures
- (B) Repayment terms
- (C) The assessment process
- (D) Interest on assessment contracts
- (E) Fees on assessment contracts
- (F) Penalty and interest for late payments

(3) Ethics. This module must include information on the following topics.

- (A) Conflicts of interest
- (B) Transparency
- (C) Prohibition on incentives
- (D) Cash vs. PACE pricing
- (E) Vulnerable populations
- (F) Liability

(4) Fraud prevention. This module must provide information on the following potential areas of misrepresentation or omissions.

- (A) Government sponsorship
- (B) Tax benefits
- (C) Subsidies
- (D) Energy savings
- (E) Repayment obligation

(F) Bait and switch tactics

(G) Refinancing

(H) Home sales

(5) Consumer protection. This module must provide information on the following topics.

(A) Fair trade practices

(B) Areas of liability

(i) Regulatory

(ii) Private actions

(C) Prohibited activities

(6) Nondiscrimination. This module must provide information on the following topics.

(A) Vulnerable populations

(B) Protected classes

(C) Unruh Civil Rights Act

(7) Senior financial abuse. This module must provide information on the following topics.

(A) Activities that constitute senior financial abuse

(B) Special protections in law

(C) Mandatory reporters

(D) Ways to avoid targeting seniors

(E) How to report suspected abuse

(h) A program administrator that does not enter into assessment contracts for efficiency improvements on residential real property with four or fewer units does not need to

comply with this section.

§ 1620.19. Annual Report Data.

(a) A program administrator shall by March 15 of each year report the following information for activity from the prior calendar year:

(1) The aggregate information required under Streets and Highways Code section 5954.

(2) The aggregate information required by section 10085 of California Code of Regulations, title 4.

(3) The following additional information:

(A) The number of foreclosure actions on PACE property reported to the program administrator during the prior calendar year. Include the year of the assessment contract, the original amount of the assessment contract, the zip code, the amount owed upon foreclosure, and the amount recovered through foreclosure.

(B) Information regarding complaints submitted by property owners, including the total number of complaints received in the prior calendar year, the number received in the prior calendar year by subject, the total number of complaints awaiting resolution at the end of the year, and the total number of complaints resolved during the prior calendar year.

(C) The percentage of property owners entering into a PACE assessment that have outstanding mortgage debt.

(D) The average and median percentages of the market value of property that is encumbered by mortgage-related and PACE assessments, for all assessment contracts

entered into during the prior calendar year.

(E) The number of PACE solicitors, and the number of PACE solicitor agents, enrolled by the program administrator as of December 31.

(F) The number of PACE solicitors and PACE solicitor agents, respectively, enrolled during the prior year, withdrawn from enrollment during the prior year, suspended during the prior year, and terminated during the prior year.

(G) The number of assessment contracts paid in full during the prior calendar year as a result of a residential mortgage refinance, and as a result of a property sale.

(H) The title changes for properties with PACE assessments during the prior year that did not result in the payoff of an assessment contract.

(I) For assessment contracts entered into the prior calendar year, the total number of assessment contracts with interest rates (i) at or below 2 percent per year; (ii) above 2 percent but at or below 4 percent per year.; (iii) above 4 percent but at or below 6 percent per year; (iv) above 6 percent and at or below 8 percent per year; (v) above 8 percent and at or below 10 percent per year; (vi) above 10 percent and at or below 12 percent per year; (vii) above 12 percent and at or below 15 percent per year; (viii) above 15 percent and at or below 20 percent per year; and (ix) above 20 percent per year.

(J) The average and median annual income of property owners entering into an assessment contract the prior year, by zip code.

(K) The average and median term of the assessment contracts entered into in the prior year, in years.

(L) The number of PACE assessments that were funded and recorded under the emergency procedures in Financial Code section 22687, subdivision (e) the prior year,

by zip code, and the number of HVAC systems, boilers, or other temperature regulation systems funded not in the case of emergency or immediate necessity, by zip code.

(M) The number of PACE assessments that were funded where evidence supporting any energy savings representations were provided to the property owner.

(NM) For each PACE assessment 12 months or more delinquent on Dec 31 of the prior year, provide the following information:

(i) The number of PACE assessments above the 97 percent cap on total PACE and mortgage-related debt at the time the assessment contract was entered into; the number of PACE assessments at or below the 97 percent cap on total PACE and mortgage-related debt, but above 87 percent, at the time the assessment contract was entered into; and the number of PACE assessments where the PACE and mortgage related debt of the property owner was below 87 percent of the value of the property at the time the assessment contract was entered.

(ii) The number of PACE assessments for which an automated valuation model was used to determine the market value of the property subject to the PACE assessment; the number of PACE assessments for which an appraisal was conducted to determine the market value of the property subject to the PACE assessment; and the number of PACE assessments where a property valuation was not obtained.

(iii) The number of PACE assessments involving a case of emergency or immediate necessity under Financial Code section 22687, subdivision (e), where the program administrator did not determine and consider the current and reasonably expected income or assets of the property owner prior in accordance with Financial Code section 22687, subdivision (b).

(iv) The average and median residual income of the property owner upon entering into the assessment contract, broken down as follows: (1) the average and median for a one-person household; (2) the average and median for a two-person household; (3) the average and median for a three-person household; (4) the average and median for a four-person household; and (5) the average and median for a household of five or more persons.

~~(ON)~~ Updates of information on officers, directors, managing members, or other key personnel, and information on the gross income of the program administrator for purposes of the annual assessment under Financial Code section 22107.

§ 1620.20. Underwriting General Standards.

(a) Program administrators shall use forms and documents written in plain English (or the property owner's primary language) and in a font size and typeface that promote readability.

(b) A program administrator shall provide a property owner with a copy of the property owner's application and all forms and documents related to the transaction, including evidence supporting the energy savings representation, where applicable.

§ 1620.21. Property Owner Protections.

(a) A program administrator shall disclose to a property owner the market -value determination at the time of the disclosure of the Financing Estimate and Disclosure -in Streets and Highways Code section 5898.17.

(b) A program administrator shall implement and maintain a firewall between -the persons making the good faith determination that the property owner has a -reasonable ability to pay the annual payment obligations for a PACE assessment and -the following:

(1) The persons making the determination on whether to approve -funding.

(2) PACE solicitors and PACE solicitor agents participating in the -transaction.

(3) Information on the status of any other part of the assessment -contract application or the home improvement contract.

(c) A program administrator shall not compensate any person involved in determining a property owner's ability to pay the PACE assessment annual obligations or involved in approving the funding of an assessment contract based on the outcome of any ability to pay or funding decision.

§ 1620.22. Property Owner Income.

(a) A program administrator must do both of the following: (1) ask open-ended questions during the confirmation of key terms call to confirm income and identify a property owner's sources of income, and (2) determine the reasonably expected income and assets of the property owner using reasonably reliable third-party records.

(b) The reasonable good faith determination of whether a property owner has a reasonable ability to pay the annual assessment shall be made and documented independently from any statement by a property owner regarding whether the property owner has the ability to pay the annual payment obligations.

(c) In determining a property owner's current or reasonably expected income, the following principles apply.

(1) The examples of the records that a program administrator may use to verify a property owner's income or assets in subdivision (b)(1) of Financial Code section 22687 are not exhaustive.

(2) A program administrator shall determine that a property owner has a stable and reliable flow of income.

(3) A program administrator should ordinarily request records that reflect two years of income.

(A) A program administrator may make a reasonable good faith determination that a property owner has a reasonable ability to pay the annual payment obligations without records of two years of income if factors suggest the determination may be made with other records establishing a stable and reliable flow of income.

(4) Temporary sources of income are sources that are expected to end within three years, and should not be included in determining income.

(5) Rental income may be included in determining income if the property is other than the residence of the property owner, and records establish that the property has been continuously rented for two or more years.

(6) A program administrator shall not rely solely upon the representation of the property owner in determining the income of the property owner.

(7) A program administrator shall not determine the income of a property owner based on records or data that is not specific to the property owner.

(1) A program administrator may include estimated energy savings in their good faith determination that a property owner has a reasonable ability to pay the annual payment obligations provided evidence supporting the energy savings representation has been prepared by a qualified third-party, independent of the PACE solicitor or PACE solicitor agent, and disclosed to the property owner.

§ 1620.23. Other Assets.

(a) A program administrator may rely on a property owner's assets for the payment of a nonroutine, nonrecurring, or atypical obligation such as the following.

Commented [BM3]: For DBO consideration relative to the concern that ability to pay underwriting may have the unintended consequence of excluding low- and moderate income (LMI) households that often pay a disproportionate percentage of their income toward utility costs. Provided a reasonable estimate of the energy savings that will accrue to the property owner as a result of the efficiency improvements is prepared by a qualified independent party, such LMI families may have the opportunity to lower their energy cost burden via the benefits of PACE.

(1) To meet the first payment obligation.

(2) To meet a one-time increase in an impound contribution.

(3) To maintain a reserve amount available for unexpected income and expense variations.

(b) A program administrator need not verify and consider assets if not relied upon in order to determine a property owner's ability to pay the PACE assessment annual payment obligations.

§ 1620.24. Basic Household Living Expenses.

In making a reasonable estimate of basic living expenses, a program administrator shall additionally obtain information from a property owner on the property owner's expenses related to child care payments, medical expenses, ~~and caregiving expenses, and utility expenses for electricity, gas, water, sewage and telecommunications.~~ If the program administrator relies on a recognized standard formula for estimating basic living expenses based on household size and region, the program administrator shall add to the amount the actual expenses of the property owner for child care payments, medical expenses, and caregiving expenses.

§ 1620.25. Emergency.

(a) The financing of a heating, ventilation, and air conditioning (HVAC) system, boiler, or other system whose primary function is temperature regulation in a home is an emergency or immediate necessity only if the efficiency improvement is installed during a season and in a climate where heating or air conditioning is necessary.

(b) A program administrator may not fund the installation of a product whose primary function is not temperature regulation under the provisions for cases of emergency or

immediate necessity in Financial Code section 22687, subdivision (e).

(c) The prohibition in Streets and Highways Code section 5926 against charging a different price for a project financed by a PACE assessment is not waived in the case of emergency or immediate necessity.

(d) A waiver of the right to cancel under subdivision (e)(5) of Financial Code section 22687 shall be in the same language as the oral confirmation of key terms under Streets and Highways Code section 5913.

§ 1620.26. Responsible for the Difference.

If a program administrator is responsible for the difference between the determination of a property owner's ability to pay the annual PACE obligations and the actual amount financed by the property owner, the following shall apply.

(a) A program administrator may prepay the assessment contract for the amount of the difference.

(1) If a program administrator proceeds under this paragraph, the property owner shall not be subject to any additional recording or other fees for the transaction, including the recording of documents.

(2) The property owner shall receive a revised Financing Estimate and Disclosure as set forth in Streets and Highways 5898.17.

(b) A program administrator may pay the amount of the difference directly to the property owner.

§ 1620.27. Automated Valuation Model.

(a) A program administrator shall maintain in its books and records, under rule 1620.07, evidence documenting the confidence scores and estimated values for all of the

automated valuation models used to derive the market value of each property.

(b) The selection of a property value with the lowest standard deviation shall meet the standard of determining the property value with the highest confidence score.

§ 1620.28. Useful Life of Improvement.

(a) A program administrator shall maintain documentation of the useful life of the efficiency improvements in its books and records in accordance with section 1620.07 of these rules.

(b) The documentation shall include source(s) of the standards or criteria used to determine the useful life.

(c) The source(s) of the standards or criteria used to determine the useful life of efficiency improvements shall be based on credible third-party sources, e.g. the U.S. Department of Energy, the U.S. Environmental Protection Agency, American Society of Heating, Refrigerating and Air Conditioning Engineers, and equipment manufacturer warranty documentation.

(d) The term of the assessment contract shall not exceed the estimated useful life of the efficiency improvement to which the greatest portion of funds disbursed under the assessment contract is attributable.

§ 1620.29. Commercially Reasonable.

The verification of criteria for submitting, presenting, or otherwise approving for recordation an assessment contract is “commercially reasonable and available” in the following circumstances.

(a) The verification relied on public records, including property tax records, county assessor records, court filings, and information made available on government

websites.

- (b) The verification relied on information supplied in credit reports prepared by national credit reporting agencies.
- (c) The verification relied on the market value of property determined in compliance with subdivision (a) of Financial Code section 22685.
- (d) The verification relied on mortgage statements.
- (e) Where information was not reasonably available through an independent source, the verification relied on the representation of the property owner.

§ 1620.30. Application for a Program Administrator License.

(a) A program administrator shall provide the general information required by section 1422 of these rules for a license under the California Financing Law, except that a program administrator shall not provide the information related to lending or brokering a loan.

(b) Applicants for a program administrator license shall submit the following additional documents with an application for a license under the California Financing Law:

(1) A copy of each agreement between the applicant and a public agency or sponsoring public agency that authorizes the applicant to administer a PACE program on behalf of a public agency.

(2) A copy of the applicant's agreement(s) with PACE solicitors.

(3) A copy of the applicant's internal complaint procedures.

(4) A copy of the applicant's procedures for enrolling PACE solicitors and PACE solicitor agents.

(5) A copy of the applicant's training program for PACE solicitor agents.

(6) For applicants engaged in business on or before January 1, 2019, evidence

demonstrating compliance with the ability-to-pay provisions in Financial Code sections 22686 and 22687.

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