

NOTICE OF RULEMAKING ACTION
TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT

NOTICE IS HEREBY GIVEN (Government Code Section 11346.5, Paragraph (a)(1))

The Commissioner of the Department of Business Oversight (Department) proposes to make the following changes in subchapter 6 of title 10, chapter 3 of the California Code of Regulations: amend sections 1404, 1408, 1409, 1409.1, 1411, 1422, 1422.4, 22.4.5, 1422.5, 1422.6.2, 1422.7.1, 1422.9, 1422.10, 1422.12, 1423, 1424, 1425, 1426, 1437, 1550, and 1552; rename subchapter 6; adopt section 1422.5.1; and adopt article 15, including sections 1620.01, 1620.02, 1620.02.1, 1620.03, 1620.05, 1620.06, 1620.07, 1620.08, 1620.10, 1620.11, 1620.12, 1620.13, 1620.14, 1620.15, 1620.16, 1620.17, 1620.19, 1620.21, 1620.22, 1620.25, 1620.27, 1620.28, and 1620.29. The proposed sections relate to the implementation of 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 requires a program administrator that administers a Property Assessed Clean Energy (PACE) program on behalf of a public agency to be licensed by the Commissioner of Business Oversight (Commissioner) under the renamed California Financing Law, beginning January 1, 2019. The proposed sections also provide the Commissioner with authority to transition 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.

AUTHORITY (Government Code Section 11346.5, Paragraph (a)(2))

The Department proposed this regulatory action under the authority vested in Financial Code section 22150.

REFERENCE (Government Code Section 11346.5, Paragraph (a)(2))

The Department proposes this regulatory action to implement, interpret, and make specific Business and Professions Code sections 31, 494.5, 17900, 17910, 17913, and 17926; Civil Code sections 1633.7, 1798.17, 1798.18, and 1798.24; Family Code section 17520; Financial Code sections 331, 331.5, 22000, 22001, 22017, 22018, 22100, 22100.5, 22101, 22101.5, 22102, 22103, 22104, 22105, 22105.2, 22105.3, 22105.4, 22106, 22107, 22108, 22109, 22112, 22153, 22154, 22156, 22157, 22158, 22159, 22161, 22162, 22163, 22164, 22165, 22166, 22170, 22680, 22681, 22682, 22683, 22684, 22685, 22686, 22687, 22689, 22690, 22692, 22700, 22709, and 22714; Government Code section 7473; Penal Code section 11077.1; Streets and Highways Code sections 5898.16, 5898.17, 5913, 5925, 5926, and 5940; and chapter 29.1 of part 3 of division 7 of the Streets and Highways Code.

INFORMATIVE DIGEST (Government Code Section 11346.5, Paragraph (a)(3))

A. PACE Program Administrators

A public agency¹ may authorize public agency officials and property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.² These arrangements are commonly known as Property Assessed Clean Energy (PACE) programs. Existing law authorizes a private entity to administer a PACE program on behalf of, and with the written consent of, a public agency.

On October 4, 2017, the Governor signed into law AB 1284 (Dababneh, Chapter 475, Statutes of 2017), which renamed the “California Finance Lenders Law” the “California Financing Law,” effective immediately, and which generally requires a private entity that administers a PACE program on or behalf of a public agency to be licensed by the Commissioner of Business Oversight under the renamed California Financing Law, beginning January 1, 2019. The private entities are defined as “program administrators.” AB 1284 amended the California Financing Law to establish licensing requirements and standards for program administrators. The California Financing Law is administered by the Department.

AB 1284 requires a program administrator to comply with licensure requirements that are the same as those for a finance lender or broker already subject to licensure under the California Financing Law, such as the location of its business, maintenance and preservation of its records, reporting, including filing an annual report under oath, prohibiting making false or misleading statements, and advertising.

In the conduct of their business, program administrators typically make PACE financing available to property owners through general contractors and other third parties who are arranging to perform energy and water upgrades for property owners. AB 1284 defines these third parties as “PACE solicitors” when they are soliciting property owners to enter into contracts for PACE financing (defined as “assessment contracts”). The individuals who act on behalf of the PACE solicitors and solicit property owners are defined as

¹ Streets and Highways Code section 5898.20, subparagraphs (c)(3)(A) through (C) provide that, for financing the installation of water efficiency improvements, “public agency” means a city, county, city and county, municipal utility district, community services district, sanitary district, sanitation district, or water district; for financing the installation of distributed generation renewable energy sources or energy efficiency improvements, “public agency” means a county, city, city and county, or a municipal utility district, an irrigation district, or public utility district that owns and operates an electric distribution system; and for financing the public improvements, “public agency” means a city as defined in Section 5005. The term as used in this Notice of Rulemaking Action is intended to have the same meaning.

² A voluntary contractual assessment on property may be authorized pursuant to paragraph (2) of subdivision (a) of section 5898.20 of the Streets and Highways Code; a voluntary contractual assessment or a voluntary special tax on property may be levied to finance the installation of distributed general renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements pursuant to a chartered city’s constitutional authority under section 5 of article XI of the California Constitution; and a special tax on property may be authorized pursuant to subdivision (b) of section 53328.1 of the Government Code. For simplicity, the reference to “contractual assessments” includes all of these.

“PACE solicitor agents.” Operative January 1, 2019, AB 1284 requires a program administrator to establish and maintain a process for the enrollment of a PACE solicitor and a PACE solicitor agent, including requiring a PACE solicitor or a PACE solicitor agent to meet specified minimum background checks, and prohibits a program administrator from enrolling a PACE solicitor or a PACE solicitor agent if the program administrator makes specified findings. The bill requires a program administrator to establish and maintain a process to promote and evaluate the compliance of a PACE solicitor and a PACE solicitor agent with applicable law, and to establish and maintain a process to cancel the enrollment of a PACE solicitor or PACE solicitor agent who fails to meet minimum qualifications. AB 1284 also requires a program administrator to establish and maintain a training program for PACE solicitor agents, in accordance with certain requirements.

In addition to the licensing and oversight provisions in AB 1284, commencing on April 1, 2018, the bill prohibits a program administrator from approving an assessment contract for funding and recording by a public agency unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the “PACE assessments,” subject to specified requirements and procedures.³

This rulemaking action proposes amending and enacting rules to implement AB 1284. This rulemaking action makes conforming amendments to existing rules under the California Financing Law to account for the name change and the regulatory oversight of program administrators, PACE solicitors, and PACE solicitor agents. It further adds a new article to the regulations that is solely applicable to the activities of program administrators, PACE solicitors, and PACE solicitor agents. The new article contains new sections which do the following:

- Add new definitions related to PACE financings;
- Clarify persons excluded from licensing definitions;
- Require employees be familiar with regulatory requirements;
- Clarify requirements for translated documents;
- Set forth requirements related to advertising;
- Require disclosures;
- Define the books and records to be maintained;
- Set forth requirements for processing complaints;
- Provide examples of prohibited deceptive dealings and misleading statements;
- Implement PACE solicitor and PACE solicitor agent enrollment standards;
- Set forth standards for monitoring compliance;
- Set forth standards for periodic reviews;
- Set forth requirements for canceling enrollment;
- Set forth requirements for education programs;
- Set forth requirements for annual reports;
- Set forth standards regarding determinations of a property owner’s ability to pay;
- Set forth standards for determining property owner income;
- Set forth conditions on emergency improvements;
- Require documentation of the useful life of improvements; and

³ A “PACE assessment” is defined as a voluntary contractual assessment, voluntary special tax, or special tax, as described in subdivisions (a), (b), and (c) of section 26054 of the Public Resources Code.

- Set forth guidance on meeting the commercially reasonable standard for evaluating PACE financing applications.

The broad objectives of the regulations are to protect property owners who are offered PACE financing from deception, misrepresentations, or misunderstandings, to promote transparency in PACE financing, to provide oversight of persons soliciting property owners, and to facilitate a fair marketplace where the financing option can provide benefits to both property owners and the environment. The specific benefits are protection of property owners in PACE financing transactions; continued viability of PACE programs through the public confidence in effective oversight; and advancing innovative environmental solutions by ensuring the PACE marketplace has uniform statewide oversight.

B. Transitioning to NMLS

The proposed rulemaking action has program administrators applying for licensure through NMLS rather than applying in paper directly with the Department and further requires all licensees under the California Financing Law to transition their licenses onto NMLS. NMLS is an online licensing system that was developed and is operated by State Regulatory Registry LLC, a nonprofit affiliate of the Conference of State Bank Supervisors. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008⁴ required all state licensed and federally registered mortgage loan originators to be registered with the system. Since development, the system has expanded and now serves as a multistate licensing system for many financial services providers. Currently, the Department licenses mortgage lenders, mortgage brokers, mortgage servicers, mortgage loan originators, student loan servicers, and program administrators through NMLS. Under the California Financing Law, some licensees are licensed through NMLS, including mortgage lenders, mortgage brokers, mortgage loan originators, and program administrators, while other lenders and brokers not engaged in the business of making or brokering loans secured with residential real property or financing PACE transactions are not on NMLS. Through this rulemaking action, the Department proposes to amend existing rules to transition all licensees under the California Financing Law onto NMLS.

The broad objectives of these provisions are to allow all California Financing Law applicants and licensees to use the same national database and to modernize the application and license maintenance process. The specific benefits include reducing the regulatory burden on licensees with a multistate presence, providing consumers with a common location nationally to access information on financial services providers, and streamlining the licensing process internally by leveraging the technology already developed and used nationally.

After conducting an evaluation for any other regulations on this matter, the Department has found that these proposed rules are the only regulations setting forth requirements for PACE program administrators and requiring all California Financing Law applicants and licensees to maintain records on NMLS. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

⁴ 12 U.S.C. § 5101 et seq.

C. Documents Incorporated by Reference

This rulemaking action incorporates by reference the following documents in their entirety:

- “Form MU1,” the uniform licensing form developed by NMLS, entitled “NMLS Company Form,” Version 11.0, dated 9/12/2015, available at [Company \(MU1\) Form](#) and directly from the Department.⁵
- “Form MU2,” the uniform licensing form developed by the NMLS for a person that directly or indirectly exercises control over a licensee, or a branch thereof, including qualifying individuals and branch managers specified in Form MU1, entitled “NMLS Individual Form,” Version 9, dated 9/12/16, available at [Individual \(MU2\) Form](#) and directly from the Department.⁶
- “Form MU3,” the uniform licensing form developed by the NMLS for the branch office of a licensee, entitled “NMLS Branch Form,” Version 10, dated 3/31/14, available at [Branch \(MU3\) Form](#) and directly from the Department.⁷

ANY OTHER MATTERS PRESCRIBED BY STATUTE (Government Code Section 11346.5, Paragraph (a)(4))

No other matters are prescribed by statute.

DETERMINATION REGARDING MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS; ESTIMATE OF COSTS OR SAVINGS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT, OR TO FEDERAL FUNDING (Government Code Section 11346.5, Paragraphs (a)(5) and (a)(6))

This regulatory action does not impose a mandate on local agencies or school districts. This regulatory action will not result in any cost to any local agency or school district required to be reimbursed, will not result in other nondiscretionary cost or savings imposed on local agencies, and will not result in cost or savings in federal funding to the state.

ESTIMATE OF COST OR SAVINGS ON STATE AGENCY (Government Code Section 11346.5, Paragraph (a)(6))

This Department will conduct regulatory examinations of licensees and confirm compliance with the new provisions. In addition, the Department may have enforcement actions related to the new provisions. Since the number of new licensees is expected to be remain around five, the Department does not anticipate more than \$50,000 in annual

⁵<https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Company%20Form.pdf>.

⁶<https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Individual%20Form.pdf>.

⁷<https://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Branch%20Form.pdf>.

costs relating to this rulemaking action.

The Department is not aware of any costs or savings for any other state agency.

DETERMINATION REGARDING ADVERSE ECONOMIC IMPACT (Government Code Section 11346.5, Paragraph (a)(7) and (8))

The Department has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

DESCRIPTION OF ALL COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS (Government Code Section 11346.5 Paragraph (a)(9))

A representative business will incur costs complying with this regulatory action. A representative business will incur costs above those incurred solely because of the requirements set forth in statute, for the following new requirements:

- Requiring employees be familiar with regulatory requirements;
- Requirements related to advertising;
- Requiring disclosures;
- Requiring specified books and records to be maintained;
- Requiring processes complaints;
- Requiring specific PACE solicitor and PACE solicitor agent enrollment standards;
- Requiring standards for monitoring compliance;
- Requiring standards for periodic reviews;
- Requiring procedures for canceling or withdrawing enrollment;
- Requiring specific education programs; and
- Requiring specific annual reports.

The Department anticipates the compliance costs may be between \$200,000 and \$500,000 for five to ten potential applicants.

RESULTS OF ECONOMIC IMPACT ASSESMENT (Government Code Section 11346.5, Paragraph (a)(10))

The creation or elimination of jobs within the state:

The Department has assessed whether this rulemaking action will create or eliminate jobs. The provisions in this action will not create jobs. While implementation of the requirements in this rulemaking action will require resources, once implemented the requirements will not result in activities that will produce jobs. The requirements of this rulemaking action may include provisions that will eliminate jobs. If PACE solicitors or PACE solicitor agents are unable to meet the enrollment standards in Financial Code section 22680 as clarified and interpreted in this rulemaking action, these businesses and individuals will not be able to offer PACE financing to property owners.

The creation of new businesses or the elimination of existing businesses within the state:

The Department has assessed whether this rulemaking action will create new businesses or eliminate existing businesses. This rulemaking action will not result in the creation of new businesses. The Department is not aware of any provision in this rulemaking action that will result in the elimination of a business and therefore has determined that this rulemaking action will not result in the elimination of existing businesses within the state. The rulemaking action balances the regulatory requirements against the benefits of public protection and based on the Department's assessment the action does not burden business to the extent of eliminating businesses.

The expansion of businesses currently doing business within the state:

The Department has assessed whether this rulemaking action will result in the expansion of business currently doing business within the state. The Department has determined that this rulemaking action will not result in the expansion of business currently doing business within the state. The regulatory requirements on program administrators will initially require the reallocation of resources for a business to achieve compliance with the new regulatory requirements. In the long term, this rulemaking action may positively impact the PACE financing marketplace by increasing public confidence in the market, and consequently future expansion is possible.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

The Department has assessed whether this rulemaking action will result in benefits to the health and welfare of California residents, worker safety, and the state's environment. The regulatory requirements proposed in this rulemaking action will help improve the welfare of California residents and the state's environment by establishing processes and protections intended to prevent fraud and misrepresentation in the PACE financing marketplace.

DETERMINATION OF EFFECT ON SMALL BUSINESS (Section 4 of Title 1 of the California Code of Regulations)

This regulatory action may impact small business.

FINDING REGARDING REPORT (Government Code Section 11346.5, Paragraph (a)(11))

This regulatory action defines the content of reports required by statute. The Commissioner finds that the information required is necessary for the health, safety, or welfare for the people of the state that the regulation applies to businesses.

EFFECT ON HOUSING COSTS (Government Code Section 11346.5, Paragraph (a)(12))

This regulatory action will not have a significant effect on housing costs.

STATEMENT REGARDING REASONABLE ALTERNATIVES (Government Code Section 11346.5, Paragraph (a)(13))

The Department must determine that no reasonable alternative considered by the Department or that otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposed action; or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

COMMENT DEADLINE (Government Code Section 11346.5, Paragraph (a)(15))

Written comments related to the proposed action must be received by December 9, 2019 to be considered by the Department before it proceeds with this regulatory action. Comments may be submitted by e-mail to the following address:

regulations@dbo.ca.gov, and copy colleen.monahan@dbo.ca.gov

Comments may be submitted by U.S. mail to the following address:

Department of Business Oversight
Attention: Mark Dyer, Regulations Coordinator
1515 K St., Ste. 200
Sacramento, CA 95814

PUBLIC HEARING (Government Code Section 11346.5, Paragraph (a)(17))

A public hearing has not been scheduled. Any interested person or his or her duly authorized representative may request a public hearing no later than 15 days prior to the close of the written comment period. If the Department receives a request for a public hearing, the Department will provide notice of the time, date, and place of the hearing by emailing the notice to every person who has subscribed to electronically receive notice of activity related to this rulemaking action with the Department.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE (Government Code Section 11346.5, Paragraphs (a)(16) and (20), and Subdivision (b))

The Department has prepared a statement of reasons for the proposed action and has available all the information upon which the proposal is based and the express terms of the proposed action. This notice of rulemaking, the text of the proposed regulatory action, and the initial statement of reasons for the proposed regulatory action are available on the Department's website at www.dbo.ca.gov. To access the documents from the Department's Web site, select the "Licensees" link in the top banner of the

home page, select “Laws and Regulations” from the drop-down menu, select the “Regulations/Rulemaking” link, and select the “California Financing Law” link.

To subscribe to electronically receive notice of activity on this rulemaking action such as revised text, from the Department’s homepage (dbo.ca.gov), select ”Contact Us” from to top banner. Select “Subscribe to DBO emails” and provide the requested information. When requested, indicate your request to receive notices related to rulemaking, and submit your request.

The initial statement of reasons and proposed text may also be obtained at the front counter of any of the Department’s locations, below, by requesting Document PRO 02/17-B or 02/17-C. The documents are also available from the contact person designated at the end of this notice.

Los Angeles Office:
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Sacramento Office:
1515 K Street, Suite 200
Sacramento, CA 95814-4052

San Diego Office:
1350 Front Street, Room 2034
San Diego, CA 92101-3697

San Francisco Office:
One Sansome Street, Suite 600
San Francisco, CA 94104-4448

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Legal Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT (Government Code Section 11346.5, Paragraph (a)(18))

If the Department makes changes to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends, or repeals the proposed text. A request for a copy of any modified text should be addressed to the contact person designated below. The modified text will also be available on the Department’s website. The Department will accept written comments on the modified text for at least 15 days after the date on which it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS (Government Code Section 11346.5, Paragraph (a)(19))

Upon its completion, the final statement of reasons will be available, and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONTACT PERSON (Government Code Section 11346.5, Paragraph (a)(14))

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be

directed to:

Mark Dyer, Regulations Coordinator
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814

Telephone: (916) 322-1977
e-mail: mark.dyer@dbo.ca.gov

Inquiries regarding the substance of the proposed regulation may be directed to:

Colleen Monahan, Senior Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814

Telephone: (916) 322-3553
e-mail: colleen.monahan@dbo.ca.gov

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