



STATE OF CALIFORNIA

## Department of Financial Protection and Innovation

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

### NOTICE OF THIRD 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 Financial Protection and Innovation (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 and September 2, 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 additions to the rules as proposed through September 2, 2020 are shown in single underline, and the deletions to the rules as proposed through September 2, 2020 are shown in single strike-out. The third modifications to the 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**

Effective September 29, 2020, the Department of Business Oversight's name was changed to the Department of Financial Protection and Innovation (Department). The proposed amendments change the name of the Department where it appears in the rulemaking action. The proposed amendments also make grammatical changes.

### **Section 1422**

The proposed amendments to rule 1422, regarding the application under the California Financing Law, make clarifying changes to the 10 percent or more owners who must submit background information and fingerprints for investigation. The proposed amendments eliminate the requirement for the submission of background and fingerprint information for officers, directors, managing members, and partners of the 10 percent or more entity owners, unless the individual is responsible for the day-to-day business decisions related to the applicant's lending activities in this state. The amendments also eliminate the provision allowing the Commissioner to waive the requirement for background and fingerprint information, including where the entity owner is a reporting company. Finally, the amendments to rule 1422 revise the website address for the Attorney General's *Request for Exemption from Mandatory Electronic Fingerprint Submission Requirement* form.

### **Section 1422.5**

Consistent with the proposed amendments to section 1422, the proposed amendments to rule 1422.5 regarding applications filed through NMLS clarify that background information and fingerprints are required of 10 percent or more owners who are individuals, or who are managerial personnel of the 10 percent or more equity owners if the individual is responsible for the day-to-day business decisions related to the applicant's lending or PACE activities in this state. The amendments also clarify that the individual in charge of each place of business are to be reported within the "Qualifying Individuals" section of Form MU1 and on Form MU2. The amendments further require the organizational chart identifying owners of the applicant to identify the principal officers, directors, managing members, general partners, and trustees of each entity owning or controlling 10 percent or more of the outstanding interests or outstanding equity securities of the applicant. In addition, the amendments provide that a corporate applicant must upload a NMLS certificate of qualification or good standing from the California Secretary of State, rather than submitting an original. Finally, the amendments to rule 1422.5 provide that each business entity applicant must upload to NMLS a state-certified copy of its formation documents, including any subsequent amendments, relevant resolutions, and a list of any name changes.

### **Section 1423**

The proposed amendments to rule 1423 revise the website address for the Attorney General's *Request for Exemption from Mandatory Electronic Fingerprint Submission Requirement* form.

### **Section 1437**

The proposed amendments clarify the requirements regarding filing surety bonds through NMLS. The changes also clarify the language for the electronic surety bond form that will be filed in NMLS.

### **Section 1550**

The proposed amendments change the character limit from 500 to 300 for electronic advertising platforms and clarify that the platform must be "electronic" to be subject to the exclusion from the section. The amendments also clarify that the electronic advertisement must link to the information required by the rule.

### **Section 1620.02**

The proposed amendments to rule 1620.02 change the definition of "to solicit a property owner to enter into an assessment contract" to remove the language regarding a property owner requesting PACE financing. The amendments also change the definition of "administrative or clerical tasks" to remove the requirement that the tasks be conducted by an employee of a program administrator, and to instead provide that the tasks be performed by an individual under the supervision and direction of an enrolled PACE solicitor or PACE solicitor agent, or a program administrator. Finally, the amendments remove the definition of "PACE-authorized improvement," and where that phrase is used throughout the rules, instead return to the phrase "efficiency improvement" as defined in section 22019 of the Financial Code.

### **Section 1620.05**

Proposed amendments to rule 1620.05 provide that the list of actions constituting advertising of a PACE program that is untrue, deceptive, or likely to mislead a property owner is non-exclusive. With regard to advertising, the amendments clarify that exclusion from certain disclosure requirements for advertising on a platform with limited characters is limited to an electronic platform. With regard to obtaining leads from third parties who solicit property owners through untrue, deceptive, or misleading advertising, the amendments clarify that the program administrator may not knowingly obtain leads from such parties.

### **Section 1620.06**

The proposed amendments to rule 1620.06 incorporate the requirement under Streets and Highways Code section 5898.17, operative January 1, 2021, that a program administrator provide a property owner with the Financing Estimate and Disclosure as a printed paper copy unless the property owner opts out by signing a printed paper document. The amendments further provide that if a program administrator obtains the consent of the property owner to enter into the assessment contract electronically, that consent shall be obtained in a manner that demonstrates that the consumer can access the information in the electronic form that will be used to provide the information that is the subject of the consent. The amendments also provide that if a program administrator obtains the consent of the property owner to receive a copy of the signed assessment contract solely in an electronic format, this consent shall be obtained by the program administrator in a written document separate from the assessment contract and in a manner that demonstrates that the consumer can access the information in the electronic form. With regard to taking reasonable steps to ensure that a signature belongs to a property owner, the amendments provide that a program administrator must confirm the signature of the property owner through a photo or other unique identification or a two-step authentication process, plus at least one additional confirmation method which may be tracking IP geolocation information, sending a confirming letter, or confirming with the property owner during the oral confirmation of key terms.

### **Section 1620.07**

The proposed amendments to rule 1620.07 require the program administrator to retain the property owner's consent to an electronic signature and electronic delivery if the assessment contract is signed and delivered electronically.

### **Section 1620.08**

The proposed amendments to rule 1620.08 require factual allegations of a mistake or wrongdoing related to PACE financing to be subject to the complaint process set forth in the rule. The amendments no longer require inquiries, questions, requests, and criticisms to be treated as complaints solely based on the time required to respond. In the second modifications, the Department proposed that if a program administrator has not issued a final decision on a complaint after 45 days, the program administrator must provide the property owner with a written update of the status and additional time needed to issue a final decision, and include contact information for the Department. This modification was not highlighted by double-underline in the second modifications and so the text is highlighted now to provide interested parties the opportunity to comment on the language. The proposed amendments also remove

the requirement that the complaint process include a process for the expedited review of complaints where a third-party lender or servicer has rights as a lienholder to advance payments for property taxes on behalf of a property owner.

### **Section 1620.10**

The proposed amendments to rule 1620.10 remove the provision providing that the program administrator may rely on the representation of a property owner regarding whether work is performed, and instead provide that a determination of whether work is performed shall be consistent with paragraph (a)(5) of Business and Professions Code section 7159.5. Business and Professions Code section 7159.5 sets forth requirements for contractor payments upon the performance of work under a home improvement contract, and paragraph (a)(5) provides that a contractor shall neither request nor accept payment that exceeds the value of work performed or material delivered. Similarly, the proposed amendments remove the provision regarding relying on the representation of a property owner that products are installed, or that equivalent products are installed. The proposed amendments also rephrase the provision prohibiting the misrepresentation to a property owner of whether the property owner will be obligated to pay for the efficiency improvements financed through the assessment contract. Further, the proposed amendments require that a representation that an efficiency improvement will result in an increase in a property's market value must be lawful. Finally, the amendments provide that nothing in the section authorizes any representation that is restricted or prohibited under any law.

### **Section 1620.11**

The proposed amendments to rule 1620.11 require PACE solicitors to agree to comply with the limitation on executing a home improvement contract and beginning work under a home improvement contract until the criteria set forth in Financial Code section 22684 are satisfied. The amendments further rephrase the provision that provides that a PACE solicitor's responsibility for the acts of a PACE solicitor agent does not affect any responsibility that a program administrator may otherwise have for the acts of a PACE solicitor or a PACE solicitor agent.

### **Section 1620.13**

The proposed amendments to rule 1620.13 recharacterize when complaint responses are timely, for purposes of determining whether a PACE solicitor has a clear pattern of failing to timely receive and respond to property owner complaints. The amendments provide that a program administrator may presume that complaint responses are timely if the PACE solicitor

ordinarily acknowledges complaints within three business days and takes actions to reach a resolution of complaints within thirty days, but longer time periods may be appropriate based on the characteristics of the business and the details of the complaints. The amendments provide that for purposes of identifying whether longer time periods are timely, a program administrator may consider factors such as but not limited to the size and resources of the PACE solicitor, the length of time in business, the product or service of the PACE solicitor, the nature of the complaints received, and whether the PACE solicitor's actions demonstrate an intent to address the complainant's concerns, resolve the complaint, and identify the need for changes to improve business practices.

#### **Section 1620.14**

Proposed amendments to rule 1620.14 remove a provision regarding canceling enrollment of a PACE solicitor or PACE solicitor agent. The amendments further provide that the program administrator must maintain in its books and records that the PACE solicitor agent completed the introductory training, including passing the required test, and completing the six hours of education.

#### **Section 1620.17**

The proposed amendments to rule 1620.17 clarify that as part of the introductory training of a PACE solicitor agent, the PACE solicitor agent must pass a test, and require the records include the dates of completion. The amendments also include as topics that must be covered within the training (1) the general requirements under the California Financing Law, and (2) the prohibition on assessment contracts on property subject to a reverse mortgage.

#### **Section 1620.19**

The proposed amendments to rule 1620.19 regarding the annual report add that the program administrator must report on seller's points paid by contractors during the prior calendar year.

#### **Section 1620.22**

The proposed amendments revise the requirements for considering rental income from the property owner's principal residence. The amendments provide that if other members of the property owner's household are paying rent or board to the property owner, this income must be verified through a rental agreement and reasonably reliable third-party records that demonstrate the property owner's receipt of such income for at least the prior six months. If a rental agreement is unavailable, the amendments provide that an agreement may be verified

through the written statement of the individual renting or boarding from the property owner and evidence that the renter or boarder has resided in the property owner's household for at least the prior six months.

### **Section 1620.25**

The proposed amendments to rule 1620.25 provide that the list of products not constituting an emergency is not exhaustive.

### **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 Financial Protection and Innovation's website at [www.dfpi.ca.gov](http://www.dfpi.ca.gov), and from the Legal Division of the Department of Financial Protection and Innovation. 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.

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

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

Commissioner of Financial Protection and Innovation  
Attn: Colleen Monahan, Senior Counsel, Legal Division  
2101 Arena Boulevard  
Sacramento, CA 95834

Comments must be received by December 3, 2020. Written comments may also be sent by electronic mail to [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov) with a copy to [colleen.monahan@dfpi.ca.gov](mailto:colleen.monahan@dfpi.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: November 18, 2020  
Sacramento, California