

(1) A risk-based, commercially reasonable procedure shall include different processes for monitoring or testing compliance that are designed to identify potential areas where the solicitation activities of PACE solicitors and PACE solicitor agents are not in compliance with applicable law. If a program administrator relies on samples of data that are intended to identify noncompliance, the program administrator shall have a reasonable basis for determining the adequacy of the sample size. The sample size shall include vulnerable populations such as seniors, non-English speakers, and low-income populations, where applicable. Nothing in this section restricts the monitoring or testing of compliance through sampling unless expressly stated.

(2) The following are examples of commercially reasonable processes for monitoring and testing whether a PACE solicitor or a PACE solicitor agent soliciting property owners is in compliance with the law. The list is not exhaustive, and a program administrator may establish and implement other or additional methods to identify noncompliance.

(A) A program administrator may monitor and 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 or at any other time.

(B) A program administrator may monitor and test the compliance of PACE solicitors and PACE solicitor agents by conducting a confirmation of completion call to property owners.

(C) A program administrator may monitor and test the compliance of a PACE solicitor and PACE solicitor agent through an analysis of the complaints received by the program administrator.

(c) The program administrator shall monitor and test whether a PACE solicitor is maintaining the minimum qualifications required under subdivision (e) of Financial Code section 22680 for enrollment as a PACE solicitor.

(1) For purposes of monitoring and testing whether consumer complaints against a PACE solicitor evidence a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions, the program administrator shall track and review the complaints containing allegations of this conduct. Notwithstanding the ability to monitor and test for compliance through sampling, a program administrator shall track all complaints that allege dishonesty, misrepresentations, or omissions.

(A) In considering evidence of a clear pattern, 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.

(2) For purposes of identifying whether a PACE solicitor's conduct presents a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law, the monitoring and testing shall be designed to identify the following:

(A) Whether the PACE solicitor has made any untrue statements to the program administrator or to a property owner.

(B) Whether the PACE solicitor has advised or knowingly permitted a property owner to make any untrue statements to the program administrator.

(D) Whether PACE solicitor has had its license revoked by the Contractors State License Board or has a complaint on file with the registrar that is available to the public on the website of the Contractors State License Board pursuant to Business and Professions Code section 7124.6.

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

(F) Whether the PACE solicitor has engaged in elder or dependent adult financial abuse as defined in Welfare and Institutions Code section 15610.30.

(3) For purposes of monitoring and testing whether a PACE solicitor has a clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor, a clear pattern 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; or unreasonably delaying the response to, or investigation of, multiple complaints.

(d) The program administrator shall have risk-based, commercially reasonable processes to monitor and test a PACE solicitor's compliance with the following.

(1) Whether a PACE solicitor may be providing a different price for a project financed by a PACE assessment than the solicitor would provide if paid in cash by the property owner. A program administrator may use commercially available cost guides for guidance.

(2) Whether the PACE solicitor is commencing work prior to the expiration of the

right to cancel period.

(e) The process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law shall include a procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents as provided in Financial Code section 22680, paragraph (f)(2).

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

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

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

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

(C) 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 remains in good standing not less than once every quarter need not confirm licensure or registration status in the circumstances described in subparagraphs (e)(2)(A) and (B).

(4) The procedure for monitoring the registration status of PACE solicitor agents shall include a process to confirm 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, have complied with the requirements of the training program, and are reported to the Department.

(f) For purposes of promoting and evaluating the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law, the actions of a PACE solicitor agent are attributable to the PACE solicitor employing or retaining the PACE solicitor unless the PACE solicitor did not know and reasonably should not have known of the conduct of the PACE solicitor agent, the conduct giving rise to the complaint was not within the scope of the agency relationship with the PACE solicitor, and 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.

(g) A program administrator shall maintain in its books and records the written process required by this section and documentation that the monitoring and testing required by this section is ongoing.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22680 and 22689, Financial Code.

§ 1620.15. Periodic Review Standards.

(a) The procedures for the periodic review of the solicitation activities of a PACE solicitor required by paragraph (f)(3) of Financial Code section 22680 shall be in writing and shall be designed by a program administrator to measure a PACE solicitor's compliance with the standards for solicitation activities.

(b) The periodic review procedures shall include the following:

(1) A review of a sampling of advertising related to PACE conducted by the PACE solicitor to ensure representations regarding the PACE program administered by the program administrator are not false or misleading.

(2) 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. The analysis may be tailored based on the size of the PACE solicitor and the volume of PACE business conducted by the PACE solicitor. The program administrator shall use the information on the controls maintained by the PACE solicitor in determining the level of monitoring required under paragraph (f)(1) of Financial Code section 22680 and section 1620.14 of these rules.

(3) An analysis of a sampling of responses to the open-ended questions during the oral confirmation of key terms telephone call conducted with property owners solicited by the PACE solicitor or its agents, for patterns suggesting potential misrepresentations or omissions.

(4) An analysis of complaints made against the PACE solicitor regarding the solicitation activities of the PACE solicitor, and the resolution of the complaints.

(c) In conducting a periodic review of the solicitation activities of the PACE solicitor, the program administrator shall review a random sampling of assessment contracts to evaluate whether the PACE solicitor is in compliance with the requirements for solicitation activities, and may include contacting property owners to review the relevant items in this subdivision.

(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, for work that was financed through the assessment contract.

(3) The review shall confirm that efficiency improvements installed are those represented to the program administrator.

(4) The review shall evaluate whether the efficiency improvements financed through the assessment contract were completed as represented, including:

(A) Whether all outstanding permits obtained final approval by a building inspector, if necessary and a part of the home improvement contract financed through the assessment contract.

(B) If solar interconnection was included as part of the scope of work in the home improvement contract financed through the assessment contract, whether solar improvements were interconnected to an electricity provider.

(d) For any sampling of data in the periodic review, the program administrator shall sample an amount of data sufficient to identify whether the PACE solicitor is complying with its agreement with the program administrator and the law, and may rely on algorithms, consumer complaints, PACE volume, compliance monitoring during the assessment contract approval process, and other relevant data identified by the program administrator to develop the sampling size.

(e)(1) A program administrator shall document that the periodic review was completed and identify the findings made during the periodic review of the solicitation activities of the PACE solicitor. If a program administrator uses a method other than

sampling as authorized in subdivision (d), the documentation shall include a description of the processes used to review the PACE solicitor's solicitation activities for compliance with the items in subdivisions (b) and (c) of this section.

(2) The program administrator shall retain the documentation of the periodic review, the findings, alternative review procedures, and any subsequent actions in its books and records in accordance with section 1620.07 of these rules.

(3) The program administrator shall take any other corrective action warranted by the findings from the periodic review, including but not limited to educating PACE solicitors about areas of noncompliance, remedying consumer harm, and disenrolling PACE solicitors.

(A) The periodic review and any corrective action shall be designed to promote compliance through collaboration with PACE solicitors and PACE solicitor agents.

(B) If the periodic review identifies that a PACE solicitor or PACE solicitor agent fails to maintain the minimum qualifications under Financial Code section 22680 and section 1620.13 of these rules, the process shall include the cancellation of enrollment under section 1620.16 of these rules.

(f) (1) A program administrator shall conduct a periodic review of the solicitation activities of a PACE solicitor at least once every two years.

(2) Program administrators who enroll the same PACE solicitors may collaborate on conducting coordinated joint periodic reviews.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22680, Financial Code; Sections 5898.16, 5926, and 5940, Streets and Highways Code.

§ 1620.16. Canceling Enrollment.

(a) A program administrator shall establish and implement a written process for canceling the enrollment of a PACE solicitor or PACE solicitor agent who fails to maintain the minimum qualifications required by Financial Code section 22680 or who violates any provision of the California Financing Law.

(b) The process shall include the following:

(1) Tracking the enrollment of 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.

(c) A program administrator shall notify the Commissioner of a change to the enrollment status of each PACE solicitor and PACE solicitor agent in the manner prescribed in subdivision (d) of section 1620.11 of these rules.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22680 and 22682, Financial Code.

§ 1620.17. Training Program.

(a) (1) The training program for PACE solicitor agents established and maintained by the program administrator shall comply with the requirements of Financial Code section 22681 and this rule.

(2) A program administrator that does not administer assessment contracts for efficiency improvements on residential real property with four or fewer units does not need to comply with this rule.

(3) The training program consists of three parts:

(A) The introductory training addressing the topics in subdivision (c) of Financial Code section 22681, which must be completed as part of the enrollment process for PACE solicitor agents.

(B) The passage of a test that measures the PACE solicitor agent's knowledge and comprehension of the training material.

(C) Six hours of education that a PACE solicitor agent must complete within three months of completing the enrollment process.

(4) A program administrator may combine the introductory training and the six hours of education provided that the combined training occurs upon enrollment and before the PACE solicitor agent engages in the business of a PACE solicitor agent.

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

(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) Upon notice to the Commissioner, a program administrator may use a training program that has been established by a different program administrator.

provided that the program administrator establishing the training program consents to its use.

(c) A PACE solicitor agent that has completed a training program for a program administrator 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 section 1620.07 of these rules, that a PACE solicitor agent enrolled by the program administrator has completed the required introductory training, including passing the test as part of the training, and the six hours of education. The records shall include the dates of completion.

(2) (A) 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.

(B) A program administrator that uses a training program established by another program administrator shall provide a PACE solicitor agent a certificate that documents completion of the training program, the date of completion, the name of the program administrator from whom the program administrator acquired the training program, and the date of acquisition of the right to use the training program.

(d) Each program administrator shall provide each enrolled PACE solicitor agent with information on changes to the PACE program and any changes to previous training material, as the information is changed, but no less frequently than annually. The

information may be provided through the PACE solicitor.

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

(1) PACE programs and assessment contracts.

(A) Training on this topic must include the following information on PACE programs and assessments:

1. The consequences of the first lien position, including the risk that if the property owner is unable to pay the property taxes, the mortgagee will pay on the property owner's behalf and may then be in a position to foreclose on the property if the property owner cannot pay the mortgagee.

2. The role of public agencies, including local agencies authorizing PACE programs, local agencies and joint powers authorities administering PACE programs, and county tax collectors and assessors billing and collecting PACE assessments.

3. The treatment of PACE assessments by federal housing finance agencies.

4. The risks to property owners, including the risk that the property owner may be breaching the property owner's mortgage agreement by allowing a PACE lien.

5. The potential barriers to property transfers, such as a potential buyer or buyer's mortgagee requiring that the PACE lien be paid off upon sale, and the accompanying risk of prepayment penalties.

6. The potential barriers to refinancing property with a PACE lien, including the risk that the mortgagee will require the PACE lien be paid off before refinancing the property.

(E) Potential effects of PACE assessments on a property sale

(5) Consumer protection. The training under this topic must provide information on property owner protections under section 1620.10 of these rules. Training shall also include information on the following:

(A) The potential negative consequences of a hard inquiry on a property owner's credit file pulled from a credit reporting agency.

(B) The need to identify whether the property is subject to a reverse mortgage.

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

(A) Protected classes

(B) Unruh Civil Rights Act

(7) Elder and dependent adult financial abuse. For purposes of this paragraph, elder and dependent adult financial abuse shall have the same meaning as in Welfare and Institutions Code section 15610.30. This topic must provide information on the following.

(A) Activities that constitute elder and dependent adult financial abuse

(B) Special protections in law

(C) Mandatory reporters (individuals with a mandatory duty to report known or suspected abuse)

(D) Ways to avoid targeting seniors

(E) How to report suspected abuse

(f) The training may be developed based on materials from nationally recognized organizations with expertise in the specific areas.

2. 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 type of improvement, and the average cost of each type of improvement.

(G) For all PACE assessments 12 months or more delinquent on December 31 of the prior year, provide the following information:

1. 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.

2. 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, if any.

3. 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).

4. The average and median residual income of the property owners upon entering into the assessment contract, at the time the assessment contracts were entered into.

(H) Updates of information required to be disclosed under section 1409 of these rules 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.

(I) The number of PACE assessments canceled within three or five days, as applicable, as provided under Streets and Highways Code section 5898.16.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22107, 22159, 22687, and 22692, Financial Code; Section 5898.16, Streets and Highways Code.

§ 1620.21. Ability to Pay Determinations.

(a) A program administrator shall maintain written procedures for determining whether a property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment as required under Financial Code sections 22686 and 22687, which shall include the following:

(1) The criteria used for identifying whether a property owner has sufficient residual income to meet basic living expenses.

(2) The criteria used for determining whether income is from a temporary source.

(3) The criteria used for determining whether assets are liquid.

(4) Any assumptions included in the determination, such as the continuation of,

or growth of, income, the continuation or extinguishment of debt, and the continuation or extinguishment of any basic household living expenses.

(5) If the program administrator allows exceptions to any of its criteria for determining a property owner's ability to pay the property owner's PACE assessment obligations, the nature of any permissible exceptions and the conditions allowing for the exceptions.

(b) (1) A program administrator may not base employee compensation on a positive determination of a property owner's reasonable ability to pay the annual payment obligations for the PACE assessment.

(2) The prohibition in paragraph (b)(1) shall apply to any person making an ability to pay determination and any person with the ability to overturn an ability to pay determination.

(3) This section shall not restrict an employee from participating in any stock, bonus, or similar incentive plan that is generally available to employees nor any other type of compensation plan that is not specifically contingent on the outcome of ability to pay determinations.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22686 and 22687, Financial Code.

§ 1620.22. Property Owner Income.

(a) (1) 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 under an assessment

contract.

(2) This subdivision shall not be applicable in the case of emergency or immediate necessity under subdivision (e) of Financial Code section 22687.

(b) 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 temporary source of income under subparagraph (b)(2)(A) of Financial Code section 22687 includes income that it reasonably may be concluded will not continue during the foreseeable future.

(3) The property owner's household income may only include the incomes of the persons identified in subdivision (a) of Financial Code section 22687. If other members of the property owner's household are paying rent or board to the property owner, this income shall be verified through a written 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 written rental agreement is unavailable, 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.

(4) Rental income for properties other than the property owner's household may be included in determining income provided that all mortgage principal and interest payments, insurance, property taxes, mortgage guaranty insurance, and other

preexisting fees and assessments for the rental property are subtracted from gross rental receipts before such income is included in the property owner's total income.

(5) A program administrator shall not determine the income of a property owner based on predictive or estimation methodologies that are not specific to the income of the property owner, such as, but not limited to, methodologies that estimate income based on average incomes in the property owner's geographic location, or average wages paid by the property owner's employer.

(6) Nonliquid assets under subparagraph (b)(2)(B) of Financial Code section 22687 include assets, such as funds in retirement accounts, that would result in a financial penalty for a property owner if withdrawn or liquidated.

(7) Funds received from a reverse mortgage shall not constitute income.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22686 and 22687, Financial Code.

§ 1620.25. Emergency.

The installation of the following products does not constitute an emergency or immediate necessity: cool coat paint, window replacements, or a cool roof. This list is not exhaustive.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22687, Financial Code; Sections 5898.16 and 5940, Streets and Highways Code.

§ 1620.27. Automated Valuation Model.

(a) A program administrator shall maintain in its books and records under section 1620.07 of these rules evidence documenting the confidence scores and estimated values for all the automated valuation models used to derive the market value of each

property subject to a PACE assessment.

(b) The disclosure to the property owner of the market value determination for the property required under subdivision (b) of Financial Code section 22685 prior to the signing of the assessment contract shall be in writing.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22684 and 22685, Financial Code; Section 5898.16, Streets and Highways Code.

§ 1620.28. Useful Life of Improvement.

A program administrator shall base the determination of the useful life of the efficiency improvement as of the date of the execution of the assessment contract and shall maintain documentation of the useful life of the efficiency improvement in its books and records in accordance with section 1620.07 of these rules.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22684, Financial Code.

§ 1620.29. Commercially Reasonable.

(a) The verification of criteria for submitting, presenting, or otherwise approving for recordation an assessment contract under subdivision (l) of Financial Code section 22684 is “commercially reasonable and available” in the following circumstances.

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

(2) The verification relied on information supplied in credit reports prepared by national credit reporting agencies.

(3) The verification relied on the market value of property determined in compliance with subdivision (a) of Financial Code section 22685.

(4) The verification relied on mortgage statements.

(b) If the program administrator does not verify the criteria in Financial Code section 22684 through the commercially reasonable and available sources identified in subdivision (a), the program administrator shall identify the source of the information in the records related to the assessment contract maintained under section 1620.07 of these rules. This paragraph shall not be applicable to any criteria where Financial Code section 22684 requires or authorizes the verification directly with the property owner.

(c) Property tax payment histories are a commercially reasonable and available method to verify some of the criteria in Financial Code section 22684 and a program administrator shall use these records as one source of verification unless the payment tax history is unavailable at the time or Financial Code section 22684 authorizes verification directly from the property owner.

(d) The verification shall include confirmation with the PACE solicitor that the PACE solicitor has notified the program administrator of any other PACE assessment on the property known to the PACE solicitor.

(e) The verification methods identified in this rule are non-exhaustive and permissive.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22684, Financial Code.

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