



STATE OF CALIFORNIA

## Department of Business Oversight

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

### NOTICE OF SECOND MODIFICATIONS TO PROPOSED REGULATIONS UNDER THE CALIFORNIA FINANCING LAW

**PRO 02/17**

#### **Applications and Filings through NMLS and Licensure of PACE Program Administrators**

To Interested Persons:

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

After consideration of public comments, the Commissioner proposed additional changes to the proposed amendments on May 27, 2020. After consideration of public comments to the proposed modifications, the Commissioner is proposing additional modifications. A copy of the proposed revisions is being made available to the public in accordance with the requirements of Government Code section 11346.8(c). The text showing modifications is attached. The originally proposed additions from the initial text and modifications are shown in single underline and the originally proposed deletions from the initial text and modifications are shown in single strike-out. The second modifications to the original text proposed by this notice are shown by double underlining of additions and double strike-out of deletions. The public may submit comments on the proposed changes, as described more fully below.

## **DESCRIPTION OF CHANGES**

### **Section 1404**

The proposed amendments clarify that “Form MU2” means the form required to be submitted for each individual subject to investigation under section 22105 of the California Financing Law and section 1422.5 of the rules. The proposed amendments also change the term stockholders to equity interests for purposes of describing a partnership.

### **Sections 1408, 1409, 1409.1, and 1411**

The proposed amendments make clarifying amendments to the authority and reference for these rules.

### **Section 1422**

The proposed amendments to rule 1422, regarding the application under the California Financing Law, make clarifying changes to the title, the description of persons who must obtain a license, and the description of when applicants must obtain a license through NMLS. The amendments further (1) move instruction applicable to the organizational chart to Exhibit M, (2) clarify the instruction regarding a designated email account, (3) expand certain disclosure questions to include individuals as well as entities on the organizational chart, (4) expand the instruction for the organizational chart to include key individuals in the chart, and (5) make other clarifying heading and grammatical changes.

### **Section 1422.4**

The proposed amendments make grammatical changes to rule 1422.4.

### **Section 1422.5**

The proposed amendments to rule 1422.5, regarding applications through NMLS, include grammatical changes, various changes instructing applicants which documents may be uploaded directly to NMLS, and instructions clarifying individuals to be identified on form MU1. In addition, the changes (1) set forth the information to be included in a business plan submitted with an application, and (2) direct the applicant to use the NMLS electronic surety bond function and form.

### **Sections 1422.9, 1423, and 1424**

The proposed amendments make clarifying and grammatical changes to these rules.

### **Section 1437**

The proposed amendments make changes to the rule regarding surety bonds to set forth the procedure for bonds filed through NMLS. The provision further sets forth language for the electronic surety bond form that will be filed in NMLS.

### **Section 1620.01**

The proposed amendments to this section, regarding the application of other articles to program administrators, clarify the parameters of the exclusion, and make clarifying changes to the cited reference sections.

### **Section 1620.02**

The proposed amendments to rule 1620.02, regarding definitions, clarify that the exclusion from the definition of “to solicit a property owner to enter into an assessment contract” is not applicable when a property owner requests PACE financing only in circumstances where, among the other requirements, the contractor has neither advertised PACE financing nor otherwise obtained a client lead from a person marketing PACE financing. The proposed amendments clarify that administrative or clerical tasks include customer and back-end technical support when conducted by an employee of a program administrator. The proposed amendments define “PACE-authorized improvement” as including a distributed generation renewable energy source or energy or water efficiency improvement that is permanently fixed to real property; permanent seismic safety improvements that are permanently fixed to real property; the installation of electric vehicle charging infrastructure that is permanently fixed to real property; and a wildfire safety improvement that is permanently fixed to real property. The proposed amendments use the phrase “PACE-authorized improvement” to mean a home improvement of the type authorized for a PACE program.

### **Section 1620.03**

Proposed rule 1620.03, regarding exclusions, is amended to change “efficiency improvement contract” to “home improvement contract” for purposes of identifying a laborer not meeting the PACE solicitor or PACE solicitor agent definition.

### **Section 1620.05**

Proposed amendments to rule 1620.05 regarding advertising standards prohibit a program administrator from evading the prohibition on false, deceptive, or misleading advertising by obtaining leads from a third party who solicits property owners for participation in a PACE program through untrue, deceptive, or misleading advertising. The changes further require a program administrator to condition remaining enrolled as a PACE solicitor or agent on

refraining from advertising a PACE program directly or indirectly in an untrue, deceptive, or misleading manner. The changes further prohibit a program administrator from enrolling or continuing the enrollment of a PACE solicitor who the program administrator knows obtains leads from a third party that solicits property owners for participation in a PACE program through untrue, deceptive, or misleading advertising. The changes also prohibit a program administrator from arranging an assessment contract with a property owner if the program administrator knows that the property owner was solicited by a third party that solicits property owners for participation in a PACE program through untrue, deceptive, or misleading advertising, unless before the start of the home improvement and before entering into an assessment contract, the program administrator (1) notifies the property owner of the untrue, deceptive, or misleading representation by the third party, and (2) after correcting the misinformation, obtains and documents the affirmative response that the property owner seeks to proceed with the transaction.

#### **Section 1620.06**

The proposed amendments to rule 1620.06, regarding written disclosures, require the agreement by the property owner to solely receive electronic copies by email to be acknowledged by the property owner separate from any other agreement. The proposed amendments further provide that a program administrator who uses technology to detect newly created email addresses need not also inquire about the creation of an email account during the confirmation of key terms call. The provision regarding verifying a property owner's signature was amended to apply to all signatures rather than those obtained through a PACE solicitor agent, to require reasonable steps to verify the signature belongs to the property owner, and to clarify optional methods for verifying a signature. The provision regarding verifying a property owner can access the electronic documents was amended to only apply where documents are solely provided electronically. The proposed amendments also require the program administrator to confirm that the scope of work subject to PACE financing in the assessment contract is included in the scope of work in the home improvement contract. The proposed amendments further clarify that if documents are delivered solely in electronic format, the program administrator must confirm that property owner can access the documents through the property owner's electronic device prior to proceeding with the oral confirmation of key terms.

#### **Section 1620.07**

The proposed amendments to rule 1620.07 require the program administrator to retain the audit trail related to the electronic signature of the property owner on the assessment contract, to retain documentation of the scope of work subject to PACE financing from the home

improvement contract, and to retain correspondence with other lienholders on the property. The proposed amendments also clarify that the program administrator must retain any advertising submitted by a PACE solicitor. For specified records related to the assessment contract, the proposed amendments change the time for retaining the records to five years after the consummation of a PACE assessment. The proposed amendments also require a program administrator maintain documentation of the property owner's consent to receive the disclosures required by Streets and Highways Code sections 5898.16 and 5898.17 electronically.

### **Section 1620.08**

The proposed amendments to rule 1620.08, regarding complaint process and procedures, require a program administrator's policies and procedures to comply with the rule. The proposed amendments clarify that inquiries, questions, requests, or criticisms must follow the complaint processes if they involve factual allegations for which the program administrator must decide how to respond, or if the response will take longer than a week. The proposed amendments provide three working days to acknowledge a complaint received by postal mail. The proposed amendments clarify that a complaint received by email or postal mail requires a written acknowledgment. The proposed amendments provide that the program administrator must make the complaint process available to a complainant in the language used to solicit the property owner to enter into of the assessment contract, the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language. The proposed amendments provide that a program administrator must ordinarily respond to a complaint status update request in three business days. The proposed amendments provide that if after extending the complaint response an additional 15 days after the initial 30 days, the program administrator has not issued a final decision, the program administrator must provide the complainant with a written update on the status of the complaint and an estimate of the additional time needed to complete the investigation and issue a final decision, which may not be more than 15 additional days except in an extraordinary circumstance, and must include contact information for the Department. The amendments provide that an expedited complaint process must be available for complaints involving (1) a third-party lender or servicer who has advanced, or has rights as a lienholder to advance, payments for property taxes on behalf of a property owner; (2) the risk of foreclosure or loss of possession of real property; or (3) other financial hardship. The proposed amendments require the program administrator to maintain a process where a property owner may request the reconsideration of a final decision in a complaint. The amendments prohibit reconsideration from being conducted by the same person who issued the final decision, and require the person reconsidering the complaint to have

authority to reverse the final decision. The proposed amendments require notice of the opportunity for requesting reconsideration.

### **Section 1620.10**

The proposed amendments to rule 1620.10, regarding dishonest dealings and misleading statements, provide that for purposes of not paying a contractor for unperformed work, the program administrator may rely on the representation of a property owner that that work is performed if the representation is made directly to the program administrator and not through a PACE solicitor or PACE solicitor agent. Similarly, the program administrator may rely on the representation of a property owner that all products are installed if the representation is made directly to the program administrator and not through a PACE solicitor or PACE solicitor agent, and the program administrator may rely on the representation of a property owner that the product in the assessment contract was the product installed if the representation is made directly to the program administrator and not through a PACE solicitor or PACE solicitor agent. The proposed amendments recast the prohibition on representing to a property owner that a certain type of home improvement that is not an efficiency PACE-authorized improvement may be financed through a PACE assessment, or otherwise provided to a property owner for free or at a nominal cost, because the property owner enters into an assessment contract. The proposed amendments also revise the term “efficiency improvement” to “PACE-authorized improvement” as defined in rule 1620.02. Finally, the proposed amendments change the reference to a “three-day right to cancel period” to a “three-day or five-day right to cancel period,” to allow for the contingency of AB 2471 (Maienschein, 2020) being enacted into law.

### **Section 1620.11**

The proposed amendments to rule 1620.11, regarding solicitor enrollment standards, revise the term “efficiency improvement” to “PACE-authorized improvement” as defined in rule 1620.02. The proposed amendments further eliminate the provision providing an exclusion from subdivision (b)(3)(C) of the rule. With respect to subdivision (b)(3)(C) of the rule regarding a PACE solicitor’s responsibility for the acts of a PACE solicitor agent, the amendments clarify that the provision does not relieve the program administrator of any responsibility for the acts of a PACE solicitor or a PACE solicitor agent. With respect to subdivision (b)(3)(F) regarding PACE solicitors notifying program administrators of outstanding complaints, the amendments clarify that the PACE solicitor must notify the program administrator of complaints unresolved to the property owner’s satisfaction for a month or more. The amendments clarify that the review of current and past PACE solicitor licenses with the Contractors State License Board (CSLB) is limited to information that is readily and publicly available. The amendments also clarify that whether a

PACE solicitor or PACE solicitor agent is required to have a license or registration with the CSLB is determined by the CSLB.

#### **Section 1620.12**

The proposed amendments to rule 1620.12, regarding PACE solicitor agent enrollment standards, remove the seven-year lookback period for convictions of crimes involving dishonesty, fraud, or deceit.

#### **Section 1620.13**

The proposed amendments to rule 1620.13, regarding enrollment denials, clarify the meaning of “timely” for purposes of identifying whether a PACE solicitor has a clear pattern of failing to timely respond to complaints. The amendments provide that an action is timely if ordinarily the PACE solicitor acknowledges complaints within three business days and takes actions to reach a resolution of complaints within thirty days.

#### **Section 1620.14**

Proposed amendments to rule 1620.14 regarding monitoring compliance provide examples of commercially reasonable processes for monitoring and testing whether a PACE solicitor or a PACE solicitor agent is soliciting property owners in compliance with the law, including (1) posing questions to property owners during the oral confirmation of key terms, (2) conducting a confirmation of completion call to property owners, and (C) analyzing the complaints received by the program administrator. The proposed amendments remove the term “regularly” from the provision requiring program administrators to monitor and test whether a PACE solicitor is maintaining the minimum qualifications for enrollment as a PACE solicitor. The amendments also clarify the meaning of elder abuse by referring to a Welfare and Institutions Code definition for elder or dependent adult financial abuse. The proposed amendments remove a provision regarding repeated contact by complainants and clarify language regarding a process for canceling the enrollment of PACE solicitors and PACE solicitor agents.

#### **Section 1620.15**

The proposed amendments to rule 1620.15 regarding period review procedures recast the requirements to avoid repetitiveness and inconsistency. The amendments recast the review of advertising to identify false or misleading advertising. The amendments recast the provisions regarding reviewing whether PACE-financed work was completed as represented to clarify the language. The amendments also remove the provision authorizing a program administrator to design a different review to measure compliance.

### **Section 1620.17**

The proposed amendments to rule 1620.17 regarding the education training of a PACE solicitor agent replace “efficiency improvements” with “PACE-authorized improvements” and recast the requirement that the training provide information on how the finance charges required to be disclosed in the home improvement contract under Business and Professions Code section 7159.5 may be affected by the PACE assessment contract. The amendments also require the training to specifically include the need for a PACE solicitor agent to disclose to a property owner that the home improvements will be paid back through a special assessment that will appear on the property owner’s property tax bill that must be paid by the property owner. The amendments further require training on dependent adult abuse in addition to elder abuse, and reference section 15610.30 of the Welfare and Institutions Code to define the terms. Finally, the amendments change the reference to a “three-day Right to Cancel notice” to a “three-day or five-day Right to Cancel notice,” to allow for the contingency of AB 2471 (Maienschein, 2020) being enacted into law.

### **Section 1620.19**

The proposed amendments to rule 1620.19 regarding the annual report require the program administrator to report on the total number of assessment contracts where the PACE solicitor paid the program administrator a portion of the assessment contract as a buydown fee, a contractor payment, or as any other type of payment; the aggregate amount of the payments; and the average and median amount of the payments. Finally, the amendments change the reference to assessments canceled within three days to assessments canceled within three or five days, to allow for the contingency of AB 2471 (Maienschein, 2020) being enacted into law.

### **Section 1620.22**

The proposed amendments to rule 1620.22 regarding principles for determining property owner income provide that in determining rental income from other household members, the program administrator may rely on third-party records instead of a rental agreement if the records demonstrate income for at least the prior twelve months. The amendments also recast the provision regarding rental income from other properties to provide that certain mortgage-related costs and taxes must be subtracted from the rental income before the income is considered. The amendments clarify the provision regarding the prohibition on the use of predictive or estimation methodologies that are not specific to the income of the property owner to estimate income by providing that such methodologies include estimating income based on



average incomes in the property owner’s geographic location, or average wages paid by the property owner’s employer.

**Section 1620.27**

The proposed amendments to rule 1620.27 regarding the automated valuation model provide that the disclosure to the property owner must be in writing.

**Section 1620.28**

The amendments to proposed rule 1620.28 regarding the useful life of efficiency improvements change “efficiency improvement” to “PACE-authorized improvement.”

**Section 1620.29**

The amendments to proposed rule 1620.29 regarding verifying the criteria in Financial Code section 22684 through commercially reasonable and available methods remove the express authorization to rely on a representation of a property owner.

**THE HEARING FILE**

The initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available on the Department of Business Oversight’s website at [www.dbo.ca.gov](http://www.dbo.ca.gov), and from the Legal Division of the Department of Business Oversight. As required by the Administrative Procedure Act, the Legal Division maintains a hearing file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection during regular business hours. Comments or inquiries concerning these proposed regulation changes may be directed to Colleen Monahan at (916) 576-4952.

**DOCUMENTS RELIED UPON (Government Code section 11347.1)**

In addition to the documents identified in the Notice of Rulemaking published on October 25, 2019, the Department has relied upon the transcript from the PACE Regulations Stakeholder Meeting held at 1515 K St., 5th Floor, Suite 550, Sacramento, California on Friday, December 1, 2017. This document is available for public inspection during the business hours of 8 am to 5 pm at 2101 Arena Boulevard, Sacramento, California, 95834, and is posted on the Department’s website at <https://dbo.ca.gov/wp-content/uploads/sites/296/2019/02/DBO-PACE-hearing-12-1-17-FINAL.pdf>.

### **15-DAY COMMENT PERIOD**

Any interested person may submit written comments regarding these second modifications by written communication addressed as follows:

Commissioner of Business Oversight  
Attn: Colleen Monahan, Senior Counsel, Legal Division  
2101 Arena Boulevard  
Sacramento, CA 95834

Comments must be received by September 18, 2020. Written comments may also be sent by electronic mail to [regulations@dbo.ca.gov](mailto:regulations@dbo.ca.gov) with a copy to [colleen.monahan@dbo.ca.gov](mailto:colleen.monahan@dbo.ca.gov).

The proposed changes to the Commissioner's rules in the text accompanying this notice are not yet effective and will not be effective until approved by the Office of Administrative Law and filed with the Secretary of State in accordance with Government Code section 11349.3. Questions regarding the content of this notice may be directed to Colleen Monahan at (916) 576-4952.

Dated:           September 2, 2020  
                    Sacramento, California