Final Statement of Reasons

Update to the Initial Statement of Reasons

The initial language proposed with the notice of rulemaking has changed during this rulemaking action. The Department of Financial Protection and Innovation ("Department") has revised the text and sought public comment on five occasions. This updated final statement of reasons describes changes made since initial text was proposed with the notice of rulemaking, and the reference to amendments in this update refers to changes made to the initial proposed text.

General Non-substantive or Technical Changes

The amendments make various grammatical changes and make changes to the cited reference and authority in the regulations. The purpose of these changes is to provide clarity to the rules. These changes are necessary for clarity and greater specificity in the regulations. The amendments also change the name of the Department from "Department of Business Oversight" to "Department of Financial Protection and Innovation," consistent with AB 107 (Stats. 2020, ch. 264). On September 29, 2020, AB 107 was signed into law, changing the name of the Department. In addition to changing the name, the amendments make related changes such as replacing the acronym DBO with DFPI and amending email and website addresses to the correct addresses under the new name.

Section 1404. Definitions

Subdivision (h): The amendments to the definition of "Form MU2" in subdivision (h) of rule 1404 define the form as the uniform licensing form developed by NMLS for background information about individuals who own or control the activities of an applicant or licensee. The purpose of these changes is to define the form in a general manner that captures the purpose of the form. Financial Code section 22105 of the California Financing Law ("CFL") requires the Commissioner to conduct background investigations on specified owners and control persons, and Financial Code section 22109 authorizes the Commissioner to deny licensure if specified individuals have committed certain crimes. Further, Financial Code section 22714 authorizes the Commissioner to suspend or revoke a license if a fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license. Section 1422.5 of these rules identifies the individual owners and control persons who must file Form MU2 as part of their application. The revisions to the definition of "Form MU2" are necessary to identify the form to be used to administer these provisions of law when filing through NMLS.

Paragraph (l)(1): The amendments add paragraph (l)(1) to rule 1404 to define "outstanding interests" if the applicant or licensee is a partnership. Financial Code section 22105 of the CFL uses the term "outstanding interests" to define the owners of

an applicant who must be investigated by the Commissioner prior to the issuance of a license. Specifically, if the applicant is a partnership, section 22105 requires the Commissioner to investigate persons owning or controlling, directly or indirectly, 10 percent or more of the of the outstanding interests. The purpose of paragraph (l)(1) is to define "outstanding interests" under section 22105 of the CFL to describe persons to be investigated by the Commissioner when an application is filed, and to define the persons whose prior crimes may result in a denial of an application under Financial Code section 22109. If the applicant or licensee is a finance company, paragraph (l)(1) of rule 1404 provides that "outstanding interests" means equity interests in a finance company (if the applicant or the licensee is a partnership) that have the power to: (1) vote to elect or direct the management of the applicant or the finance company, or (2) conduct or manage the lending activities of the finance company. These provisions are necessary to identify the type of voting and managerial power of the applicant that would necessitate a background investigation by the Commissioner for the protection of the public.

The definition further clarifies that the term "outstanding interests" does not include: (i) an equity interest in the partnership which represents only an economic interest such as a right to receive income and other distributions from the partnership, or (ii) an equity interest which does not give the owner or holder the right or ability, directly or indirectly, to elect or direct management of the applicant or the finance company, or (iii) equity interests where the owner or holder of such interests have entered into a written agreement whereby any right to vote such equity interests are disclaimed (such as an undertaking that any vote will mirror management's vote or the vote of the rest of the finance company's equity interests) or relinquished such that the owner or holder of such equity interests cannot, directly or indirectly, elect officers, directors, or management or otherwise direct, conduct or manage the licensed activities of the applicant or finance company. The purpose of these provisions is to exclude certain owners from the background investigation, where the owners do not have the authority to control the applicant's licensed activity. These provisions are necessary to streamline the licensing process, to avoid unnecessary regulatory burdens and invasions of privacy where not necessary nor warranted for the protection of the public, and to provide clarity and certainty to applicants in the licensure process. Each clause is separately necessary to describe a scenario where the holder of the interest in the partnership does not hold the power to influence the applicant's licensed activity.

Paragraph (l)(2): Paragraph (l)(2) defines "outstanding interests" when the applicant or licensee is a program administrator organized as a partnership. Similar to paragraph (l)(1), the definition provides that If the applicant or licensee is a program administrator, "outstanding interests" means equity interests in a program administrator (if the applicant or the licensee is a partnership) that have the power to: (1) vote to elect or direct the management of the applicant or the program administrator, or (2) conduct or manage the administering of the PACE program of the program administrator. The purpose of paragraph (l)(2) is to define "outstanding interests" under section 22105 to

describe persons to be investigated by the Commissioner when an application is filed, and to define the persons whose prior crimes may result in a denial of an application under Financial Code section 22109. These provisions are necessary to identify the type of voting and managerial power of the applicant that would necessitate a background investigation by the Commissioner for the protection of the public.

Similar to the definition for a finance company, the term “outstanding interests” for a program administrator organized as a partnership does not include: (i) an equity interest in the partnership which represents only an economic interest such as a right to receive income and other distributions from the partnership, or (ii) an equity interest which does not give the owner or holder the right or ability, directly or indirectly, to elect or direct management of the applicant or the program administrator, or (iii) equity interests where the owner or holder of such interests have entered into a written agreement whereby any right to vote such equity interest are disclaimed (such as an undertaking that any vote will mirror management’s vote or the vote of the rest of the program administrator’s equity interests) or relinquished such that the owner or holder of such equity interests cannot, directly or indirectly, elect officers, directors, or management or otherwise direct, conduct or manage the administering of the PACE program activities of the applicant or program administrator. The purpose of these provisions is to exclude certain owners from the background investigation, where the owners do not have the authority to control the applicant’s licensed activity. These provisions are necessary to streamline the licensing process, to avoid unnecessary regulatory burdens and invasions of privacy where not necessary nor warranted for the protection of the public, and to provide clarity and certainty to applicants in the licensure process. Each clause is separately necessary to describe a scenario where the holder of the interest in the partnership does not hold the power to influence the applicant’s licensed activity.

Paragraph (m)(1) and (2): The amendments add paragraphs (m)(1) and (2) of section 1404 of the rules to the definitions to serve the same purpose as paragraphs (l)(1) and (l)(2) and are necessary for the same reasons. Paragraph (m)(1) defines “outstanding equity securities,” as used in Financial Code sections 22105 and 22109, for an applicant or licensee that is a finance company. Paragraph (m)(2) defines “outstanding equity securities” for a program administrator. Under section 22105 of the CFL, the outstanding equity securities are the ownership interests of corporations, trusts, limited liability companies, and associations.

Paragraph (m)(1) of the rules defines “outstanding equity securities” as the securities of a corporation, trust, limited liability company, or association, including an unincorporated organization, that have the power to: (1) vote for or elect the management of the applicant or the finance company, or (2) direct, conduct or manage the lending activities or other operations of the finance company. The purpose is to define “outstanding equity securities” for purposes of section 22105 of the CFL to describe persons to be investigated by the Commissioner when an application is filed, and to define the persons whose prior crimes may result in a denial of an application under section 22109

of the CFL. These provisions are necessary to identify the type of voting and managerial power of the applicant that would necessitate a background investigation by the Commissioner for the protection of the public.

Consistent with paragraphs (l)(1) and (l)(2) of rule 1404, the amendments exclude certain ownership interests from the term “outstanding equity securities” when the ownership interest does not include the authority to control the applicant’s licensed activity. The rule provides that the term “outstanding equity securities” does not include: (i) non-voting equity securities which represent only an economic interest or a right to receive income and other distributions, or (ii) equity securities which do not give the owner or holder the right or ability, directly or indirectly, to elect or direct management of the applicant or the finance company, or (iii) equity securities where the owner or holder of such securities have entered into a written agreement whereby any right to vote such equity securities are disclaimed (such as an undertaking that any vote will mirror management’s vote or the vote of the rest of the finance company’s stockholders) or relinquished such that the owner or holder of such equity securities cannot elect, directly or indirectly, officers, directors, or management or otherwise direct, conduct or manage the lending activities of the applicant or finance company. The purpose of these provisions is to exclude certain owners from the background investigation, where the owners do not have the authority to control the applicant’s licensed activity. These provisions are necessary to streamline the licensing process, to avoid unnecessary regulatory burdens and invasions of privacy where not necessary nor warranted for the protection of the public, and to provide clarity and certainty to applicants in the licensure process. Each clause is separately necessary to describe a scenario where the holder of the securities does not hold the power to influence the applicant’s licensed activity.

Paragraph (m)(2) of rule 1404 defines “outstanding equity securities” where the applicant or licensee is a program administrator. The paragraph provides that “outstanding equity securities” means securities of a corporation, trust, limited liability company, or association, including an unincorporated organization, that have the power to: (1) vote for or elect the management of the applicant or the program administrator, or (2) direct, conduct or manage the administering of the PACE program or other operations of the program administrator. The purpose is to define “outstanding equity securities” for purposes of Financial Code section 22105 to describe persons to be investigated by the Commissioner when an application is filed, and to define the persons whose prior crimes may result in a denial of an application under Financial Code section 22109. These provisions are necessary to identify the type of voting and managerial power of the applicant that would necessitate a background investigation by the Commissioner for the protection of the public.

Consistent with paragraphs (l)(1) and (l)(2) of rule 1404, the amendments exclude certain ownership interests in the program administrator from the term “outstanding equity securities” when the ownership interest does not include the authority to control the applicant’s licensed activity. The rule provides that the term “outstanding equity

securities" does not include: (i) non-voting equity securities which represent only an economic interest or a right to receive income and other distributions, or (ii) equity securities which do not give the owner or holder the right or ability, directly or indirectly, to elect or direct management of the applicant or the program administrator, or (iii) equity securities where the owner or holder of such securities have entered into a written agreement whereby any right to vote such equity securities are disclaimed (such as an undertaking that any vote will mirror management's vote or the vote of the rest of the program administrator's stockholders) or relinquished such that the owner or holder of such equity securities cannot elect, directly or indirectly, officers, directors, or management or otherwise direct, conduct or manage the lending activities of the applicant or program administrator. The purpose of these provisions is to exclude certain owners from the background investigation, where the owners do not have the authority to control the applicant's licensed activity. These provisions are necessary to streamline the licensing process, to avoid unnecessary regulatory burdens and invasions of privacy where not necessary nor warranted for the protection of the public, and to provide clarity and certainty to applicants in the licensure process. Each clause is separately necessary to describe a scenario where the holder of the securities does not hold the power to influence the applicant's licensed activity.

Section 1422. Application for License under the California Financing Law: Form

Subdivision (a): Rule 1422 sets forth the paper application for a finance lender or broker license under the CFL. Subdivision (a) of rule 1422 is amended to specify when the paper license may be submitted, and when an applicant must file through NMLS. As introduced, subdivision (a) provided that a paper application was available if the applicant was unable to file through NMLS. To provide clarity, the amendments instead provide that all applicants must file through NMLS on or after the effective date of this rulemaking action, as provided in rule 1422.5. The amendments provide that upon the effective date for filing applications through NMLS, an applicant may no longer submit the application set forth in rule 1422, unless directed elsewhere in the subchapter to use sections of the form. The purpose of the amendments is to provide clear instruction on when applicants must apply through NMLS. Since licensees already communicate with the Department electronically, the Department was unable to identify a circumstance when an applicant would not have the ability to apply through NMLS. Therefore, the alternative of filing in paper or through a method other than NMLS was eliminated. These changes are necessary to guide applicants in the licensing process and to ensure all licensees are captured in a single database for efficiency purposes.

Subdivision (b): The amendments strike the language in subdivision (b), which sets forth communication timelines for applications submitted under rule 1422. The purpose of the change is to streamline the introductory provisions under rule 1422 to direct applicants to rule 1422.5, and to conform to subdivision (a) which provides that applications will no longer be filed under rule 1422 and therefore the language deleted from subdivision (b) will no longer be applicable. The amendments are necessary to

remove language that may cause applicants confusion because applications will no longer be filed on the form under rule 1422.

Subdivision (c) (Renumbered Subdivision (b)):

The amendments renumber subdivision (c) as subdivision (b) and strike the introductory language in subdivision (c) which provided that an application for a license under the California Financing Law must be made on the form in that subdivision. The purpose of striking the language requiring an application to be on the form in the subdivision is to conform to the language in subdivision (a), requiring applications to be submitted through the NMLS. The change is necessary to clarify the application to be submitted to the Department.

Application Instructions

This subdivision sets forth the instructions and paper application for filing for a finance lender or broker license under the CFL. Although applications will no longer be on the form in this section, the Department is retaining the application in the rules while licensees are transitioning to NMLS and updating the application to reflect needed changes. The amendments to the instructions (1) update the heading of the instructions to designate that the application is for a finance lender or broker license; (2) provide a broad overview of who is required to obtain a license under the CFL and include program administrators in the explanation; (3) identify the dates for filing through NMLS instead of paper (upon the effective date of the rulemaking action for new applicants and December 31, 2021 for licensees transitioning onto NMLS); (4) move instructions for the organizational chart from the body of the application to exhibit M; (5) include a specific directive to provide a designated email account for communications from the Department; (6) exclude from the requirement to submit Statement of Identity and Questionnaire forms and fingerprints, owners who do not own 10 percent or more of the outstanding interests or outstanding equity securities, as those terms are defined in rule 1404; (7) exclude from the requirement to submit Statement of Identity and Questionnaire forms and fingerprints, officers, directors, managing members, and partners of owners of 10 percent or more of the outstanding interests or outstanding equity securities, unless the individual has the power to direct the management or policies of the applicant's lending activities in this state; (8) remove duplicative instructions and obsolete guidance regarding the necessary version of Adobe Reader; (9) eliminate the requirement for an obsolete Department of Justice form for an exemption from the mandatory electronic fingerprint submission requirement, (10) set forth a definition of "affiliate" for purposes of the organizational chart required under exhibit M; and (11) require applicants to identify by name and title the key management personnel for direct owners of 10 percent or more.

The purpose to the heading update to the application instructions is to provide clarity on the use of the form. The change is necessary to ensure applicants understand how to apply to the Department. The purpose of including program administrators in the broad

overview of the who is required to obtain a license under the CFL is to update the explanation since the addition of program administrators to the CFL. The change is necessary to provide an accurate description of the law. The purpose of identifying the dates for filing through NMLS is to inform the public and licensees of the transition dates to transition onto NMLS. The effective date for new applicants is necessary to allow the Department to complete the backend processes necessary to receive filings through NMLS. The date of December 31, 2021 for licensees to transition onto NMLS is necessary to allow time for backend processes, to provide existing licensees time to transition, and to ensure internal resources are available internally to assist licensees with the transition.

The purpose of moving instructions for the organizational chart from the body of the application to exhibit M is for clarity. The change is necessary to have guidance on the organizational chart in a single location. The purpose of including a specific directive to provide a designated email account for communications from the Department is for clarity. The change is necessary for the instruction to clearly advise the applicant on the information being sought. The purpose for the exclusion from the requirement to submit Statement of Identity and Questionnaire forms and fingerprints for owners who do not own 10 percent or more of the outstanding interests or outstanding equity securities is to streamline the background investigation to those individuals with control or management over the applicant. The provision is necessary to focus investigation resources on areas that serve the regulatory purpose of protecting the public against bad actors while expediting the licensure process.

The purpose of excluding from the requirement to submit Statement of Identity and Questionnaire forms and fingerprints, officers, directors, managing members, and partners of entity owners of 10 percent or more of the outstanding interests or outstanding equity securities, unless the individual has the power to direct the management or policies of the applicant's lending activities in this state, is to streamline the licensing process so that for purposes of investigating 10 percent or more entity owners, only individuals who have influence over the management or policies of the applicant's lending activities are subject to the background investigation. The officers, directors, managing members, and partners of the 10 percent or more entity owners are instead subject to disclosure on the organizational chart under exhibit M. An individual who owns 10 percent or more of the outstanding interests or outstanding equity securities of the applicant remains subject to the requirement to submit a Statement of Identify and Questionnaire form and fingerprints. These changes are necessary to ensure that background investigations are focused on the individuals who are actively engaged in the licensed activities of the applicant. The changes are further necessary to align with the background investigations more closely under other financial services laws administered by the Department, such as the California Deferred Deposit Transaction Law and the Student Loan Servicing Act. The changes are also necessary to achieve a reasonable balance between the licensure burdens on applicants and the consumer protections obtained through the investigation of officers, directors, managing

members, and partners of 10 percent or more owners who are not responsible for the management or policies of the applicant's lending activities.

The purpose of the amendments to remove duplicative instructions and obsolete guidance regarding the necessary version of Adobe Reader is to clarify the instructions for the submission of fingerprints. The amendments are necessary to avoid duplication and to remove obsolete instructions. The purpose of eliminating the requirement for the completion and submission of the "Request for Exemption from Mandatory Electronic Fingerprint Submission Requirement" form is to recognize that the Department of Justice no longer requires the form. The amendments are necessary to relieve applicants of the burden of submitting a form that is no longer in use.

The purpose of setting forth a definition of "affiliate" for purposes of the organizational chart required under exhibit M is to define the entities to be included on the organizational chart. The amendment provides that for purposes of this exhibit, an applicant is an "affiliate" of, or an applicant is "affiliated" with, another entity if the applicant directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the other entity, and an affiliate includes subsidiaries of the applicant. The purpose is to identify affiliated entities. This definition was originally proposed in the section regarding owners but was moved to exhibit M to provide greater clarity. The provision is necessary to provide the applicant with guidance on the information that the Department seeks in the organizational chart, and for the Department to obtain through the organizational chart information about related entities so the Department can evaluate the application for licensure. The purpose of requiring applicants to identify by name and title the key management personnel for direct owners of 10 percent or more on the organizational chart in exhibit M is so that the Department can investigate the owners as required by Financial Code section 22105. The names and titles of the key management personnel are necessary for the Department to identify the individuals who may have the ability to control the licensed activity of the applicant.

Application

The amendments to the application (1) clarify in item 5(e) of the application that the information requested is for the 10 percent or more owners of the outstanding interests of the applicant; (2) clarify in item 6(e) that the information requested is for the 10 percent or more owners of the outstanding equity securities of the applicant; (3) remove the directives in items 5 and 6 to provide an organizational chart; (4) add to the disclosure questions in item 7 individuals disclosed in exhibit M; (5) amend exhibit M to require the applicant to identify by name and title the directors, officers, managing members, and partners, as applicable, for the applicant and each direct owner of 10 percent or more of the applicant; and (6) amend item 33 of the execution section to indicate that a license will be sent, rather than mailed.

The purpose of clarifying in items 5(e) and 6(e) that the information requested is for the 10 percent or more owners of the outstanding interests or outstanding equity securities of the applicant is to follow Financial Code section 22105 more closely regarding owners subject to investigation. In rule 1404, the Department defined both “outstanding interests” and “outstanding equity securities” to focus the investigation of applicants on individuals with the ability to control the lending activity or program administrator activity of an applicant. The changes to the application are necessary to effectuate the changes to the definitions of owners subject to investigation, to streamline and focus the licensing process. The purpose of removing the organizational chart requirement in items 5 and 6 is to eliminate duplication, since exhibit M requires the chart. The change is necessary to streamline the application. The purpose of adding individuals to the persons required to answer disclosure questions related to past crimes, actions, and regulatory violations in item 7, is to ensure that the Department captures the answers to these questions for all individuals disclosed on the organizational chart in exhibit M. This change is necessary to provide the Department with information that may be necessary in evaluating whether an application should be denied under Financial Code section 22109.

The purpose of the amendment to exhibit M to require the applicant to identify by name and title the directors, officers, managing members, and partners, as applicable, for the applicant and each direct owner of 10 percent or more of the applicant on the organizational chart is to provide the Department a visual display of the relationship between the individuals and entities managing and controlling the licensee. The change is necessary to assist in the investigation of the applicant under Financial Code section 22105 by displaying the relationship among the individuals named in the application. The purpose of the amendment to item 33 of the execution section to indicate that a license will be sent, rather than mailed, is to allow for other methods of delivery. The change is necessary to transition from postal mail to other methods of delivery.

Section 1422.4. Electronic Filings

The amendments to section 1422.4 regarding electronic filings update the date for filing through NMLS to the effective date of this rulemaking action for applicants and December 31, 2021 for existing licensees. The purpose of the change is to provide guidance to applicants and licensees on the dates for filing through NMLS. The specific dates are necessary to allow the Department, applicants, and licensees the time necessary to adjust operations as necessary to transition onto NMLS. The amendments further amend the provision providing that the documents not filed through NMLS shall be filed directly with the Commissioner in paper form, to remove the reference to paper form. The purpose of this amendment is to recognize that a document may be filed with the Commissioner other than in paper form. This change is necessary to allow documents to be filed with the Commissioner through methods other than postal mail.

Section 1422.5. License Application through NMLS

The amendments to section 1422.5 (1) clarify that all exhibits and supporting documents related to the application or amendment must be filed with NMLS for transmission to the Commissioner; (2) provide that documentation related to the use of fictitious business names must be uploaded to NMLS; (3) clarify the individuals required to submit Form MU2; (4) clarify the individuals who must submit fingerprints; (5) identify the information to be provided in a business plan; (6) provide that the organizational chart and management chart are to be submitted to NMLS; (7) provide that, upon request, the organizational chart must identify individuals holding specified positions for each entity owning or controlling 10 percent or more; (8) provide that the surety bond is to be provided directly to NMLS through the NMLS electronic surety bond function and form; (9) provide that organizational documents and certificates of qualification or good standing are to be provided through NMLS; and (10) require the designated email address to be provided directly to the Commissioner.

The purpose of the provision in subdivision (a) providing that all exhibits and supporting documents must be filed with NMLS, followed by the sentence clarifying that exhibits that cannot be submitted through NMLS must be filed directly with the Commissioner, is to make clear that NMLS is the central depository for exhibits and supporting documents that may be filed through it. This change is necessary to provide clarity to the instructions on submitting applications for licensure through NMLS. The purpose of several additional changes to the rule is to update the instructions on exhibits and supporting documentation that may be filed directly through NMLS. These exhibits and supporting documents include documentation related to the use of fictitious business names, the organizational chart, the managerial chart, the surety bond, organizational documents, and state certificates of qualification or good standing. The changes to the rule are necessary to provide applicants with guidance on how to file the supporting exhibits and documentation as part of the application process. The purpose of paragraph (a)(16), requiring the designated email address be provided directly to the Commissioner, is to provide instruction on how to provide the designated email address to the Department when NMLS does not request this information in the Form MU1. The provision is necessary to ensure the Department receives designated email addresses so that the Department may communicate with licensees electronically.

The amendments in subparagraphs (a)(3)(A) and (B) clarify the individuals who must submit Form MU2 by providing that the form is required for individuals who own 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant. The amendments further clarify that these individuals must submit fingerprints for criminal history background checks. The purpose of these changes is to incorporate the definitions added to rule 1404 defining “outstanding interests” and “outstanding equity securities” so that the individuals submitting form MU2 have the actual ability to manage or control the applicant, for purposes of investigating these individuals as required under Financial Code section 22105. This change is necessary

for the background investigations under section 22105 of the CFL to be conducted on individuals who possess the ability to manage or otherwise control the licensed activity of the applicant. For similar reasons, the amendments require a Form MU2 and fingerprints from any individual who is an officer, director, managing member, or partner of an entity who owns 10 percent or more of the outstanding interests or outstanding equity securities of the applicant, if that individual has the power to direct the management or policies of the applicant's lending activities or PACE program administration in this state. The purpose of this provision is to conform to the language of section 22105, which defines the individuals subject to investigation during licensure. The amendments are necessary to ensure that the application process is designed to identify and investigate individuals with the ability to control the applicant's licensed conduct, and to ensure the process does not unnecessarily include individuals whose functional responsibility does not include directing the management or policies of the applicant.

The amendment to paragraph (a)(5) clarifies that an applicant must file the Customer Authorization of Disclosure of Financial Records form through NMLS. The purpose of the amendment is to clarify that the form should no longer be submitted directly to the Commissioner but should instead be uploaded through NMLS. This amendment is necessary to permit the Department to more efficiently review and process all components of the application, including the Customer Authorization of Disclosure of Financial Records form.

In paragraph (a)(6), the amendments add subparagraphs (A) and (B) to describe the content of the business plan to be submitted with an application. The purpose of the changes is to provide the applicant guidance on the information that the applicant must include in the business plan so that the Department will have background on applicants and can evaluate whether the applicant's business model complies with the CFL. For finance lender and brokers, the amendments in subparagraph (a)(6)(A) require the business plan to include (1) the intended sources of capital; (2) the intended market for the loans, including the credit worthiness of intended borrowers; (3) the intended methods for marketing the loans; (4) the anticipated terms of the loans; (5) the methods for disbursing funds to the borrower; (6) any products or services offered or required in connection with the loans; (7) any cobranding or joint agreements with other organizations related to the making of the loans; (8) whether the applicant intends to retain or sell the loans, in whole or in part, and the intended purchasers, if applicable; (9) whether any other business is solicited or engaged in at the same place as the proposed lending activity; and (10) whether, and to what extent, the applicant intends to use third parties to perform any of its lending functions, such as marketing, underwriting, servicing, or any other functions.

The purpose of identifying sources of capital is to provide the Department information on how capital is obtained for loans under the CFL. The information is necessary for the Department to understand the financing of the business models of licensees. The

purpose of identifying the intended market for the loans, including the credit worthiness of intended borrowers, is to provide the Department with information on how loans will be made under the CFL. The information is necessary for the Department to understand the lending markets served by CFL applicants and licensees. The purpose of identifying the intended methods for marketing the loans is to provide the Department with information on how borrowers will be solicited for loans. The information is necessary to ensure that the applicant's business model will comply with existing laws, such as Financial Code sections 22161 through 22167, and to provide the Department with information on borrower solicitation that will assist the Department in protecting borrowers against unfair or deceptive practices. The purpose of identifying in the business plan the anticipated terms of the loans is to provide the Department with information on the terms of the loans being made under the CFL. This information is necessary to implement the various regulatory requirements regarding the terms of loans set forth throughout the CFL and to assist the Department with protecting borrowers against unfair or deceptive practices. The purpose of requiring the business plan to include the methods for disbursing funds to the borrower is so that the Department can evaluate the potential risks to borrowers and the potential for additional costs or services. This provision is necessary to ensure the business model complies with the CFL, and to provide information on market practices that may guide future policy decisions. The purpose of requiring information on any products or services offered or required in connection with the loans is to provide the Department with background on the business activities of applicants. The provision is necessary to ensure the business model complies with requirements in the CFL regarding the sale of products and services. The purpose of requiring information on any cobranding or joint agreements with other organizations related to the making of the loans is to inform the Department on the details of the applicant's business model. The provision is necessary for the Department to ensure that any such agreements comply with the CFL. The purpose of requiring information on whether the applicant intends to retain or sell the loans, and the intended purchasers, is for the Department to understand who will hold and service the note after the loan is made. The rule is necessary for the Department to ensure that the business model complies with the CFL, such as ensuring that the licensee is the true lender and ensuring that the transfer of the note is permissible. The purpose of identifying whether any other business is solicited or engaged in at the same place as the proposed lending activity is to provide the Department with an understanding of the other business activity at a licensed location. The provision is necessary for the Department to evaluate whether the other business activity will facilitate evasions of the CFL, as provided in Financial Code section 22154. The purpose of identifying whether, and to what extent, the applicant intends to use third parties to perform any of its lending functions, such as marketing, underwriting, servicing, or any other functions, is for the Department to understand the use of third parties in the applicant's lending process. The provision is necessary for the Department to ensure that the protections of the CFL are not evaded through delegation to third parties.

For program administrators, the amendments in subparagraph (a)(6)(B) require the business plan to include (1) the intended sources of capital; (2) the intended market for the PACE financing, including the credit worthiness of intended property owners; (3) the intended methods for marketing the contract assessments; (4) the anticipated terms of the contract assessments; (5) the methods for disbursing funds for the PACE-authorized improvements; (6) any products or services offered or required in connection with the contract assessments; (7) whether any other business is solicited or engaged in at the same place as the proposed financing activity; (8) a description of the arrangements with public agencies for the administering of the PACE programs; and (9) whether the applicant will be purchasing the bonds from a public agency, and if so, whether these bonds will be retained or sold.

The purpose of this provision requiring the identification of sources of capital is to provide the Department information on how capital is obtained for PACE assessments. The information is necessary for the Department to understand the financing of the business models of licensees. The purpose of requiring the business plan to include the intended market for the PACE financing, including the credit worthiness of intended property owners, is to provide the Department with information on how PACE financing will be offered under the CFL. The information is necessary for the Department to understand the markets served by PACE program administrators. The purpose of requiring the intended methods for marketing the contract assessments is to provide the Department with information on how the program administrator intends to market PACE financing. This provision is necessary ensure that protections for solicitations through PACE solicitor and PACE solicitor agents align with the marketing methods of the program administrators. The purpose of the provision requiring the business plan to include the anticipated terms of the assessment contracts is to provide the Department with information on the terms of the assessment contracts being made under the CFL. This information is necessary to implement the various regulatory requirements regarding the terms of loans set forth throughout the CFL and to assist the Department with protecting borrowers against unfair or deceptive practices. The purpose of the provision requiring the business plan to include the methods for disbursing funds for the PACE-authorized improvements is to provide the Department with information on how the program administrator intends to disburse funds for PACE-authorized improvements. This provision is necessary for the Department to understand the business model of the applicant. The purpose of the provision requiring the business plan to include any products or services offered or required in connection with the assessment contracts is to provide the Department with information on products or services offered to property owners. The provision is necessary to identify whether products or services in addition to PACE-authorized improvements are offered with PACE financing. The purpose of requiring the business plan to include other business solicited or engaged in at the same place as the proposed financing activity is to inform the Department of other business activity by the program administrator. The provision is necessary for the Department to ensure that other business does not facilitate evasions

of the CFL as provided in Financial Code section 22154. The purpose of the business plan including a description of the arrangements with public agencies for the administering of the PACE programs is to the inform the Department about the local jurisdictions where the program administrator may provide PACE financing. This provision is necessary to understand the scope of the program administrator's business in this state. The purpose of including in the business plan information regarding whether the applicant will be purchasing the bonds from a public agency, and if so, whether these bonds will be retained or sold, is to inform the Department about the program administrator's business model. The provision is necessary for the Department to understand the program administrator's involvement in the financing of PACE assessments.

The amendments to paragraph (a)(7) establish subparagraphs (A) and (B). As initially proposed, the amendments to paragraph (a)(7) required the organizational chart to identifying affiliates, subsidiaries, and each owner of the applicant. As amended, the amendments require the organizational chart to identify entities and individuals owning or controlling 10 percent or more of the outstanding interests or equities securities of the applicant and the percentage ownership in the applicant. The purpose of the change is to have the organizational chart identify the owners subject to investigation under Financial Code section 22105. The amendments are necessary to obtain the information typically needed for licensure without burdening applicants to provide additional documentation that is only requested in unique circumstances. The amendments further provide that subsidiaries and affiliates are to be identified upon request where such additional information is necessary to investigate the applicant or owners, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting reasons for denial are present. The purpose of this provision is to provide the applicant notice that the Department may seek additional information about the applicant when investigating the applicant under Financial Code section 22105 where, based on the unique characteristics of the applicant, the information submitted does not provide sufficient information for the Department to investigate the applicant and its owners. The provision is necessary to where the Department requires additional information to understand the context of the applicant's proposed operations.

The amendments to subparagraph (a)(7)(B) provide that upon request, the applicant's organizational chart must identify the principal officers, directors, managing members, general partners, and trustees, as applicable, for each entity owning or controlling 10 percent or more of the outstanding interests or outstanding equity securities of the applicant, where additional information is necessary to investigate the applicant or owners, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting reasons for denial are present. The purpose of subparagraph (a)(7)(B) is to ensure that the Department is able to receive information on the identity of the individuals who serve in key managerial positions within the entities who own 10 percent or more of the applicant, where based on the unique

characteristics of the applicant, the additional information is necessary as part of the investigation of the applicant. The rule is necessary for the Department's investigation of the owners as required under Financial Code section 22105, and further necessary because the Department is no longer requiring these individuals submit background and fingerprint information unless they have the power to direct the management or policies of the applicant's lending or PACE program administration activities in this state.

The amendments add subparagraph (a)(11)(F), requiring each business entity applicant to upload to NMLS a copy of its formation documents, including any subsequent amendments, relevant resolutions, and a list of any name changes, upon request, where additional information is necessary to investigate the applicant, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting a reason for denial are present. The purpose of this provision is to provide applicants with notice that formation and related documents may be required for licensure when necessary for the Department to investigate the applicant, and to describe the means for submitting the documents to the Department. The formation documents would be necessary if the Department has questions about the structure of the applicant that would not otherwise be answered by the information provided in the application. An applicant's formation or related documents would be requested to further the investigation of the applicant required under Financial Code section 22105.

The amendments add subdivision (e), setting forth instructions for existing licensees transitioning onto NMLS. The purpose of transitioning onto NMLS is to establish a license record in NMLS, not to require the re-licensure of the licensee. Consequently, subdivision (e) provides that a licensee transitioning onto NMLS is not required to file the following items, if already on file with the Commissioner: (1) copies of Fictitious Business Name Statements bearing the seal of the county clerk; (2) fingerprints for individuals identified in the "Direct Owners and Executive Officers," "Indirect Owners," and "Qualifying Individuals" sections of Form MU1, unless fingerprints have not previously been submitted for an individual; (3) financial statements provided at the time of licensure; (4) the Customer Authorization of Disclosure of Financial Records form; (5) a business plan, except that a licensee transitioning to NMLS must provide an updated business plan if the plan previously submitted to the Commissioner is no longer accurate; (6) an organizational chart, unless the organizational chart previously submitted to the Commissioner is no longer accurate; (7) a management chart, unless the management chart previously submitted to the Commissioner is no longer accurate; (8) a certificate of qualification or good standing; (9) a partnership agreement; and (10) an Execution Section as set forth in the California Financing Law license application in subdivision (b) of section 1422 of the rules. The purpose of these provisions is to provide the licensee notice that the licensee is not required to submit many of the items needed for licensure, where already on file with the Commissioner, just to transition onto NMLS. However, some licensing information may be inaccurate as a result of changes to operations since the applicant's licensure, so the provisions indicate that inaccurate information must be updated in NMLS. These provisions are necessary to

reduce the burden on licensees transitioning to NMLS by not requiring the same supporting documentation that was provided to the Department when a license was issued, and to ensure that in transitioning to NMLS, the licensee updates its licensing record where the information in the Department's possession has become obsolete, so the Department has current information on its licensees.

Section 1422.5.1. License Application Requirements for Program Administrators

Financial Code section 22684, setting forth criteria that must be present before an assessment contract is executed, was amended by AB 2063 (Stats. 2018, ch. 813). Prior to the amendments made by AB 2063, the assessment contract could not be recorded unless the statutory criteria were met. The AB 2063 statutory amendments prohibit a program administrator from executing an assessment contract, prohibit work financed by an assessment contract from commencing under a home improvement contract, and prohibit a home improvement contract financed by an assessment contract from being executed, unless the criteria in section 22684 are met. The amendments to the text of rule 1422.5.1 reflect this change. Question 3 under paragraph (a)(4) of rule 1422.5.1 is recast to reflect the change to section 22684 made by AB 2063. The purpose of the amendment is to incorporate the statutory change made by AB 2063, and the amendment is necessary to accurately reflect the law. Similarly, Financial Code sections 22686 and 22687 were amended by AB 2063 to condition the executing of an assessment contract, rather than the recording of the assessment contract, on compliance with the requirements of these sections. Question 4 under paragraph (a)(4) of rule 1422.5.1 is recast to reflect the changes to sections 22686 and 22687, which require the program administrator to make a reasonable good faith determination that a property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment prior to executing the assessment contract. The purpose of the amendment to the text of the rule is to incorporate the statutory changes made by AB 2063, and the amendment is necessary to accurately reflect the law.

The amendments remove the requirement in paragraph (a)(4) requiring that the training program be submitted upon request of the Commissioner, and instead require the training program to be submitted as a condition of licensure. The purpose of this change is to ensure that the applicant maintains a training program that is in compliance with the law. The change is necessary to ensure that the training program is received by the Department as part of the application process, and to ensure applicants know that the training program is required to be submitted. The amendments to subdivision (b) remove the language requiring the PACE Program Administrator Application Request for Information form to be provided to the Commissioner upon request. The purpose of the change is to remove superfluous language since the form will already be maintained in the licensee's books and records, and the Department may examine a licensee's books and records at any time. The change is necessary to remove any ambiguity about when the Commissioner may request the original document.

Section 1423. Short Form Application for Licensees Seeking Additional Location License; Form

Under the CFL, each business location requires a license. Rule 1423 sets forth a short form application for licensees to seek a license for a new location. The amendments to section 1423 remove obsolete information in the short form instructions about the necessity for Adobe Reader 7.x to download the "Request for Live Scan Service" form. The purpose of this change is to remove an outdated instruction, and the change is necessary to provide accurate information to applicants. The amendments also change a statement in the form regarding the mailing of the license, to instead provide that the license will be provided to the person identified in the form. The purpose of removing the reference to the mailing of the license is to modernize the rules by changing provisions that may imply postal mailing. The change is necessary to transition away from paper driven licensure processes. The amendments also eliminate the requirement that an out-of-state individual submitting fingerprints also submit the Department of Justice's *Request for Exemption from Mandatory Electronic Fingerprint Submission Requirement* form. The purpose of the amendments is to eliminate the requirement for an obsolete form. The amendments are necessary because the Department of Justice no longer requires or uses the form.

Section 1424. Branch Office License Instructions for Licensees and Applicants Filing Through NMLS

The amendments to rule 1424 clarify that the rule is applicable to finance lender, broker, or program administrator licensees. The purpose of the amendments is to clarify that the section is not applicable to individual mortgage loan originator licensees under the CFL. The rule is necessary to identify the licensees subject to the rule.

Section 1425. Books and Records: To Be Maintained at the Licensed Place of Business

The amendments to rule 1425 amend subdivision (a) to provide that books may be maintained physically at the licensee's licensed location, or the books and records may be digitally accessible from its license location. The purpose of this amendment is to clarify for licensees that the requirement for maintaining books and records at its licensed location does not require the records be maintained in physical form. The rule is necessary to clarify the requirement and recognize advances in technology.

Section 1437. Surety Bond

The amendments to section 1437 set forth an electronic bond form for applicants and licensees on NMLS. The amendments set forth the bond language adapted from the NMLS's model bond form and used by the Department under the Student Loan Servicing Act. The required information from the applicant or licensee includes the bond number, bond amount, bond effective date, licensee's name, NMLS number, address for service of process, surety name, surety's NAIC number, surety's address for service

of process, signatory date, licensee signature, and surety signature. The purpose of obtaining this information is to provide the key information on the surety, the bonded licensee or applicant, and the terms of the bond. The provisions are necessary to establish the parties to the bond, the amount of the bond, and the effective date of the bond.

In the body of the bond, the surety represents that it is licensed to do surety business in the State of California, and that the surety and the applicant or licensee are bound to the Commissioner for the Commissioner's benefit, and for the benefit of any person who may have a cause of action against the surety or applicant under the CFL, for the amount of the bond. The bond further provides that if the applicant or licensee conforms and abides by the CFL, then the obligation under the bond is void, but otherwise it remains in full force and effect until released by the Commissioner, subject to the surety's authority to amend or cancel the bond and subject to the dollar amount of the bond. The signatory for the surety certifies under penalty of perjury under California law that the signatory executed the bond under an unrevoked power of attorney. Finally, the bond provides that the Commissioner has the exclusive right to proceed against the bond. The purpose of the provisions is to set forth the bond provisions for an electronic surety bond through the NMLS that complies with the bond requirement in Financial Code section 22112 and the Code of Civil Procedure requirements under the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.). The provisions of the rule setting forth the content of the bond are necessary to establish the content of an electronic bond for filing through NMLS, to set forth the specific obligation of the surety or principal for the bond amount, to set forth the acts that will give rise to liability for the bond amount, and to provide the person who may make a claim against the bond. The language of the surety bond provides that the surety may reduce coverage or cancel the bond with thirty days' notice. The purpose of this language is to set forth the requirements for changing the coverage of the bond that complies with Code of Civil Procedure section 996.330. This provision is necessary to set forth the applicability of the bond during the period from the notice of cancellation of the bond, or reduction in coverage, to the operative date of the cancellation or change in coverage. The text of the bond conforms to the language approved by the Attorney General in accordance with Government Code section 11110.

Section 1550. Advertising

Subdivision (b) is amended to no longer require that every licensee's NMLS unique identifier be included on all advertising. The Department is persuaded by stakeholders that the benefits of this change do not outweigh the costs for all licensees to make this change to advertising. Subdivision (c) of section 1550 is amended to provide that a written advertisement on an electronic advertising platform that is limited to 300 or fewer characters need not comply with the requirements of the section setting forth additional information to be included in the advertising, provided that the electronic advertisement contains a link, and the linked location contains the information required by the section.

The purpose of clarifying that the advertising platform be electronic was to ensure that the exclusion was not applicable to print media. This change is necessary to achieve the purpose of the exclusion to allow advertising on electronic platforms that limit characters. The number of allowable characters for the exclusion was reduced from 500 to 300. The purpose of the reduction in characters is to ensure that the exclusion is narrowly tailored so that the exclusion does not replace the requirement of the rule. The amendment is necessary to narrowly apply only to platforms that otherwise may limit a licensee's ability to meet the requirements of this rule. Finally, the purpose of requiring that the advertising contain a link to the disclosures required under the section is to ensure that the disclosures remain available to consumers. The amendments are necessary allow consumers and other interested parties to confirm the licensure of persons advertising loans on electronic advertising platforms.

Article 15. PACE Program Administrators

Section 1620.01. General

The amendments to rule 1620.01 provide that the articles of the regulations applicable to lending are applicable to a program administrator who is also engaged in business as a finance lender or broker. The purpose of this amendment is to clarify that the exclusion from specified articles related to lending is applicable to a program administrator when engaged in business as a program administrator, but the articles would be applicable to a program administrator who engages in business as a finance lender or broker. The amendments are necessary to clarify the exclusion.

Section 1620.02. Definitions

The amendments to section 1620.02 remove the proposed definitions of "ability to pay" and "authorized by a program administrator," based on concerns from commenters. The amendments to the definition of "to solicit a property owner to enter into an assessment contract" in subdivision (a) no longer provide that it means to ask, entice, urge, or request a property owner to enter into an assessment contract, based on concerns that the added language resulted in uncertainty rather than clarity. The definition was further amended to provide that it includes assisting a property owner with completing the application for financing through a PACE assessment plus one or more of the following: (1) inviting a property owner to apply for a PACE assessment; (2) asking a property owner whether the property owner is interested in a PACE assessment; (3) discussing the terms of a PACE assessment with a property owner; or (4) describing the characteristics of a PACE assessment to a property owner. The purpose of the changes is to provide guidance on when an individual must be enrolled as a PACE solicitor or PACE solicitor agent. The amendments also add to the definition that "to solicit a property owner to enter into an assessment contract" does not include a trainee observing the process of PACE financing, provided the trainee does not actively participate in the solicitation or PACE financing process. The purpose of this provision is to address a request from a commenter to add this provision to confirm that a trainee

would not be subject to enrollment. Among other things, a PACE solicitor agent must complete an introductory training, and therefore this provision is necessary to ensure that a trainee may observe a PACE solicitor agent prior to enrollment.

The definition of “administrative or clerical tasks” in subdivision (b) is amended to provide that the tasks identified as administrative or clerical tasks are such when performed by an individual under the supervision and direction of an enrolled PACE solicitor, enrolled PACE solicitor agent, or program administrator. This purpose of this provision is to ensure that the collection of property owner information, and any communication with property owners to collect information for an assessment contract, is performed with oversight by a licensee or an enrollee of a licensee. This rule is necessary to ensure that administrative functions that may involve processing sensitive property owner information, and ultimately a lien on a property owner’s property, will be under the direction of a licensee or an enrollee.

The amendment also provides that “administrative or clerical tasks” means customer and back-end technical support on the electronic, web-based or database elements of PACE applications. The purpose of this provision is to provide certainty that technical support constitutes an administrative or clerical task and is not otherwise subject to enrollment as a PACE solicitor or PACE solicitor agent. This provision is necessary to clarify the persons subject to enrollment as PACE solicitors and PACE solicitor agents.

The definition of “maintain a license in good standing” or “maintain a registration in good standing” in subdivision (d) is amended to provide that the status of a license or registration on the CSLB website that a license or registration is active, without any notice that the license or registration is expired, suspended, revoked, surrendered, conditioned, or restricted, constitutes the maintenance of a license or registration in good standing. The purpose of this provision is to ensure that a program administrator may rely on the representations of licensure or registration on the CSLB website when monitoring the status of a PACE solicitor or PACE solicitor agent’s license or registration. The rule is necessary to provide guidance to a program administrator on what action is required to ensure a PACE solicitor or PACE solicitor agent’s license or registration is in good standing.

The definition of “extinguishment of a PACE assessment” in subdivision (e) is amended to provide that the property owner’s obligations under an assessment contract have been satisfied or canceled, without identifying whether the property owner or another has satisfied the obligations. The purpose of this change is to recognize that persons other than property owners may be satisfying or canceling the obligation of a property owner, and the change is necessary to incorporate this possibility into the definition. The amendments also change “annual secured property tax bill” to “property tax bill.” The purpose of this change is to ensure that all property tax bills fall within the definition. This change is necessary to ensure that the initial description of a property tax bill did not inadvertently limit the meaning in an unintended manner.

The definition of “person who advertises a PACE program” in subdivision (h) is amended to provide clarifying descriptions to the various terms. “Contractor” is changed to “home improvement contractor,” “individual” is changed to “other individual,” and “property owner” is changed to “specific property owner.” The purpose of these changes is to clarify that the definition of a “person who advertises a PACE program” is intended for advertisers and not intended to include home improvement contractors or salespersons soliciting property owners to enter into PACE assessments. This rule is necessary to ensure the exclusion in the law intended for advertisers is not applied to PACE solicitors or agents intended to be enrolled under the law.

Subdivision (j) defines “home improvement” as having the same meaning as in Business and Professions Code section 7151; subdivision (k) defines “home improvement contract” as having the same meaning as in Business and Professions Code section 7151.2; subdivision (l) defines “home improvement contractor” as having the same meaning as in Business and Professions Code section 7150.1; and subdivision (m) defines “home improvement salesperson” as having the same meaning as in Business and Professions Code section 7152. The purpose of these provisions is to define these terms in the same manner as the terms are defined in the Contractors State License Law. The changes are necessary to prevent confusion by ensuring these terms have the same meanings when used in different aspects of the transaction.

Section 1620.03. Exclusions

Section 1620.02.1 was renumbered to section 1620.03. As renumbered, subparagraph (b)(1) of section 1620.03 sets forth an exclusion from the definition of “PACE solicitor” and “PACE solicitor agent” for employees on home improvement projects who are not involved in soliciting the property owner for financing through a PACE assessment. The changes provide clarity by amending the proposed language to use more specific terms as defined in the rules, including changing “contractor” to “PACE solicitor” and changing “efficiency improvement contract” to “home improvement contract.” The purpose of these changes is to be consistent in the use of terms, and the changes are necessary to provide clarity to the meaning of the exclusion. The changes also require that the employee or subcontractor not solicit a property owner to enter into an assessment contract. The purpose of this change is to ensure that if the employee or subcontractor is excluded from the definition of PACE solicitor or PACE solicitor agent, then the employee or subcontractor is not soliciting property owners to enter into assessment contracts. The change is necessary to ensure that the exclusion for employees and subcontractors is not construed to authorize these unenrolled individuals to solicit property owners to enter into assessment contracts.

“Joint powers authorities” are added to the list in subparagraph (b)(4) of section 1620.03 as not included in the terms “PACE solicitor” or “PACE solicitor agent.” The purpose of the amendment is to confirm that joint powers authorities are not subject to enrollment or oversight as a PACE solicitor or PACE solicitor agent. While “joint powers authority” is included in the definition of “public agency” in Financial Code section 22020, the

purpose of including these authorities in the rule is to provide clarity and not duplication. The rule is necessary because joint powers authorities are frequently responsible for local PACE programs and therefore the separate inclusion in the rule resolves questions about the applicability of the PACE regulations to them.

The introduced version of section 1620.03 contained provisions that were either incorporated into section 1620.06 or withdrawn based on comments from interested parties raising various concerns with the provisions.

Section 1620.05. Advertising Standards

The amendments rephrase subdivision (a) of section 1620.05 to provide that a program administrator must condition remaining enrolled as a PACE solicitor or PACE solicitor agent on refraining from advertising a PACE program, directly or indirectly, in a manner that is untrue, deceptive, or likely to mislead a property owner. The purpose of rephrasing the provision from a prohibition to a condition of enrollment is to better align the provision with the law and the nature of the contractual relationship between the program administrator and the PACE solicitors and agents. The change is necessary to ensure that program administrators maintain oversight of advertising by PACE solicitors and PACE solicitor agents to prevent misrepresentations to property owners. The amendments provide that advertising by a program administrator, PACE solicitor, or PACE solicitor agent may be direct or indirect. The purpose of this provision is to prevent schemes to avoid responsibility for misrepresentations by using lead services that make the misrepresentations to property owners. This provision is necessary to ensure that property owners are not misled about PACE financing of efficiency improvements.

The amendments provide that the list of actions constituting untrue advertising is non-exclusive. The purpose of this provision is to ensure that the list of actions constituting untrue advertising does not prevent other untrue advertising from being prohibited under Financial Code section 22161. The rule is necessary to protect property owners from untrue representations.

Paragraph (a)(1), restricting an untrue representation that the full assessment payment may be deductible as a state or local real estate tax, is amended to add, “unless the statement is consistent with representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency with regard to the tax treatment of PACE assessments or otherwise true.” The purpose of the amendment is to ensure that the provision does not prohibit truthful representations, and the amendment is necessary for the same reason.

The amendments to paragraph (a)(2) provide that representing to a property owner that the program is a free, subsidized, or government program is untrue, deceptive, or likely to mislead a property owner, unless the program in fact has these characteristics. The purpose of the amendments is to ensure that the provision does not prohibit truthful

representations, and the amendments are necessary to accommodate instances where the representations may be truthful.

The amendments to paragraph (a)(5) recharacterize the restriction on untrue representations regarding energy savings. The amendments condition enrollment on a PACE solicitor or PACE solicitor agent not suggesting an efficiency improvement will pay for the PACE assessment, unless the representation is supported by evidence, including being consistent with the Public Utilities Commission's inputs and assumptions for calculating electric utility bill savings under Public Utilities Code section 2854.6. The amendments narrow the originally proposed text that more broadly restricted suggesting an efficiency improvement will result in an economic savings or offset the cost of the improvement. The purpose of narrowing the type of misrepresentation subject to the rule is to ensure that the rule is only applicable to a PACE solicitor or PACE solicitor agent's offering of PACE financing, and not a home improvement contract in general. Prohibitions on misrepresentations regarding home improvements in general are enforced by the Contractors State License Board. The amendments are necessary to ensure that the rule does not inadvertently encroach on the regulatory oversight of the Contractors State License Board over home improvement solicitation activity.

The amendments to paragraph (a)(6) condition enrollment on a PACE solicitor or PACE solicitor agent not advertising PACE financing through a method that violates the Federal Trade Commission's Telemarketing Sales Rule, rather than any state or federal "do not call" law or anti-spam law. The purpose of the amendments is to address concerns that the originally proposed language was too vague, while still protecting property owners against unlawful telemarketing practices. The Telemarketing Sales Rule requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services. The amendments are necessary to prevent the continued enrollment of a PACE solicitor or PACE solicitor agent who is telemarketing PACE financing in a manner that violates the Telemarketing Sales Rule.

The amendments to paragraphs (a)(9) and (a)(10) clarify that the requirements of the paragraph are only applicable for advertising related to a PACE program. With respect to paragraph (a)(9), only blind advertising for a PACE program falls within the provision. With respect to paragraph (a)(10), only untrue statements about a PACE program or the omission of information about a PACE program falls within the provision. The purpose of the amendments is to ensure that the provision is limited to advertising related to a PACE program. The changes are necessary to clarify the scope of the rule.

The amendments remove provisions regarding misleading credentials and renumber the following subdivisions. In renumbered subdivision (c), the amendment to the provision restricting the advertising of unenrolled businesses or individuals provides that that the restriction is not applicable if the business or individual is not required to be enrolled. The purpose of this amendment is to recognize that some businesses or

individuals may not be within the definitions of a PACE solicitor or PACE solicitor agent. The amendment is necessary to ensure that the advertising restriction is limited to persons subject to enrollment.

The amendments to renumbered subdivision (e) change the exclusion from the advertising licensure disclosure requirement in the following ways: (1) the advertising platform must be electronic; (2) the advertising platform must limit characters to 300 rather than 500; and (3) the advertisement must contain a link to the disclosures required under subdivisions (b) and (d) of the section. The purposes of these amendments are (1) to ensure that the exclusion is only for electronic advertising platforms, and not print platforms; (2) to ensure that only platforms that limit characters are included in the exclusion; and (3) to provide consumers with access to the disclosures by requiring a link to them. The changes are necessary to further refine the exclusion so that it serves its intended purpose of allowing advertising on electronic media such as social media where characters are limited, without inadvertently providing an overly broad loophole to the disclosure requirements in subdivisions (b) and (d).

The amendments add subdivision (f) for the purpose of ensuring that the protections from misleading advertising are applicable to advertising by third parties who obtain leads that are subsequently provided to PACE solicitors or program administrators for potential PACE financing of home improvements. Paragraph (f)(1) provides that a program administrator may not evade the prohibition against untrue, deceptive, or misleading advertising by obtaining leads from a third party who the program administrator knows solicits property owners for participation in a PACE program through untrue, deceptive, or misleading advertising. Paragraph (f)(2) provides that a program administrator may not enroll or continue 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. These provisions are necessary to ensure that consumers are protected against untrue, deceptive, or misleading advertising regardless of whether the advertisement was made by the program administrator or a third party.

Paragraph (f)(3) prohibits 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 notifies the property owner of the untrue, deceptive, or misleading representation by the third party, and after correcting the misinformation, obtains and documents the affirmative response that the property owner seeks to proceed with the transaction. The purpose of paragraph (f)(3) is to protect property owners from being misled into PACE financing transactions based on untrue, deceptive, or misleading advertising. However, the purpose of subparagraphs (f)(3)(A) and (B) is to

provide the program administrator with a way to correct the untrue, deceptive, or misleading representations by a third party and proceed with the transaction. A property owner may choose to proceed with PACE financing after misinformation is corrected. The rule is necessary to protect against misrepresentations but also provide both the property owner and the program administrator with a means of proceeding with the transaction.

Section 1620.06. Assessment Contracts and Disclosures

The amendments redraft most of section 1620.06 and combine the section with concepts initially proposed in section 1620.03. For clarity purposes, paragraphs (1) and (2) of subdivision (a) incorporate the delivery requirements for the Right to Cancel notice and Financing Estimate and Disclosure notice required under Streets and Highways Code sections 5898.16 and 5898.17, including the requirement under section 5898.17 that consent to electronic delivery be obtained in writing through a signature on a printed paper document. Paragraph (2) incorporates the amendments to Streets and Highways Code section 5898.17 made by AB 1551 (Stats. 2020, ch. 156) and AB 2471 (Stats. 2020, ch. 2471). While duplicative of statutory law, these changes are necessary to provide clarity and context to the remainder of the section. Paragraph (3) of subdivision (a) provides that if a program administrator obtains the consent of the property owner to enter into the assessment contract electronically, that consent must be obtained in a manner that demonstrates that the property owner can access the information in the electronic form that will be used to provide the information that is the subject of the consent. The purpose of this provision is to incorporate this principle from section 7001(c)(1)(C) of the Electronic Signature in Global and National Commerce Act (15 U.S.C. § 7001 et seq.). The provision is necessary to ensure that property owners are not unknowing consenting to the electronic receipt of documents without any demonstrated ability to access the documents.

Paragraph (4) of subdivision (a) is amended to 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 property owner can access the information in the electronic form. The purpose of the requirement that the consent be in a separate document is to improve the likelihood that the property owner recognizes and knowingly agrees to receiving the contract electronically. The purpose of the requirement that the consent be obtained in a manner that demonstrates the property owner can access the information in an electronic form is to ensure that the property owner has access to the documents that the property owner will be receiving solely in an electronic format. These provisions are necessary to decrease the likelihood of a property owner unknowing agreeing to solely receiving the assessment contract electronically when the property owner lacks the ability to access the document in this format.

Paragraph (5) of subdivision (a) requires a program administrator to make a printed paper copy of the assessment contract available to the property owner upon request. The purpose of this provision is to ensure that a property owner can obtain a copy of the assessment contract in paper, regardless of whether the property owner consented to the electronic receipt of the contract. The provision is necessary to provide an alternative means for the property owner to obtain a copy of the contract if the electronic copy is not available to the property owner.

Paragraph (6) of subdivision (a) provides that nothing in the section restricts the ability of a program administrator to deliver documents to a property owner in printed form or requires the electronic delivery of any document. The purpose of the provision is to clarify that a program administrator may deliver documents in printed form whether or not they are provided in an electronic form, and to clarify that the requirements for electronic delivery do not create an obligation to provide documents electronically. These provisions are necessary to clarify the requirements for electronic or paper delivery.

Subdivision (b) of section 1620.06 sets forth requirements applicable when a program administrator provides the documents in subdivision (a) electronically. It further provides that compliance with the subdivision is not necessary if the program administrator also provides the property owner with printed copies of the documents. The subdivision rephrases the some of the requirements originally proposed under subdivision (b) of section 1620.03. The purpose of the provision is to require compliance with the requirements for electronic documents in instances where a property owner is not otherwise provided printed copies. The provision is necessary to set forth when compliance is necessary. Paragraph (b)(1) requires a program administrator to ask and confirm with a property owner that the property owner has access to the internet and agrees to accept the documents at an electronic mail address of the property owner's choosing. This provision is necessary to prevent a program administrator from delivering documents electronically to a property owner who effectively has no way to access them.

Paragraph (b)(2) requires a program administrator to confirm that the property owner's email address was not established during the solicitation for PACE financing by asking the property owner during the oral confirmation of key terms call under Streets and Highways Code section 5913 to confirm the property owner's email address, when it was created, and the person who created it. The paragraph provides that a program administrator that uses technology to detect newly created email addresses may rely on this technology in lieu of the confirmation required by this paragraph. The purpose of this paragraph is to help ensure that the email addresses used to provide documents to property owners are valid existing email addresses that belong to the property owner, so that the property owner can access the documents. Email addresses established at the time of the PACE financing transaction are unreliable as a means for delivering documents to property owners in light of the lack of evidence that the property owner

will be able to access and use the email address without the assistance of a PACE solicitor or PACE solicitor agent. Requiring the use of a preexisting email address helps ensure the legitimacy of the transaction. The provisions are necessary to ensure that the program administrator validates the property owner's email address directly with the property owner using the oral confirmation of key terms under Streets and Highways Code section 5913, so that the program administrator is timely alerted if an email address is created at the time of solicitation.

Paragraph (b)(3) requires a program administrator to provide the documents under subdivision (a) to a property owner electronically in a manner that does not limit the time period that the property owner has to access the electronic records unless the program administrator notifies the property owner of this limitation and provides the property owner a printed copy of the documents. The purpose of this provision is to ensure that if documents are provided electronically, the documents may be accessed by the property owner at any time, and not provided through a link or password that will expire. The provision is necessary to ensure property owners will continue to have access to the documents regarding their transaction.

The provisions in paragraphs (b)(4), (b)(5), and (b)(6) are renumbered as paragraphs (b)(1), (b)(2), and (b)(3), and edited for clarity. As amended, the provisions are applicable to all the documents in subdivision (a). The purpose is to require all documents provided electronically to be printable, to include the advice that the property owner save a copy of the documents, and to require the documents to be provided upon request. The amendments are necessary to clarify the requirements for all electronic records.

Paragraph (b)(7) provides that a program administrator must retain evidence in its records that the documents were received electronically by the property owner and provides that the evidence may be obtained during the oral confirmation of this information under paragraph (e)(1) of this section or through another method determined by the program administrator. The purpose of this amendment is to require documentation substantiating that documents provided electronically were received by the property owner. The provision is necessary to help ensure that the property owner receives the documents. The purpose of the provision providing that the evidence may be obtained during the oral confirmation or through another method is to provide guidance on ways to comply with the requirement. The provision is necessary to clarify how the program administrator can obtain such evidence.

The amendments to subdivision (c), which required disclosures to be on the first page if provided with the assessment contract, instead require disclosures in front of the contract and provide that the disclosures may be preceded by a cover letter or other introductory information. The purpose of the amendments is to allow for introductory information while ensuring that key disclosures appear up front in the documentation provided to property owners. The amendments are necessary to provide a program administrator greater flexibility while ensuring the disclosures are up front.

The proposed subdivision (d) required a program administrator to maintain evidence of compliance with the section in its books and records. Instead, paragraph (b)(2) of section 1620.07 describes the books and records to be maintained related to the disclosures and assessment contract requirements under this section. As amended, the books and records requirement in subdivision (d) was deleted and paragraph (d)(1) instead requires a program administrator to take reasonable steps to ensure the signature belongs to the property owner. The purpose is to ensure a program administrator has implemented processes to confirm the authenticity of a property owner's signature. The provision is necessary to assist in protecting property owners from fraudulently signed assessment contracts. Paragraph (d)(2) sets forth minimum requirements for ensuring the signature belongs to the property owner if the signature is not notarized. The purpose of this subdivision is to protect the property owner by ensuring that the property owner intended to enter into the contract. The provisions are necessary to prevent forged documents that result in a lien on the property owner's property. Paragraph (d)(2) provides if a signature is not notarized, the program administrator must confirm the signature of the property owner through the process identified in subparagraph (A) of the paragraph in addition to one or more of the processes identified in subparagraphs (B) through (D) of the paragraph. Subparagraphs (A) through (D) set forth methods for validating a signature. Subparagraph (d)(2)(A) includes confirming the identity of the property owner through photo or other unique identification presented by the property owner or a two-step authentication process. If a signature is not notarized, the identity of the signatory must always be confirmed through this process, plus an additional method. The purpose of requiring either photo identification or a two-step authentication process is to verify the identity of the signatory. The provision is necessary because both a photo or unique identification, and a two-step authentication process, are established manners of confirming identity. The purpose of the requirement for at least one additional means of confirming the identity of the signatory is to further validate the signature and reduce the likelihood of a fraudulent signature. Subparagraph (d)(2)(B) provides that one of the additional methods may be tracking IP geolocation information, which will indicate the location of an electronic signature. This provision is necessary as one of the three options for additionally validating a signature because it will provide the program administrator with information on whether the contract was signed at the property owner's property. Subparagraph (d)(2)(C) provides that one of the additional methods may be sending a confirming letter by postal mail. This provision is necessary as one of the three options for additionally validating a signature because a letter will alert a property owner by postal mail of the signature, allowing the property owner to act if the property owner did not enter into the assessment contract. Subparagraph (d)(2)(D) provides that one of the additional methods may be confirming the identity of the property owner and that the property owner will be the person signing the assessment contract during the oral confirmation of key terms. This provision is necessary as one of the three options for additionally validating a signature because it provides a forum for a program administrator to

communicate directly to the property owner and confirm the property owner's signature on the agreement.

Subdivision (e) provides that the oral confirmation of key terms under Streets and Highways Code section 5913 must be conducted in a manner intended to confirm the property owner understands the information. The purpose of this provision is to protect the property owner by ensuring the property owner understands the information. The provision is necessary to assist in avoiding misunderstandings regarding the financing tool. Paragraph (e)(1) provides that for purposes of confirming that at least one owner of the property has a copy of the assessment contract documents required in subparagraph (a)(1)(A) of Streets and Highways Code section 5913, the program administrator must confirm that the physical or electronic documents have been delivered to the property owner, and if the documents are delivered solely in electronic format, that the property owner has received the documents and the property owner has successfully accessed the documents through the property owner's own electronic device, before proceeding with the remainder of the oral confirmation. The purpose of this provision is to ensure that the property owner has a copy of the assessment contract before the contract is executed, as required in Streets and Highways Code section 5913, and if the contract is provided electronically, to ensure the property owner can access the contract. The provisions are necessary to ensure that the property owner receives a copy of the contract before both the oral confirmation and the execution of the contract, as contemplated by the statute.

Paragraph (e)(2) provides that if the program administrator determines that PACE solicitor agent is providing the property owner with answers during the oral confirmation, the program administrator shall advise the property owner that the program administrator cannot confirm that the property owner understands the terms unless the property owner can respond without the assistance of the PACE solicitor agent. The purpose of this provision is to ensure that the property owner understands the information provided during the oral confirmation. The provision is necessary to prevent PACE solicitor agents from circumventing the rules intended to ensure the property owner understands the terms by providing the property owner with the answers during the oral confirmation.

Paragraph (e)(3) provides that if a PACE solicitor agent is present during the oral confirmation of key terms, the program administrator shall confirm that the property owner consents to the PACE solicitor agent's presence. Subparagraph (a)(2)(A) of Financial Code section 5913 provides that a property owner has the right to have other persons present on the call. However, the property owner may not be aware that the property owner can proceed with the call outside of the PACE solicitor agent's presence. The purpose of confirming the property owner's consent to the presence of the PACE solicitor agent is to decrease the likelihood that the property owner will be influenced by the presence of the PACE solicitor agent. The provision is necessary to

allow a property owner to acknowledge the key terms of the transaction without any potential pressure or influence from a home improvement salesperson.

Paragraph (e)(4) prohibits a program administrator from proceeding with the oral confirmation if the property owner objects to the presence of the PACE solicitor agent and the PACE solicitor agent remains present. The purpose of this provision is to ensure that a property owner may proceed with an oral confirmation of key terms call without any pressure or influence from a home improvement salesperson. The provision is necessary in order for paragraph (e)(3) to have effect; otherwise, the property owner's right to object to the PACE solicitor agent's presence would be illusory.

Subparagraph (a)(2)(C) of Streets and Highways Code section 5913 requires a program administrator to confirm with a property owner that the efficiency improvement being installed is being financed by a PACE assessment. Subdivision (f) of section 1620.06 provides that for purposes of confirming that the efficiency improvement being installed is being financed by a PACE assessment, the program administrator shall confirm with the property owner 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 purpose of this provision is to ensure that the efficiency improvement being financed is the same as the efficiency improvement being installed in the home improvement contract. This provision is necessary to protect a property owner from being defrauded by financing something different than what was provided through a home improvement contract.

Subdivision (g) of section 1620.06 requires a program administrator to provide in writing to every property owner who enters into an assessment contract the Department's consumer services toll-free number ((866) 275-2677), email address (Ask.DFPI@dfpi.ca.gov), and website (dfpi.ca.gov). The purpose is to ensure the property has contact information for the Department in case the property owner has a complaint about the program administrator. The rule is necessary for the protection of the property owner.

Section 1620.07. Books and Records

The amendments to subdivision (a) of section 1620.07 provide that books, records and accounts may either be physically maintained at the licensee's main location or may be digitally accessible at the location. The purpose of the amendment to recognize digitally accessible records is to ensure that a licensee is not required to keep records in paper form, nor required to physically maintain mainframes or other hardware for storage of digital records at its main location. The amendments are necessary to clarify and modernize the requirements for the maintenance of records.

The amendments to subparagraph (b)(1)(D) expand the enrollment records for PACE solicitors and agents by incorporating the records maintained pursuant to paragraph (h)(2) of section 1620.12. Paragraph (h)(2) of section requires a program administrator

to maintain identification information in its books and records for any enrolled PACE solicitor agent who is not registered with the Contractors State License Board. The purpose of the amendment to subparagraph (b)(1)(D) is to incorporate the specific enrollment record requirement under section 1620.12 into the broader section 1620.07 requirement for enrollment records. The amendment is necessary to provide clarity to the recordkeeping requirements by signaling within section 1620.07 that section 1620.12 has specific requirements related to enrollment records.

Similarly, amendments throughout section 1620.07 provide cross-references to other provisions in the regulations, and these cross-references are necessary to provide clarity and guidance on the specific recordkeeping requirements elsewhere in the regulations. Subparagraph (b)(1)(E) regarding recordkeeping related to background checks is amended to reference paragraph (c)(4) of section 1620.11 and paragraphs (b)(2), (c)(2), and (d)(2) of section 1620.13; subparagraph (b)(1)(F) regarding documentation supporting why a PACE solicitor or PACE solicitor agent is not subject to licensure or registration by the CSLB is amended to reference subparagraph (d)(1)(D) of section 1620.11 and subdivision (g) of section 1620.12; subparagraph (b)(1)(H) regarding documentation of periodic reviews is amended to cross-reference paragraph (e)(2) of section 1620.15; subparagraph (a)(1)(I) regarding documentation of solicitor agent training is amended to cross-reference paragraph (c)(1) of section 1620.17; and subparagraph (b)(4)(C) regarding ability to pay documentation is amended to cross-reference section 1620.21. In addition, the cross-reference in subparagraph (a)(1)(G) is amended to reflect renumbering in that section. This change is necessary for clarification.

The amendments to subparagraph (b)(1)(F) provide that a program administrator must maintain documentation of the CSLB licensure or registration status of a PACE solicitor or PACE solicitor agent to the extent it exists and is accessible. The purpose of this amendment is to address the concern raised by a stakeholder that documentation of CSLB licensure may not exist or may not be accessible. While under ordinary circumstances, documentation of licensure or registration would be available from either CSLB, such as through its website, or directly from the PACE solicitor or PACE solicitor agent, the amendments to this provision are necessary to allow for the contingency that documentation is not accessible from any source. The amendments to subparagraph (b)(1)(F) also provide that documentation supporting that the PACE solicitor or PACE solicitor agent is not subject to licensure of registration with the CSLB is only required when applicable. The purpose of this amendment is to clarify that documentation is not required unless a PACE solicitor or PACE solicitor agent is unlicensed and unregistered. The amendment is necessary to clarify that documentation is only required to document the reason that neither licensure nor registration by the CSLB is required.

The amendment to subparagraph (b)(1)(H) changes the requirement for recordkeeping of reports summarizing results of periodic reviews, to instead require documentation of

periodic reviews. The purpose of this change is to recognize that the periodic reviews do not require reports or results, but instead require documentation that they were conducted and of any findings made and actions taken as a result of the review. The change is necessary to align the recordkeeping requirements with the requirements for the periodic review. The amendment to subparagraph (b)(1)(I) changes “records of PACE solicitor agent training” to “documentation of PACE solicitor agent training” to describe the records to be maintained more accurately. The change is necessary to provide clarity.

The amendments to subparagraph (b)(2)(A) remove the requirement for an accounting of any payments on the assessment contract, based on the concerns the provision was too vague. The amendments also require that if the assessment contract was signed or delivered electronically, then the program administrator must maintain records of the property owner’s consent to an electronic signature and electronic delivery. The purpose of this requirement is to ensure the records establish the property owner’s consent to sign receive the documents electronically. The provision is necessary to ensure the electronic delivery will actually result in receipt by the property owner. The amendments add clause (b)(2)(A)(1), providing that if a signed copy of the assessment contract is provided electronically to the property owner, the program administrator must maintain in its records evidence of receipt by the property owner. The purpose of this amendment is to ensure that the records establish that the property owner received the assessment contract when delivered solely in electronic form. The provision is necessary to prevent instances where property owners have failed to receive assessment contracts delivered electronically. The amendments add clause (b)(2)(A)(2) providing that if the assessment contract is signed electronically by the property owner, the program administrator must maintain the audit trail related to the electronic signature. The purpose of this provision is to retain documentation related to the signature process to establish the validity of the signature of the property owner. The provision is necessary to document that a property owner has entered into an assessment contract electronically.

Amendments to subparagraph (b)(2)(B) change the requirement that program administrators retain resolutions of complaints, to instead provide that program administrators retain final decisions of complaints. The purpose of this change is to align with section 1620.08 of these rules regarding complaints, and the change is necessary for clarity.

The amendments to subparagraph (b)(2)(E) add that if the notices required under Streets and Highways Code sections 5898.16 and 5898.17 are provided electronically, the program administrator must retain documentation of the property owner’s consent to receive the documents electronically, and evidence of receipt of the disclosures by the property owner. The purpose of these amendments is to ensure that the program administrator’s records include documentation that the consented to the electronic records and received the documents electronically. These amendments are necessary

to ensure that the property owner agrees to electronic delivery and in fact receives these statutory notices.

Amendments to subparagraph (b)(2)(F) remove the requirement for retaining records related to compliance with section 1620.06, which are incorporated into amendments to subparagraph (b)(2)(E), and instead require program administrators maintain evidence of the market value of the property at the time of the assessment contract. The purpose of this requirement is to ensure a program administrator retains documentation that the property owner was eligible for the assessment contract. The amendment is necessary to ensure the program administrator is only providing financing through PACE assessments to property owners who are eligible for a PACE assessment.

Subparagraph (b)(2)(G) adds the requirement that program administrators retain a record of the estimated useful life of the measure with the greatest portion of funds disbursed under the assessment contract in accordance with subdivision (j) of Financial Code section 22684. The purpose of this requirement is to ensure compliance with subdivision (j) of Financial Code section 22684, which provides that the term of the assessment contract may not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract is attributable. This provision requiring the retention of records is necessary to provide evidence of compliance.

The amendments add subparagraph (b)(2)(H), which requires a program administrator to retain in its books and records the sources used to verify the criteria identified in Financial Code section 22684. Specifically, Financial Code section 22684 prohibits a program administrator from executing an assessment contract and prohibits work from commencing under a home improvement contract, unless specified criteria are satisfied, including but not limited to the payment of all property taxes and the absence of any involuntary liens, notices of default, bankruptcy proceedings, and delinquent mortgages, as well as various additional protections. Subdivision (l) of Financial Code section 22684 requires a program administrator to use commercially reasonable and available methods to verify the criteria are met. Section 1620.29 of the rules sets forth commercially reasonable and available methods for verifying the criteria in Financial Code section 22684 and provides that if the program administrator does not verify the criteria in Financial Code section 22684 through a permissible method identified in in section 1620.29 of the rules, the program administrator must identify the source of the information in the program administrator’s records. The purpose of the amendment requiring a program administrator to retain in its records the sources used to verify the criteria is to allow the Commissioner to confirm that the program administrator verified the criteria were met. The amendment is necessary to ensure that the property owners who enter into PACE assessments are afforded the protections underlying the criteria set forth in Financial Code section 22684.

The amendments add subparagraph (b)(2)(I) to require that the program administrator maintain in its books and records documentation of the scope of work subject to PACE

financing from the home improvement contract. The purpose of this amendment is to reduce the likelihood that property owners will be defrauded by the scope of work subject to PACE financing being of a higher cost and value than the scope of work in the home improvement contract, resulting in the property owner paying for more than was received. The purpose is also to prevent PACE financing from being used for home improvements that are not efficiency improvements. The provision is necessary to ensure that the program administrator has confirmed that the scope of work being financed through PACE financing is included within the scope of work under the home improvement contract.

The amendments add subparagraph (b)(2)(J), requiring the program administrator to maintain in its books and records any correspondence with any other lienholder on the property. The purpose of this requirement is to ensure a property owner can learn of communication between the program administrator and another lienholder, such as a mortgagee, that may impact the property owner's property rights. This provision is necessary to ensure the correspondence can be accessed by the property owner.

The amendments to paragraph (b)(3) revise the requirement that a program administrator retain any advertising approved for use by a PACE solicitor, to also require the program administrator to retain advertising submitted by a PACE solicitor. The purpose of this change is to ensure a program administrator retains advertising about PACE assessments that is submitted to a program administrator by a PACE solicitor. This amendment is necessary to ensure that program administrators do not overlook PACE advertising submitted to them by a PACE solicitor, and consequently unwittingly allow advertising with misrepresentations to be used by PACE solicitors.

The amendment to subparagraph (b)(4)(B) changes "terminating" to "canceling enrollment of, and withdrawing" PACE solicitors and PACE solicitor agents, to align with subdivision (b) of Financial Code section 22682 more closely, which requires a program administrator to timely notify the Commissioner of each enrollment cancellation and withdrawal of a PACE solicitor or a PACE solicitor agent. This change is necessary for consistency. The amendment to subparagraph (c)(3)(B) changes the time period for the retention of various records related to an assessment contract from three years to five years, to align to the recordkeeping requirement more closely in paragraph (b)(3) of Streets and Highways Code section 5913, regarding the length of time that a recording of an oral confirmation must be retained. Since PACE assessments appear on property taxes, a long period of time may elapse between entering into an assessment contract and receiving notice to pay a PACE assessment. The amendment is necessary to ensure that records are available during the time period that the Department or a property owner may need access to them, such as to investigate complaints.

Section 1620.08. Complaint Processes and Procedures

The amendments to subdivision (a) of section 1620.08 of the rules require every program administrator to develop and implement policies and procedures for

responding to questions and addressing complaints required by the remainder of the section. The purpose of amending the subdivision from stating that a program administrator must establish and maintain a complaint process is to align the text more closely to the language in Financial Code section 22683. Including the requirements of Financial Code section 22683 into section 1620.08 of the rules is necessary for clarity purposes and not to duplicate the requirements of the code. The amendments also provide that under the complaint process, a property owner will receive a final decision. The purpose of this amendment is to ensure that a property owner receives a response to the complaint. This provision is necessary to increase the integrity of the complaint process by requiring the program administrator to respond.

As proposed, paragraph (a)(1) provided that the complaint process shall provide for adequate consideration and appropriate resolution of property owner complaints. The amendments instead require the complaint process to provide for the consideration and, as applicable, investigation of the issued raised in the complaint, and the final decision. The purpose of removing the adjectives “adequate” and “appropriate” is to address concerns that the standards were vague and created uncertainty. The purpose of adding that the complaint process shall include an investigation of the issues raised in the complaint is to ensure that a complaint is investigated. The purpose of rephrasing “resolution” to “final decision” is to align with the definition in paragraph (b)(2) of the rule. These amendments are necessary to clarify the minimum requirements for the complaint process.

Subparagraph (a)(2)(A) has been changed to define “final decision” instead of “resolution.” The purpose of this change is to recognize that a program administrator may conclude its investigation into a complaint in a manner that resolves the complaint for the program administrator but does not resolve a complaint for the property owner. While the goal of the complaint process is to resolve disputes for all parties, the parties may not be able to reach an agreement on the resolution of a complaint. Therefore, the term “resolution” is misleading when the accompanying description is that the program administrator alone has reached a conclusion on the issues in the complaint. Changing the term to “final decision” is necessary to accurately reflect that the program administrator made a decision. The amendments to subparagraph (a)(2)(A) further add “through any means available under the law” to the clarification that the definition of “final decision” does not restrict a property owner’s right or ability to pursue the complaint through other means. The purpose of the change is to ensure that the complaint process is neither a mandatory process for the property owner nor an exclusive means of seeking redress for harm related to an assessment contract. The amendments are necessary to ensure that the definition of “final decision” does not impact a property owner’s right to pursue the property owner’s complaint through other forums.

Subparagraph (a)(2)(B) adds that “final decision” includes the decision by a program administrator, after consideration and investigation, that the program administrator will

take no further action on a complaint, and the communication of this decision to the property owner. The purpose of adding this explanation of the meaning “final decision” is to clarify for all parties that the “final decision” can be that the program administrator will take no further action. This provision is necessary to ensure that a property owner knows that the program administrator has concluded its investigation and will take no further action, so the property owner can timely pursue the matter through other forums if the property owner disagrees with the program administrator’s response.

Subparagraph (a)(2)(C) adds that “final decision” includes the closure of a complaint when neither a complainant nor the authorized agent of a complainant responds to communications from the program administrator after at least two attempts to contact the complainant by the program administrator and not less than 30 days of noncommunication from the complainant between the final contact attempt and the notice of closure of the complaint. The provision further provides that a closure of a complaint because of abandonment must be communicated to the complainant in the manner described in subdivision (e) of the rule. The purpose of the addition is to clarify the meaning of “final decision” when a complaint has been abandoned, to clarify when a complaint may be considered abandoned, and to clarify that if a program administrator determines a complaint is abandoned, the program administrator must notify the property owner. The amendments are necessary to allow complaints to be considered abandoned when a property owner does not respond, but also to ensure that complaints are not considered abandoned unless certain minimum attempts are made to contact the complainant, and if a complaint is deemed abandoned, to ensure that the property owner is notified.

The amendments renumber paragraph (a)(3) as subparagraph (a)(3)(A). The amendments provide that inquiries, questions, requests, criticisms, correspondence, and complaints regarding a matter in an active lawsuit against a program administrator need not be subject to the complaint process, provided the lawsuit has been filed. The amendments additionally provide that retaining counsel does not equate to filing a lawsuit. The purpose of the amendments is to carve out matters already in litigation from the complaint process, but to ensure that the involvement of counsel, without more, does not prevent a property owner from access to the complaint process. The provisions are necessary to ensure the complaint process does not interfere with a lawsuit over the same subject matter, but to ensure that a property owner may seek assistance from counsel without being excluded from the complaint process.

The amendments add subparagraph (a)(3)(B), providing that if a program administrator determines that a property owner is making an inquiry, question, request, or criticism and not submitting a complaint, the program administrator must respond to the inquiry, question, request, or criticism as soon as practicable. The purpose of this provision is to ensure that where a program administrator determines a property owner is contacting the program administrator for a reason other than a complaint, the program administrator responds to the property owner as soon as practicable, as required under

Financial Code section 22683. This provision duplicates the requirement of Financial Code section 22683, in part, for clarity purposes. The provision is necessary to ensure that a program administrator maintains a practice of responding to all property owner contacts timely.

The amendments add subparagraph (a)(3)(C), providing that a response to an inquiry, question, request, or criticism received by telephone or email should ordinarily not take longer than one working day for information readily available to the program administrator but may require additional time for research or coordination with other parties. If the response will take longer than one day, the program administrator shall notify the property owner within 24 hours or one working day. The purpose of this subparagraph is to define “as soon as practicable” from Financial Code section 22683 and subparagraph (a)(3)(B). The one-day time period for responding to a property owner is reasonable and necessary since ordinarily the program administrator would be able to respond to the property owner at the time of the contact from the property owner. However, the amendments recognize that on occasion a property owner may have an inquiry or request that cannot immediately be responded to or fulfilled, and additional time may be necessary. Consequently, the amendments provide that the one-day standard is ordinarily the standard. The amendments provide that the program administrator must notify the property owner within 24 hours or one working day if the response will take longer than one day. This provision is necessary to conform to Streets and Highways Code section 5858.17, which provides in the Financing Estimate and Disclosure document that the property owner will receive a response within 24 hours or one business day.

The amendments add subparagraph (a)(3)(D), which provides that if the response to an inquiry, question, request, or criticism involves a decision by the program administrator about how to respond to factual allegations of a mistake or wrongdoing related to the PACE financing, then the matter is a complaint, and the program administrator must follow the processes for a complaint. The purpose of this provision is to clarify what constitutes a complaint and not an inquiry, question, request, or criticism. The provision is necessary to ensure that if a program administrator is contacted by a property owner with allegations of a mistake or wrongdoing related to the PACE financing, the property owner’s allegations will be processed as a complaint and the property owner will receive a final decision from the program administrator.

The amendments add paragraph (a)(4), providing that a complainant may authorize a representative to represent the complainant in communications with the program administrator throughout the complaint process, and providing that all of the obligations towards a complainant in the rule are applicable to a representative of the complainant. The purpose of this provision is to address the hurdles encountered by representatives of complainants when submitting complaints on behalf of complainants and when following up on these complaints. The amendments are necessary to clarify that if a complainant authorizes representation, that representative is authorized to act on the

complainant's behalf. A program administrator may not deny a property owner the ability to submit a complaint through a representative, and after verifying the representation, a program administrator may not impose hurdles that do not serve a legitimate business purpose such as repeated requests for verification or failing to respond to requests for status updates received through a representative.

An amendment to subdivision (b) changes "complaint process" to "complaint initiation process." The purpose of this change is to distinguish the other steps of the complaint process included in the succeeding subdivisions. The change is necessary for clarity. Subparagraph (b)(1)(A) provides that the notice to a property owner regarding how to contact the program administrator with a complaint must be in a form that may be maintained physically or electronically by the property owner. An amendment to this subparagraph adds that the information provided in the Financing Estimate and Disclosure document under Streets and Highways Code section 5898.17 complies with this requirement if the program administrator's telephone number and customer service email address are provided in the form and the form may be maintained physically or electronically by the property owner. The purpose of this amendment is to incorporate the disclosures required under Streets and Highways Code section 5898.17 into the complaint process required under Financial Code section 22683, and the amendment is necessary to ensure that the disclosure obligations are not duplicative. Subparagraph (b)(1)(B) requires a program administrator to maintain information on how to submit a complaint on its website. The amendments to subparagraph (b)(1)(B) provide that the website must include both the toll-free telephone number and the customer service email address required by the Financing Estimate and Disclosure form under Streets and Highways Code section 5898.17, and the website must include the notice from the Financing Estimate and Disclosure form that the property owner will receive a response within 24 hours or one business day. The purpose of these amendments is to align the disclosures required under Streets and Highways Code section 5898.17 with the information about how to submit a complaint on the program administrator's website. The amendments are necessary to ensure consistency between the information disclosed in the Financing Estimate and Disclosure form and the complaint process information on a program administrator's website, and to ensure that the information is accessible to a property owner in a location where a property owner or a representative of a property owner is likely to find it when a complaint arises.

The amendments to subparagraph (b)(1)(C) provide that a program administrator must provide a toll-free telephone number and a customer service email, and other methods to contact the program administrator may include postal mail, electronic submission, and other methods intended to make the complaint process widely accessible to property owners. The purpose of the amendments is to conform to the requirements of Streets and Highways Code section 5898.17, and the changes are necessary for this same reason.

The amendments change subparagraph (b)(2) to subdivision (c) and delete subparagraphs (b)(2)(A) and (B), and instead add a new paragraph (b)(2), subparagraphs (b)(2)(A) through (C), and paragraph (b)(3). Paragraph (b)(2) provides that a program administrator must provide the property owner with acknowledgment of receipt of a complaint received by email or telephone within 24 hours or one business day of receiving the complaint, and the program administrator must provide the property owner with acknowledgment of receipt of a complaint received by postal mail within three business days. The purpose of the amendments is to conform to Streets and Highways Code section 5898.17, which requires a response within 24 hours or one business day for complaints received by email or telephone. The purpose of allowing three business days for a written response to a complaint received by mail is to allow for the additional time needed to mail a response. The amendments are necessary to ensure that complaints are acknowledged timely.

Subparagraph (b)(2)(A) provides that if the complaint is received by email or postal mail, the acknowledgment must be in writing. The amendments further provide that a written acknowledgment may be through email if the property owner submits the complaint through email or the property owner agrees on or after the submission of the complaint to communicate through email. The purpose of the amendments is to ensure that property owners are provided written confirmation of the receipt of their written complaint. The purpose of the provision allowing an email acknowledgment to a written complaint received through another method, if the property owner agrees to email communication, is to provide flexibility for a program administrator when providing a written acknowledgment. The amendments are necessary to ensure a property owner who submits a written complaint has written documentation that a complaint was received.

Subparagraph (b)(2)(B) provides that if the complaint is received by telephone, the confirmation may be oral and the program administrator shall provide the property owner with a way to identify the property owner’s complaint in subsequent correspondence, such as a tracking number, if the complaint is not resolved during the conversation. The purpose of this provision is to ensure that complaints received by telephone are tracked, to facilitate a property owner obtaining an update on a complaint. The provision is necessary to ensure continuity in the complaint process for oral complaints.

Subparagraph (b)(2)(C) provides that the acknowledgment may be combined with the resolution of the complaint if the complaint can be resolved within the time period for the acknowledgment. The purpose of this provision is to authorize combining the acknowledgment and the final decision and is necessary to resolve any uncertainty regarding whether the acknowledgment and the final decision may be combined into a single correspondence.

Paragraph (b)(3) provides that the program administrator must make the complaint process available to a complainant in the language used during the oral confirmation,

the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language. The purpose of this provision is to increase the likelihood that the program administrator's complaint process will be available in the language of the property owner, so that the property owner has meaningful access to the complaint process. Subdivisions (d) and (e) of Streets and Highways Code section 5913 set forth minimum language requirements for the oral confirmation and the written disclosures and contract, and paragraph (b)(3) of section 1620.08 of the rules applies minimum language requirements to the complaint process. Paragraph (b)(3) is necessary to ensure that the complaint process is available to the property owner in the same language used when the property owner entered into the assessment contract.

After renumbered subdivision (c) regarding communicating the status of a complaint, the amendments add paragraph (c)(1), providing that if a complainant contacts the program administrator, including through the toll-free telephone number or customer service email address, for a status update, the program administrator must ordinarily respond to the complainant within three business days. The purpose of the paragraph is to set forth an obligation to respond to status requests and provide guidelines on when a response is timely. The provision is necessary to ensure that property owners who have submitted a complaint are able to receive a response when they follow up on the status.

The provisions regarding the handling of complaints are renumbered under subdivision (d). Subparagraph (d)(2)(A) provides that the investigation of a complaint should ordinarily not require more than thirty days. The purpose of the provision is to provide a target response turnaround time to ensure accountability and to resolve the property owner complaints, but also allow for flexibility for situations that may require additional time, such as the need to reach out to multiple parties. The provision is necessary to provide guidance on a reasonable time period for an investigation that may require gathering information from PACE solicitors, PACE solicitor agents, or other parties, and to ensure the requirement is sufficiently flexible to accommodate complex complaints. At the same time, in recognition that late property taxes are subject to fines and penalties, the target turnaround time of thirty days is necessary to ensure that property owner complaints are resolved timely.

Subparagraph (d)(2)(B) provides that if additional time is needed, the program administrator must advise the complainant. The purpose of this provision is to ensure that a property owner is provided an update on the complaint if the complaint remains outstanding after 30 days. This provision is necessary to inform the property owner that the program administrator is continuing to investigate the complaint and additional time is needed. Subparagraph (d)(2)(C) provides that if after an additional 15 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 shall not be more than 15 additional days except in an extraordinary circumstance, and include contact information for the Department of Financial Protection and Innovation at (866) 275-2677 or online at dfpi.ca.gov. The purpose of this subparagraph is to ensure that a program administrator prioritizes resolving aging complaints and provides a final decision to the property owner. The purpose of requiring the 45-day status update to include the estimate of the additional needed to resolve the complaint and the Department's contact information is to inform the property owner of when a response will be received, and to provide the property owner with an additional resource for assistance with the property owner's complaint. The purpose of requiring the program administrator to resolve the complaint within sixty days, except in extraordinary circumstances, is to ensure that the property owner receives a final decision from the program administrator so that the property owner can decide whether to accept the decision or proceed with the complaint through another forum. The subparagraph is necessary to ensure that a program administrator's complaint process includes steps to keep the property owner informed and timelines to reach a final decision.

The amendments renumber paragraph (b)(5) as paragraph (d)(3) and with respect to the requirement that the complaint process include a procedure for identifying and prioritizing aging complaints, the amendments revise "aging complaints" to "complaints not resolved in thirty days." The purpose of this change is to clarify which complaints must be identified and prioritized, and the change is necessary for the same reason. As proposed, subparagraph (b)(5)(A) required the complaint process to include a procedure for the expedited review of complaints involving the immediate risk of loss of possession of real property, or a substantial financial penalty for a person known by the program administrator to have a limited income. As revised, the provision is renumbered as paragraph (d)(4) and provides that the complaint process must include a procedure for the expedited review of complaints involving (1) a third-party lender or servicer who has advanced 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 purpose of the revisions is to refine the identification of complaints requiring prioritization. The purpose of prioritizing complaints involving a third-party lender or servicer who has advanced payments for property taxes on behalf of a property owner is to increase the likelihood that future harm by a third party, such as foreclosure or financial penalties, may be avoided through the expedient resolution of the complaint. This provision is necessary to prioritize a complaint that involves a more imminent risk of harm. The purpose of changing a priority complaint from one involving the "immediate risk of loss of possession of real property" to one involving the "risk of foreclosure or loss of possession of real property" is to rephrase the requirement to specifically include the risk foreclosure and eliminate the adjective "immediate" since it is undefined. These amendments are necessary to clarify the complaints to be prioritized. The purpose of changing a priority complaint from one involving "a substantial financial penalty for a person known by the program administrator to have a limited income" to instead include

one involving an “other financial hardship” is to broaden the types of complaints to be prioritized to those involving a financial hardship for the property owner. The change is necessary to provide an expedited complaint process for a property owner with a financial hardship, so that the property owner may be able to obtain relief from the financial hardship in an expediated manner.

An amendment to subparagraph (d)(4)(A) adds that the option of speaking with a live representative may be a representative accessible through the customer service toll-free telephone number. The purpose of this change is to clarify that if a program administrator has a live representative available to answer or respond to callers on the toll-free telephone number required under Streets and Highways section 5898.17, and the live representative is available to property owners with priority complaints, then the requirement to speak with a live representative is satisfied. The amendment is necessary to resolve any uncertainty regarding the obligation to make a live representative available as part of the expedited review process. The amendments add subparagraph (d)(4)(B), providing that the investigation of a complaint in an expedited review process should ordinarily be conducted in a week, and if additional time is needed, the program administrator shall advise the complainant. The purpose of this procedure is to define the time period for an expedited review, and to require communication with the property owner if the process will be delayed. The provisions are necessary so that program administrators and property owners have the same expectations for the review of expedited complaints, and to ensure communication between the parties when those expectations will not be met.

The amendments add paragraph (d)(5), providing that the tracking of complaints must include the tracking of whether the complainant has authorized a third party to assist or represent the complainant. The purpose of this requirement is to ensure that a complainant who seeks the assistance of a representative is not hindered in accessing the complaint process due to the representative repeatedly having to reverify the authorization to represent the complainant. This provision is necessary to remove barriers to property owners obtaining assistance with their complaints from third-party representatives.

Subdivision (e) requires a program administrator to notify the property owner upon a final decision and a closing of the complaint. The purpose of this provision is to ensure that the property owner knows that the program administrator has completed its investigation of a complaint and reached a final decision. The provision is necessary to ensure that property owner knows when a program administrator has reached a final decision so a property owner can decide whether the decision resolves the complaint, or whether the property owner wishes to pursue the matter through other means. Paragraph (e)(1) requires a program administrator to correct errors identified during the review of the complaint that occurred in the making of the assessment contract or the administering of the PACE assessment. It further provides that the requirement is not applicable to an error made by the property owner unless the property owner’s error

was the result of fraud or forgery. The purpose of the provisions is to ensure that program administrators correct errors identified during the complaint process. The purpose of providing that the program administrator is not obligated to correct errors made by the property owner is to ensure that the obligation to correct errors is not interpreted as applying to property owner errors. However, if the property owner was a victim of fraud or forgery, then the exclusion for property owner errors is not applicable. The purpose of carving out fraud or forgery is to ensure that when the property owner is the victim of fraud or forgery, the fraud or forgery do not constitute property owner errors. These provisions are necessary ensure that the complaint process results in the resolution of errors. Subparagraph (e)(1)(A) provides that if the program administrator determines an error occurred in the making of the assessment contract or administering of the PACE assessment, the program administrator must correct the error and notify the complainant of the correction, the effective date of the correction, and the contact information for further assistance. The purpose of these requirements is to require program administrators to resolve errors. The provisions are necessary to ensure the error is corrected, the property owner is notified of the correction, the property is notified of when the correction is made, and the property owner has a contact for questions. Subparagraph (e)(1)(B) provides that if after considering and investigating the complaint, as necessary, the program administrator concludes no error occurred with respect to the making of the assessment contract or the administering of the PACE assessment, the program administrator must notify the complainant of its final decision, the reasons for the decision, and the contact information for further assistance or to seek reconsideration of the complaint. The purpose of the provisions is to provide direction on the necessary actions when no error is identified. The provisions are necessary to ensure that the property owner receives notice that the program administrator completed its investigation and failed to find an error, and the program administrator's reason for its decision. The provisions are further necessary for the property owner to have a contact for questions, or to request reconsideration.

Clause (e)(1)(C)(1) requires the program administrator to maintain a process where a property owner may request the reconsideration of a final decision in a complaint. The purpose is to allow a property owner the opportunity for a second review of a decision. The provision is necessary to ensure a program administrator has a process available to a property owner for challenging the program administrator's final decision. Clause (e)(1)(C)(2) provides that the person who issued the final decision may not review the reconsideration, and the person reconsidering the complaint must have authority to reverse the final decision. The purpose of the provision is to provide the property owner with a meaningful right to reconsideration. The provision is necessary to ensure that the reconsideration process provides the property owner with a second review that is independent from the first review, and to ensure that reconsideration can result in a change to the first decision, if warranted.

Paragraph (e)(2) provides that if the complaint was received by telephone, the program administrator may notify the complainant of the final decision and closure of the

complaint by telephone and the program administrator shall offer to provide the final decision in writing. This purpose of this provision is to allow the program administrator to resolve a complaint received by telephone via the same method of communication, while allowing a property owner the option of a written decision. The provision is necessary to ensure that minor complaints may be resolved expeditiously by telephone, while ensuring that a property owner is advised that the property owner has the option of requesting a written response to the complaint so that the property owner has written documentation that the program administrator received the complaint, considered the complaint, and reached a final decision. Subparagraph (e)(2)(A) provides that if the final decision of the complaint results in changes to the PACE assessment, the program administrator shall confirm the details of the changes in writing, regardless of whether the complaint was received by telephone. The subparagraph provides that the written notice may be by email if the complainant has corresponded with the program administrator by email or the complainant confirms after the submission of the complaint that the complainant can receive communications sent by email. The purpose of this subparagraph is to ensure that a complaint resulting in changes to the PACE assessment is documented in writing to the property owner. The purpose is further to clarify that email satisfies the written notice requirement, provided that the property owner has in some manner confirmed the ability to receive correspondence by email. The subparagraph is necessary to ensure that a property owner has a written confirmation of changes to a PACE assessment, and to ensure that a property owner is able to receive written notice if it is sent by email.

Subparagraph (e)(2)(B) provides that if the allegations in the complaint involved fraud or forgery, the final decision must be in writing. The purpose of this subparagraph is to ensure that a written record exists that a property owner reported fraud or forgery to a program administrator, and the program administrator reached a final decision on the report. This subparagraph is necessary to ensure that complaints of fraud or forgery are documented the and actions and findings in response are documented. The documentation is necessary to ensure that current and future property owners are protected against fraud and forgery. Subparagraph (e)(2)(C) provides that if the complaint is closed by telephone, then the program administrator must inform the complainants that if they have any concerns regarding their complaint, they may contact the Department of Financial Protection and Innovation at (866) 275-2677 or online at dfpi.ca.gov, in addition to the other required information. The purpose of this provision is to ensure that property owners know which regulator to contact if they have outstanding concerns regarding their complaint. The provision is necessary to inform property owners that they may seek assistance with their complaint from a resource other than the program administrator.

Paragraph (e)(3) provides that if the complaint was received in writing by email or postal mail, the program administrator must notify the complainant of the final decision and the closing of the complaint in writing. The purpose of this provision is to ensure that a program administrator responds to written complaints in writing. The provision is

necessary to ensure that a property owner has written documentation of the response to a written complaint. Subparagraph (e)(3)(A) provides that if the final decision of the complaint results in changes to the PACE assessment, the program administrator must confirm the details of the changes in writing to the complainant. The purpose and necessity for this provision are the same as when the complaint is received by telephone under subparagraph (e)(2)(A). Subparagraph (e)(3)(B) provides that the written notification of the final decision and closure of a complaint must include the following, in addition to the other requirements: “If you have any concerns regarding your complaint, you may contact the Department of Financial Protection and Innovation at (866) 275-2677 or online at dfpi.ca.gov.” The purpose and necessity for this requirement are the same as when the complaints are received by telephone under subparagraph (e)(2)(C). Paragraph (e)(4) provides that for purposes of subdivision (e), “error” means a mistake; the state of being wrong in conduct or judgment. The purpose of this definition is to provide the meaning of “error” for purposes of requiring correction by the program administrator. The provision is necessary to provide clarity regarding a program administrator’s obligation to correct errors.

Section 1620.10. Dishonest Dealings and Misleading Statements

As proposed, paragraph (a)(2) provided that knowingly paying a PACE solicitor for unperformed work constituted dishonest dealings by a program administrator. As amended, the provision provides that paying a PACE solicitor for work that the program administrator knows or should have known is unperformed constitutes dishonest dealings. The amendments further provide that a determination of whether work is performed shall be consistent with Business and Professions Code section 7159.5, paragraph (a)(5). The purpose of the change to the standard for a program administrator to determine whether work is performed is to ensure that a program administrator has reasonable procedures, in light of the circumstances, to prevent the payment of PACE solicitors for unperformed work. The purpose of providing that a determination of whether work is performed shall be consistent with paragraph (a)(5) of Business and Professions Code section 7159.5 is ensure the standard for PACE solicitors is the same as for licensed contractors. The amendments are necessary to help protect property owners from being defrauded by PACE solicitors who are paid for unperformed work, by ensuring that a program administrator has reasonable procedures in place to verify that work is performed before paying a PACE solicitor. In the initial statement of reasons, the Department supported the need for the provision by claiming that the property owner does not have the ability to withhold payment until the work is performed. However, a stakeholder has indicated that this assertion is incorrect. Typically, a program administrator does not pay a PACE solicitor until a completion certificate is signed by the property owner, so by not signing the document, the property owner has the ability to prevent the PACE solicitor from getting paid. The Department agrees with this clarification. However, the Department notes that a property owner may be misled about the document requiring signature, and the need to protect the property owners from being misled continues to support the need for the provision.

As proposed, paragraph (a)(3) provided that knowingly paying a PACE solicitor for an uninstalled product constituted dishonest dealings by a program administrator. As amended, the provision provides that making the final payment on an assessment contract to a PACE solicitor when the program administrator knows or should have known that a product financed through an assessment contract is uninstalled constitutes dishonest dealings by a program administrator. The purpose is to ensure that a program administrator has reasonable procedures to ensure that a product financed through an assessment contract is installed, prior to paying the PACE solicitor. The amendments are necessary to help protect property owners from being defrauded by PACE solicitors who are paid for uninstalled products, by ensuring that a program administrator has reasonable procedures in place to verify that products are installed before paying a PACE solicitor. As proposed, Paragraph (a)(3) provided that a solar system or battery that has been affixed to a customer's real property but not interconnected to the utility grid is not an uninstalled product. This provision has been deleted to defer the determination of whether a particular product is installed to the terms of the home improvement contract, the requirements of the Contractors State License Law, and other applicable law.

As proposed, paragraph (a)(4) provided that knowingly paying a PACE solicitor for a product that materially differs in price from the product installed on the property and provided to the customer, where the installed and provided product costs less, constitutes dishonest dealings by a program administrator. As amended, the paragraph provides that paying a PACE solicitor for a product that is materially higher in price from the product the PACE solicitor installs on the property, where the program administrator knows or should have known that the product installed costs materially less than the product financed through the assessment contract, constitutes dishonest dealings by a program administrator. The purpose of the amendments is to ensure that a program administrator has reasonable procedures to ensure that a PACE solicitor is not installing products costing materially less than the products the program administrator pays the PACE solicitor to install. The amendments are necessary to help prevent property owners from being defrauded by PACE solicitors who install materially lower-priced products than they represent to the program administrator were installed on the property, by ensuring the program administrator has reasonable procedures to verify the product installed prior to paying the PACE solicitor.

The amendments recast the introduction to acts constituting dishonest dealings in subdivision (b) by providing that the acts constitute dishonest dealings, and requiring the program administrator to create and enforce, rather than implement, policies and procedures to prohibit a PACE solicitor and PACE solicitor agent from engaging in the acts. The purposes of the amendments are to clarify that the acts constitute dishonest dealings whether or not performed by a PACE solicitor or PACE solicitor agent, and to clarify that the program administrator must create and enforce the policies and procedures. The provisions are necessary to clarify the program administrator's obligations. The amendments to paragraphs (b)(2), (3), (4), (5), (6), and (8) change the

term “misrepresenting” to “representing,” to more accurately describe the act that constitutes dishonest dealing. The change is necessary to clarify the meaning of the paragraphs. The amendments to paragraph (b)(2) additionally clarify that “free,” “no cost,” “subsidized,” and “government program” are four distinct claims that may constitute misrepresentations. The amendments to paragraph (b)(4) additionally recast the paragraph to clarify that the act constituting dishonest dealings is representing to a property owner that the property owner is eligible for PACE financing through the program administrator prior to the program administrator making that determination. The purpose of recasting the provision is to clarify the meaning, and the change is necessary to facilitate compliance. The amendments to paragraph (b)(6) additionally clarify that the representations, statement, or opinions of the Internal Revenue Service or applicable state tax agency about the tax treatment of a PACE assessment must be written. The purpose of this amendment is to allow for the validation of representations by the tax authorities, and the change is necessary to clarify the requirement. The amendments to paragraph (b)(7) recast the act to provide that failing to complete the scope of work under a home improvement contract that is financed by the assessment contract constitutes dishonest dealings. The purpose of the changes is to clarify the meaning of the provision, and the changes are necessary to facilitate compliance. The amendments to paragraph (b)(8) add the representation that a non-efficiency home improvement may be provided to a property owner for free or at a nominal cost because the property owner enters into an assessment contract for an efficiency improvement. The purpose of this amendment is to prevent a PACE solicitor from inflating a PACE assessment contract for the purpose of providing home improvements that are not authorized efficiency improvements. The amendments are necessary to protect against non-PACE improvements being financed by PACE.

The amendments to paragraph (b)(9) recast the act constituting dishonest dealings as misrepresenting to a property owner whether the property owner will be obligated to pay for the efficiency improvements financed through the assessment contract. The purpose of the change is to clarify the description of the act, and the change is necessary to facilitate compliance. The amendments to paragraph (b)(10) recast the act constituting dishonest dealings as stating to the property owner that the assessment contract will transfer to the buyer upon the sale of the property, unless the property owner is also informed at the same time that often lenders will require the remaining balance under the assessment contract to be paid before financing or refinancing a property. The purpose of the changes is to clarify the description of the act, and the changes are necessary to facilitate compliance. The amendments to paragraph (b)(11) recast the act constituting dishonest dealings as representing that an efficiency improvement will result in an increase in a property’s market value, unless evidence supports the representation, and the representation is otherwise lawful. The purpose of the changes is to clarify the description of the act, and the changes are necessary to facilitate compliance.

The amendment to paragraph (b)(12) is a grammatical correction, changing “misleads” to “misleading.” The amendments to paragraph (b)(13) eliminate the description of acts constituting retaliation because the descriptions were causing confusion and unhelpful. In addition, the amendments add a reference to a five-day right to cancel period, in recognition of the changes made to Streets and Highways Code section 5898.16 by AB 2471 (Stats. 2020, ch. 158). The change is necessary to update the language based on changes to the law. Proposed paragraph (b)(14) regarding inflating the price of an efficiency improvement above the market price range for the improvement was deleted based on concerns from stakeholders that the provision was not supported by law. Proposed paragraphs (b)(15) and (16) were renumbered as paragraphs (b)(14) and (b)(15), and paragraph (b)(15) was recast to provide that facilitating a property owner entering into multiple assessment contracts on the same property for the same efficiency improvement constitutes dishonest dealings. The purpose of the changes is to clarify the description of the act, and the changes are necessary to facilitate compliance.

Proposed subdivision (c) is renumbered as paragraph (c)(1), and paragraph (c)(2) is added to provide that nothing in the section authorizes any representation that is restricted or prohibited under any law. The purpose of the addition is to ensure that the list of representations specifically identified as dishonest dealings does not otherwise authorize representations that are restricted or prohibited by any other law. The addition is necessary to avoid any party treating the list as exclusive.

Section 1620.11. PACE Solicitor Enrollment Standards and Processes

The amendments to paragraph (a)(2) of section 1620.11 add that the prohibition against a program administrator funding a home improvement contract solicited by a person not enrolled as a PACE solicitor or PACE solicitor agent is not applicable if the person was not required to be enrolled as a PACE solicitor or PACE solicitor agent at the time of solicitation. The exclusion is necessary to account for persons not meeting the definition of PACE solicitor or PACE solicitor agent in Financial Code section 22017, such as a person employed by a program administrator under paragraph (c)(1) of Financial Code section 22017. The purpose of the provision is to recognize that a program administrator may directly solicit a property owner through an employee. The amendments also change the verb “arranged” to “solicited,” for purposes of describing the activity subject to enrollment, to be consistent with Financial Code section 22017. The change is necessary for clarity to ensure a consistent interpretation of the activity that requires enrollment.

The amendments to paragraph (b)(1) recast the requirement so that under the enrollment process, a PACE solicitor must maintain any CSLB license or registration required by law, rather than a “necessary” license or registration. The purpose of the change is to clarify the requirement, and the changes are necessary to clarify the meaning of a “necessary” license or registration. The amendments to subparagraph (b)(3)(A) renumber the provisions and add clause (b)(3)(A)(3), requiring that the enrollment process must restrict enrollment to PACE solicitors that agree to comply with

the requirement that the PACE solicitor must notify the program administrator if a property owner is considering PACE programs of other licensed program administrators so the program administrator may ensure multiple assessment contracts are not recorded for the same efficiency improvements. The purpose of this provision is to protect against a property owner entering into multiple assessment contracts for the same efficiency improvements, which may result in the PACE solicitor receiving multiple payments for the same work, the property owner facing multiple PACE assessments for the same work, and the property owner and property potentially no longer meeting the eligibility requirements for the PACE assessments. The amendments are necessary to ensure that PACE solicitors are not enrolled unless they agree to notify the program administrator about the potential for multiple assessments, so the program administrator may take steps to ensure that neither it nor the property owner is being defrauded.

Subparagraph (b)(3)(B) requires a PACE solicitor to agree to deliver certain disclosures to a property owner if the agreement with the program administrator includes such a requirement. The amendments provide that the delegation of the action to the PACE solicitor does not relieve the program administrator from any obligation to ensure that a property owner receives the PACE disclosures required by law. The purpose of the amendments is to ensure that the program administrator remains responsible for the delivery of the disclosures. The amendments are necessary to ensure the property owner receives the notices.

The amendments to subparagraph (b)(3)(C) renumber the provision as clause (b)(3)(C)(1) and clarify that the PACE solicitor's agreement not to begin work on a home improvement contract, as provided, is only applicable to a home improvement contract financed by an assessment contract. The purpose of this amendment is to clarify the meaning of the provision, and the amendment is necessary to clarify that home improvements not financed through PACE are not subject to the clause. The amendments also add clause (b)(3)(C)(2) to provide that as a condition of enrollment, the PACE solicitor must agree not to execute a home improvement contract nor begin work under a home improvement contract that is financed by an assessment contract unless the criteria set forth in Financial Code section 22684 are satisfied. Financial Code section 22684 sets forth various criteria that must be met by the property owner, the property, and the terms of the assessment contract prior to the execution of a home improvement contract and the commencement of work under a home improvement contract financed by an assessment contract. The purpose of the amendments is to incorporate a commitment to comply with the requirements of Financial Code section 22684 into the enrollment process for a PACE solicitor. The provisions are necessary to highlight the need for compliance with the section, which reflects requirements added to law by AB 2063 (Stats. 2018, ch. 813) requiring program administrators to comply with the underwriting requirements of AB 1284 (Stats. 2017, ch. 475) before work is commenced under a home improvement contract financed by the assessment contract.

Subparagraph (b)(3)(D) requires the PACE solicitor to agree that the PACE solicitor will be responsible for the actions of a PACE solicitor agent when the agent is acting on behalf of the PACE solicitor. The amendments add that the provision does not affect any responsibility a program administrator may otherwise have for the acts of a PACE solicitor or a PACE solicitor agent. The purpose of the amendment is to ensure that subparagraph (b)(3)(D) does not otherwise affect a program administrator's responsibilities, such as under Financial Code section 22689. The provision is necessary to resolve any uncertainty. An amendment to subparagraph (b)(3)(E) adds that a PACE solicitor agrees to require each PACE solicitor agent employed or retained by the PACE solicitor to undertake the testing in addition to the training required by Financial Code section 22681. The purpose of the amendment is to ensure that the testing requirement for PACE solicitor agents under Financial Code section 22681 is included. The amendment is necessary to ensure that the PACE solicitor agrees to require PACE solicitor agents to undertake both the training and testing required by law. The amendments to subparagraph (b)(3)(F) recast the provision to provide that the PACE solicitor agrees to notify the program administrator of property owner inquiries and complaints regarding the assessment contract and the home improvement contract that are unresolved to the property owner's satisfaction for a month or more. The purpose of expanding the notification requirement to home improvement contracts financed by the assessment contract is to put the program administrator on notice of issues with the home improvement contract that may affect the financing. The purpose of providing that the inquiries and complaints remain unresolved for a month or more is to ensure that significant issues are reported, while not requiring a PACE solicitor report routine punch list items that are resolved in the ordinary course of closing out a project. The provision is necessary to ensure that a PACE solicitor continues to maintain the minimum requirements for enrollment under subdivision (e) of Financial Code section 22680. The amendment to subparagraph (b)(2)(H) clarifies the requirements regarding a PACE solicitor's advertising are only applicable to the advertising of PACE financing. The purpose of the amendment is to ensure that the provision is limited to advertising related to PACE financing and does not have the unintended result of encompassing a PACE solicitor's advertising related to non-PACE products and services. The amendment is necessary for clarity.

The amendments to subdivision (c) recast the provision to better align the language to the requirements of subdivision (b) of Financial Code section 22680. The amendments provide that the purpose of the written process to evaluate readily and publicly available information on a PACE solicitor is to obtain information on the qualifications of a PACE solicitor and a PACE solicitor agent for enrollment and to conduct the review of the PACE solicitor required by subdivision (e) of Financial Code section 22680 and section 1620.13 of the rules. The amendments are necessary because they clarify the reason for the succeeding provisions setting for the requirements for written process. The amendments to paragraph (c)(1) add business rating websites to the resources to be reviewed for the purpose of obtaining information on a PACE solicitor. The change is

necessary to expand the options for obtaining information on a PACE solicitor. The amendments also remove the phrase “if economically feasible for the program administrator” from the catchall provision requiring a program administrator to review any other source necessary, and instead incorporate the statutory qualifier of “readily” and publicly available information to describe the additional sources necessary to evaluate the PACE solicitor. The purpose of these changes is to better align the requirements with the terminology of subdivision (b) of Financial Code section 22680. The changes are necessary to clarify the requirements of the rule and to ensure consistency with the statutory requirements.

The amendments renumber paragraph (c)(2) as subparagraph (c)(2)(A) and add subparagraph (c)(2)(B), which requires the process established and maintained by the program administrator to evaluate a PACE solicitor’s qualifications to include a review of all of the current and past licenses and registrations the PACE solicitor holds or has held with the Contractors State License Board, to the extent this information is readily and publicly available. The purpose of this provision is to ensure that the program administrator is looking through the information related to a PACE solicitor that is readily available to the program administrator, which may include DBAs, names or licenses no longer used by a PACE solicitor, and not concluding its review after confirming that the PACE solicitor’s current name or license does not have any regulatory actions. This provision is necessary to ensure that a program administrator is utilizing all of the information available on the CSLB’s website to determine whether the PACE solicitor meets the standards for enrollment.

Paragraph (c)(3) requires a program administrator to establish standards for evaluating the public information to guide the program administrator in making the findings in subdivision (e) of Financial Code section 22680. The amendments add “in accordance with the requirements of section 1620.13 of these rules.” Section 1620.13 of the rules sets forth provisions for enrollment denial. The purpose of adding a reference to section 1620.13 in paragraph (c)(3) is to link the enrollment denial provisions in section 1620.13 of the rules to the findings in subdivision (e) of Financial Code section 22680 which prevent the enrollment of a PACE solicitor. The reference is necessary to provide clarity to the rule by providing guidance on how to proceed if the program administrator cannot make the findings required under subdivision (e) of Financial Code section 22680. The amendment to subparagraph (c)(3)(A) adds “registration” to the types of discipline that a program administrator must evaluate as part of its review of readily and publicly available information regarding a PACE solicitor. The purpose of the addition is to recognize that CSLB registers home improvement salespersons and a PACE solicitor may be, or may have been, a registrant with CSLB or another regulatory body. The amendment is necessary to ensure that a program administrator’s review of regulatory discipline is not limited to actions taken against a licensee.

The amendment to subparagraph (c)(3)(B) changes a consideration for evaluating public information from “the egregiousness of the activity” to “whether the activity

resulted in consumer harm." The purpose of this change is to clarify and be more specific regarding the action by a PACE solicitor for a program administrator to consider when evaluating readily and publicly available information about a PACE solicitor. The change is necessary to resolve the lack of clarity with the prior language. The amendment to paragraph (c)(4) clarifies the documentation to be maintained in a program administrator's books and records regarding the review of publicly available information by providing that the documentation is to be of its findings as a result of its review. The purpose is to clarify the type of documentation required, and the change is necessary to provide guidance on what type of documentation should be maintained in a program administrator's books and records.

The amendments to subdivision (d) make clarifying changes to the requirements regarding notifying the Commissioner about the enrollment, cancellation or withdrawal of a PACE solicitor or PACE solicitor agent. Subparagraph (d)(1)(D) sets forth requirements for PACE solicitors who do not have a CSLB license. The amendments clarify that the requirements are applicable to a PACE solicitor who is not required by CSLB to have a CSLB license number. The purpose of the change is to clarify that a PACE solicitor required to have a CSLB license must have one and must provide it for enrollment as a PACE solicitor; the provisions for PACE solicitors without a CSLB license are solely applicable to PACE solicitors that are either exempt from the CSLB licensure requirement, or who are not engaged in business that would require CSLB licensure. The amendments are necessary to prevent PACE solicitors required to have a CSLB license from evading the rules. Similarly, the amendments provide that a program administrator must maintain in its books and records an explanation supporting the reason the PACE solicitor is not subject to or exempt from licensure by the CSLB. The purpose of clarifying the documentation requirement is to be clear that the Department is seeking an explanation in the program administrator's records why CSLB licensure is not applicable to the PACE solicitor. The provision is necessary to protect property owners by ensuring licensure has been obtained as required by the CSLB.

The amendments to paragraph (d)(2) and subparagraph (d)(2)(B) make a similar change as subparagraph (d)(1)(D), changing "is not licensed" to "is not required to be licensed," for the same reasons as the change in subparagraph (d)(1)(D). The amendments to paragraphs (d)(2) and (d)(3) also clarify that "NMLS ID" is the "Nationwide Multistate Licensing System (NMLS) Unique Identifier." These changes are necessary to provide clearer direction on the information to be submitted to the Department. The amendments renumber subparagraph (d)(3)(C) as clauses (d)(3)(C)(1) and (2). With respect to clause (d)(3)(C)(2), the amendments require a PACE solicitor agent's CSLB home improvement salesperson registration number unless the PACE solicitor agent is not required by the CSLB to be registered with the CSLB. The purpose of this change is to ensure that PACE solicitor agents who are home improvement salespersons ("HIS") are undergoing the CSLB's background check as part of the CSLB registration process, and to provide confirmation of the identity of the PACE solicitor agent. Many individuals have the same name, and an HIS

registration number confirms the identity of the individual. The amendments are necessary to protect property owners in the PACE solicitation process.

The amendment to paragraph (d)(5) requires a program administrator who receives notice of a rejected record to correct the formatting deficiency and resubmit the record the following day in accordance with the electronic file transfer schedule in paragraph (d)(1). The purpose of the amendment is to ensure that the record is revised in accordance with the file transfer schedule set forth in paragraph (d)(1). The amendment is necessary to ensure that records are timely corrected so that the Department and the public have accurate information on whether a PACE solicitor or PACE solicitor agent is enrolled and authorized to offer PACE financing.

Section 1620.12. PACE Solicitor Agent Enrollment Standards and Processes

An amendment to paragraph (b)(1) clarifies that the background check of a PACE solicitor agent by the CSLB is a fingerprint background check. This change is necessary to clarify that the background check should include a criminal history records check through the processing of fingerprints. The amendments to subparagraph (c)(2)(A) provide that when the program administrator is conducting the background check, it must be designed to identify whether the PACE solicitor agent has been convicted of or pleaded nolo contendere to a crime involving dishonesty, fraud, or deceit, instead of the prior requirement that it identify whether the PACE solicitor agent has been convicted of a crime under Business and Professions Code section 480. The purpose of the change is to address concerns that the reference to the Business and Professions Code failed to provide sufficient guidance on information being sought through the background check. The change is necessary to clarify the requirement, and to protect property owners from PACE solicitor agents who have convictions for dishonesty, fraud, or deceit. Proposed subparagraphs (c)(2)(B) and (C) require the background check designed by the program administrator to identify whether the PACE solicitor agent has engaged in any act involving dishonesty, fraud, or deceit, or engaged in any act that violates the California Financing Law. The amendments add that these acts may be ascertained through court filings or public records of administrative actions. The purpose of the amendment is to provide guidance on how a program administrator may comply with conducting a background check to identify past acts of PACE solicitor agents. The amendments are necessary to define a reasonable scope of a background check. Subparagraph (c)(2)(D) provides that the background check must be designed to identify whether the PACE solicitor agent has been denied a license or registration from the CSLB, or had a license or registration revoked by the CSLB. The purpose of this provision is to ensure that in reviewing the background of the PACE solicitor agent, the program administrator confirms whether the PACE solicitor agent has had a CSLB license or registration denied or revoked. The purpose is to protect property owners from solicitations for PACE financing by individuals whose license or registration has been revoked or denied by the CSLB. Paragraph (c)(3) clarifies that the background check of PACE solicitor agents must include a review of public filings, including court

filings, alleging the conduct specified in the prior paragraph. The provision is necessary to clarify which public records a program administrator should be reviewing for the background check of the PACE solicitor agents.

The amendment to paragraph (d)(2) adds that a program administrator must require a PACE solicitor agent to pass the test required under subdivision (b) of Financial Code section 22681 prior to soliciting a property owner for PACE financing. The purpose of the amendment is to ensure that the test is part of the enrollment process and is passed prior to the solicitation of property owners. The amendment is necessary to protect property owners from misinformation during the solicitation of PACE financing.

The amendment to paragraph (e)(1), regarding the conditional enrollment of a PACE solicitor agent, requires the PACE solicitor agent to have applied for and completed licensure or registration with the CSLB, except for the applicant's fingerprint background check. The prior language allowed the agent to be waiting for the processing of the registration in addition to the fingerprints. The purpose of the change is to ensure that the CSLB has completed its registration process and the only outstanding item is the return of information from the fingerprint background check. This change is necessary to provide greater protections to property owners who are solicited for PACE financing by conditionally enrolled PACE solicitor agents. The amendments to paragraph (e)(2) add that in addition to the publicly available information, the program administrator must review the nonpublic information about the PACE solicitor agent available to the program administrator, include the experience of other program administrators if available. The purpose of this change is to encourage program administrators to share PACE solicitor agent experience information to protect consumers against fraud and misrepresentation in the PACE financing process, and the change is necessary for the same reason. The amendment to paragraph (e)(3) requires a PACE solicitor agent to have completed the test required by Financial Code section 22681 to be eligible for conditional enrollment. The purpose of this change is to ensure that the PACE solicitor agent has completed the minimum requirements before soliciting property owners. The change is necessary to protect property owners from solicitations by PACE solicitor agents who have not established a minimum understanding of PACE financing through the passage of a test, which may result in misinformation and noncompliance. The amendment to paragraph (e)(4) clarifies that the conditional enrollment time period may not extend beyond the CSLB approval or denial of licensure or registration. The purpose of adding "time period" is to clarify the meaning of the provision, and the change is necessary for the same reason.

Subdivision (g) provides that if a PACE solicitor agent is not licensed or registered with the CSLB, the program administrator must maintain documentation in its books and records of the reason licensure as a home improvement salesperson is not required. The purpose of this provision is to ensure that a PACE solicitor agent is registered with the CSLB as a home improvement salesperson if required by law. This provision is necessary to ensure that a PACE solicitor agent is subject to CSLB oversight and the

CSLB fingerprint background check when requirement by law, to protect property owners during the PACE financing process.

Subdivision (h) and paragraphs (h)(1) and (2) provide that if a PACE solicitor agent is not licensed or registered with the CSLB, and the PACE solicitor agent is gathering a property owner's financial information on behalf of a program administrator, the program administrator must (1) implement procedures for the safe handling of the property owner's financial information, and (2) maintain identifying information for the PACE solicitor agent, such as the PACE solicitor agent's social security number, California identification card or driver license number, or equivalent government issued identification, in its books and records. The purpose of these paragraphs is to ensure that the personal information of a property owner is protected from misappropriation. The requirements are necessary for PACE solicitor agents not licensed or registered with the CSLB because whereas the CSLB will have identification information and fingerprint background checks for licensees and registrants, it will not have such information for PACE solicitor agents not licensed or registered with it. The requirement for the program administrator to implement procedures for the safe handling of the property owner's financial information is necessary because the program administrator will need access to the personal financial information of the property owner to confirm the property owner's ability to pay, which gives rise to the need for procedures to protect against the negligent handling of the information and the potential misappropriation of the information. The requirement for the program administrator to maintain identifying information for the PACE solicitor agent, such as a social security number or California identification or driver license number, is necessary to assist with identifying the PACE solicitor agent if a property owner's personal financial information is mishandled.

Section 1620.13. Enrollment Denial

Paragraph (a)(1) is combined with subdivision (a), and subdivision (a) is recast to include the requirements of Financial Code section 22680 for describing when a program administrator may not enroll a PACE solicitor. The purpose of the provision is to introduce the standards under subdivision (e) of Financial Code section 22680 regarding when a PACE solicitor may not be enrolled. The amendments are necessary and not duplicative because they provide clarity to the remainder of the rule.

Proposed subparagraph (a)(1)(A) is renumbered as subdivision (b). For purposes of identifying a clear pattern of consumer complaints regarding dishonesty, misrepresentation, or omissions, the provision no longer requires the complaints be in the same geographical area, because of concerns that bad actors have traveled, and removes the requirement that the omission be of a material fact because of concerns the term was vague. The changes are necessary to provide guidance on the meaning of a clear pattern of consumer complaints that is better aligned with the statutory protection and does not inadvertently narrow the statutory protection.

Proposed subparagraph (a)(1)(C) is renumbered paragraph (b)(2), and the provisions are recast. As proposed, the subparagraph required the program administrator to keep documentation of its evaluation of consumer complaints and its rationale why consumer complaints do not constitute a clear pattern of a dishonest business practice. As amended, the paragraph requires a program administrator to keep in its books and records documentation that it reviewed readily and publicly available information of consumer complaints about a PACE solicitor regarding dishonesty, misrepresentations, or omissions, and its findings. The paragraph provides that if the program administrator finds a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions, the program administrator may not enroll the PACE solicitor. The paragraph further provides that if the program identifies applicable complaints but enrolls the PACE solicitor, the program administrator must document the rationale for the determination that the consumer complaints regarding dishonesty, misrepresentations, or omissions do not constitute a clear pattern of a dishonest business practice. The purpose of the changes is to align the text of the rule with the statutory prohibition against enrolling a PACE solicitor if, as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omission. The amendments are necessary to ensure that the regulations do not inadvertently narrow the statutory protections against a program administrator enrolling a PACE solicitor with a clear pattern of consumer complaints.

Proposed subparagraph (a)(1)(D) is renumbered as paragraph (b)(3). Proposed subparagraph (a)(1)(E) previously set forth a series of considerations for determining when complaints about the actions of a PACE solicitor agent constituted a complaint against the PACE solicitor. The amendments removed proposed subparagraph (a)(1)(E) because the analysis was unnecessarily complex and already generally covered by renumbered paragraph (b)(3), which provides that complaints about a PACE solicitor agent are attributable to the PACE solicitor when the PACE solicitor agent is soliciting property owners on behalf of the PACE solicitor. The removal of proposed subparagraph (a)(1)(E) is necessary to provide clarity to the section.

The amendments renumber proposed subparagraph (a)(2)(A) as paragraph (c)(1). In identifying the acts that evidence a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law, proposed clauses (a)(2)(A)(1) and (2) regarding the making of false statements to the program administrator are deleted, and instead subparagraphs (c)(1)(A) and (B) are added. Subparagraph (c)(1)(A) provides that a high likelihood of noncompliance with the law may be evidenced by the readily and publicly available information about the PACE solicitor, such as court records and business or consumer reviews, demonstrating a pattern of disregard for the laws applicable to the PACE solicitor, including compliance under the Contractors State License Law, as applicable. The purpose of the provision is to provide guidance on the type of information that that evidences a high likelihood that

a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. Publicly available court records and business and consumer reviews of a PACE solicitor provide information to a program administrator regarding the likelihood of whether a PACE solicitor will comply with applicable laws. This amendment is necessary to provide guidance to a program administrator on information to consider in determining whether the PACE solicitor agent is likely to comply with the applicable law when soliciting a property owner to enter into an assessment contract.

Subparagraph (c)(1)(B) provides that evidence of whether a PACE solicitor is highly unlikely to comply with applicable law when soliciting property owners includes evidence of whether a PACE solicitor has complied with the requirements for a home improvement contractor under the Contractors State License Law, if applicable, including whether the PACE solicitor exhibits a willingness and ability to bring its operations into compliance. The subparagraph identifies as relevant PACE solicitor actions, notifying the CSLB of the employment of a registered home improvement salesperson or otherwise complying with the applicable requirements. The purpose of this provision is to have a program administrator examine a PACE solicitor's compliance with the requirements in the Contractors State License Law for a home improvement business, in considering whether there is a high likelihood that the PACE solicitor will not solicit assessment contracts in a manner that complies with applicable law. A PACE solicitor that disregards the requirements for home improvement contractors under its contractor's license is not likely to comply with the applicable law for soliciting assessment contracts. A PACE solicitor's compliance with the article regarding the home improvement business in the Contractors State License Law is a useful metric for evaluating whether the PACE solicitor with comply with applicable law when soliciting a property owner to enter into an assessment contract. The subparagraph is necessary to provide the program administrator with a standard for evaluating whether a PACE solicitor exhibits a high likelihood it will solicit assessment contracts in a manner that does not comply with applicable law.

Proposed clauses (a)(2)(A)(3) and (4) are renumbered as subparagraphs (c)(1)(C) and (D), respectively. As proposed, clause (a)(2)(A)(3) provided that a high likelihood that a PACE solicitor will not comply with applicable law is evidenced by a PACE solicitor having had its license revoked by the Contractors State License Board or, within the past 36 months, having been disciplined by the Contractors State License Board for an act that directly resulted in harm to the public. The provision excluded actions for failing to renew a license, failing to maintain books and records, failing to maintain a bond, failing to maintain insurance, or failing to maintain a minimum net worth. Subparagraph (c)(1)(D) redrafts the requirements and instead provides that a high likelihood that a PACE solicitor will not comply with applicable law is evidenced by the PACE solicitor having at any time had its license revoked by the Contractors State License Board or the PACE solicitor having had a complaint on file with the registrar that, at the time of the review conducted as part of the program administrator's enrollment process, is available to the public on the website of the Contractors State License Board pursuant

to Business and Professions Code section 7124.6. The purpose of the change is to improve the metrics for determining whether a PACE solicitor will solicit assessment contracts in a manner that does not comply with the law by identifying actions by the CSLB and complaints with the CSLB that reflect on whether a PACE solicitor is complying with its licensing law. The change is necessary to protect property owners against financing solicitations by contractors who do not comply with the Contractors State License Law.

Proposed clause (a)(2)(A)(5) is renumbered as subparagraph (c)(1)(E) and expanded to provide that a high likelihood that a PACE solicitor will not comply with applicable law is evidenced by a PACE solicitor having a disciplinary action against it by another regulatory agency for failing to comply with applicable law, including an action for fraud, misrepresentation, or deceit. As proposed, the provision only included actions by regulatory agencies for fraud, misrepresentation, or deceit, but the provision is broadened to include any action for failure to comply with the law, because this information is relevant to a determination of whether there is a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. The change is necessary to protect property owners against financing solicitations by PACE solicitors who have actions against them by regulatory agencies for failing to comply with the law.

Proposed clause (a)(2)(A)(6) is renumbered as subparagraph (c)(1)(F), and the acts by a PACE solicitor evidencing a high likelihood that a PACE solicitor will not comply with applicable law is narrowed from engaging in elder abuse to engaging in elder financial abuse. The purpose of this change is to identify unlawful activity that is more closely related to the activities of a PACE solicitor. This change is necessary to ensure that the scope a program administrator's review is reasonable and related to the functions of a PACE solicitor.

Proposed subparagraph (a)(2)(B) is renumbered as paragraph (c)(2). As proposed, the paragraph required a program administrator to keep in its books and records documentation regarding the evaluation of whether a PACE solicitor has a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. As amended, paragraph (c)(2) requires a program administrator to keep in its books and records documentation demonstrating that the program administrator has conducted a review of readily and publicly available information for the purpose of identifying whether there is a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law, and its findings. The paragraph further provides that where the review identifies evidence of past noncompliance with applicable law as set forth in paragraph (c)(1), the program administrator must either not enroll the PACE solicitor or document the reason it has determined the past noncompliance does not establish a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. The purpose of the changes to paragraph (c)(2) is to

align the requirements regarding the evaluation of the PACE solicitor with the statutory requirement for reviewing readily and publicly available information regarding a PACE solicitor in paragraph (b)(2) of Financial Code section 22680. The purpose of requiring a program administrator to maintain in its books and records documentation of why past noncompliance does not establish a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law is to ensure a program administrator is conducting the review and evaluating the information as intended by the statute, so that the program administrator does not enroll PACE solicitors with a high likelihood of noncompliance. The provisions are necessary to protect property owners from solicitations by PACE solicitors with a history of failing to comply with the law.

Proposed subparagraph (a)(2)(C) is renumbered as paragraph (c)(3), and proposed paragraph (a)(3), which restated paragraph (e)(3) of Financial Code section 22680, is deleted. Paragraph (c)(3) is amended to provide that for purposes of establishing a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law, the acts of a PACE solicitor agent employed or retained by a PACE solicitor must be considered if the PACE solicitor (instead of the PACE solicitor agent) knows or should have known of the acts. The purpose of the amendment is to clarify that it is the PACE solicitor's knowledge, and not the knowledge of the PACE solicitor agent, that is determinative of when the acts of the PACE solicitor agent must be considered. The amendment is necessary to ensure that PACE solicitors are accountable for employing or retaining PACE solicitor agents when the solicitors know or should have known that the agents have engaged in acts not in compliance with the law.

Proposed subparagraphs (a)(3)(A), (B) and (C) are renumbered as paragraphs (d)(1), (2), and (3). Paragraph (d)(2) is amended similar to paragraph (c)(2). As proposed, subparagraph (a)(3)(B) required a program administrator to keep in its books and records documentation regarding the evaluation of whether a PACE solicitor has clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor. As amended, paragraph (d)(3) requires a program administrator to keep in its books and records documentation demonstrating that the program administrator has conducted a review of readily and publicly available information for the purpose of identifying whether a PACE solicitor has clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor, and its findings. The paragraph further provides that where the review identifies that the PACE solicitor has failed to timely receive and respond to property owner complaints, the program administrator must either not enroll the PACE solicitor or must document the reason it has determined the past failures do not constitute a clear pattern of a PACE solicitor failing to timely receive and respond to property owner complaints regarding the PACE solicitor. The purpose of the changes to paragraph (d)(2) is to align the requirements regarding the evaluation of the PACE solicitor with the statutory requirement for reviewing readily and publicly available information regarding a PACE

solicitor in paragraph (b)(2) of Financial Code section 22680. The purpose of requiring a program administrator to maintain in its books and records documentation of why past failure to timely receive and respond to property owner complaints does not establish a clear pattern of on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints is to ensure a program administrator is conducting the review and evaluating the information as intended by the statute, so that the program administrator does not enroll PACE solicitors with a clear pattern of disregarding property owner complaints. The provisions are necessary to protect property owners from solicitations by PACE solicitors with a history of failing to respond to property owner complaints.

Paragraph (d)(4) provides that, for purposes of subdivision (d), 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 paragraph additionally provides 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. The purpose of paragraph (d)(4) is to provide guidance on when complaint responses are timely under paragraph (e)(3) of Financial Code section 22680. In addition to setting forth a time period for responding to complaints, paragraph (d)(4) includes factors that may result in longer time periods being timely. The purpose of including additional factors for consideration is to ensure that the standard of timeliness is applied to PACE solicitors in a reasonable manner, while at the same requiring a program administrator to consider the business practices of a PACE solicitor in responding to complaints that may preclude the PACE solicitor from enrollment. The paragraph is necessary to protect property owners from PACE solicitors that do not respond to complaints, while at the same time allowing a program administrator to evaluate the circumstances surrounding a PACE solicitor's business practices to determine whether a PACE solicitor has a clear pattern of failing to timely receive and respond to property owner complaints.

Proposed subdivision (b) providing a safe harbor for program administrators failing to identify the practices in the subdivision upon the enactment of a compliant background check and enrollment process is deleted based on concerns that the provision was not supported by the statutory language.

Section 1620.14. Monitoring Compliance

The amendments to subdivision (a) require the process established and maintained by a program administrator to promote and evaluate a PACE solicitor and PACE solicitor

agent's compliance with the requirements of applicable law to be in writing and to comply with section 1620.14 of the rules. The purpose of amendments is to ensure that the process is in writing, and to introduce the remainder of the section, and the amendments are necessary for the same reasons.

Proposed paragraph (a)(1) is renumbered as subdivision (b) and proposed subparagraph (a)(1)(A) is renumbered as paragraph (b)(1). As proposed, paragraph (a)(1)(A) provided that a "risk-based, commercially reasonable procedure" included, but was not limited to, a procedure that selects a sample of solicitors and a sample of efficiency improvements, based on factors or algorithms that are intended to identify noncompliance. It further provided that the program administrator must have a reasonable basis for determining the adequacy of the sample size. The amendments recast paragraph (b)(1) to provide that a risk-based, commercially reasonable procedure must 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. The paragraph provides that if a program administrator relies on samples of data that are intended to identify noncompliance, the program administrator must have a reasonable basis for determining the adequacy of the sample size. The paragraph further provides that the sample size must include vulnerable populations such as seniors, non-English speakers, and low-income populations, where applicable, and provides that nothing in the section restricts the monitoring or testing of compliance through sampling unless expressly stated. The purposes of the amendments are (1) to include different processes for monitoring or testing compliance beyond sampling; (2) to clarify that the purpose of monitoring and testing is to identify potential areas where the solicitation activities of PACE solicitors and PACE solicitor agents are not in compliance with applicable law; (3) to clarify that criteria regarding data samples are applicable when a program administrator uses data samples for monitoring compliance; (4) to ensure that if samples of data are used, the samples include vulnerable populations such as seniors, non-English speakers, and low-income populations, where applicable; and (5) to clarify that the section does not restrict the monitoring or testing of compliance through sampling, unless expressly stated. The changes are necessary to allow the use of sampling in a manner that will identify noncompliance, for the purpose of protecting property owners during the assessment contract solicitation process.

Paragraph (b)(2) provides that the following subparagraphs are examples of commercially reasonable processes for monitoring and testing whether a PACE solicitor or a PACE solicitor agent soliciting property owners is complying with the law. The paragraph provides that the list is not exhaustive, and a program administrator may establish and implement other or additional methods to identify noncompliance. The purpose of the paragraph is to introduce the following subparagraphs, and to clarify that the list is not exhaustive, and that the program may establish other or additional methods to identify noncompliance. The paragraph is necessary for the same reason. The examples in the subsequent subparagraphs are examples added in response to

requests for guidance, and are discretionary processes, although a program administrator must monitor and test compliance under paragraph (f)(1) of Financial Code section 22680.

Proposed subparagraph (a)(1)(B) is renumbered as subparagraph (b)(2)(A) and is expanded to provide that a program administrator may monitor and test the compliance of PACE solicitors and agents by posing questions to property owners at any time. The purpose of the amendments is to clarify that the oral confirmation under Streets and Highways Code section 5913 is not the sole time a program administrator may survey property owners to monitor compliance. The change is necessary to provide clarity to the provision. Subparagraph (b)(2)(B) provides that a program administrator may monitor and test compliance of PACE solicitors and PACE solicitor agents by conducting a confirmation of completion call to property owners. While some program administrators confirm completion of projects through calls to property owners, the laws do not mandate this action. The purpose of identifying completion calls as an option for monitoring and testing the compliance of PACE solicitors and PACE solicitor agents is to recognize that this discretionary activity as a process for promoting and evaluating the compliance of a PACE solicitor and PACE solicitor agent with the requirements of applicable law. The purpose of this provision is to provide program administrators with guidance on actions that constitute risk-based, commercially reasonable procedures. Subparagraph (b)(2)(C) provides that 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 property owner. The purpose of identifying the analysis of complaints as an option for monitoring and testing the compliance of PACE solicitors and PACE solicitor agents is to highlight that the analysis of complaints is a commercially reasonable process for monitoring and testing whether a PACE solicitor and PACE solicitor agent comply with the requirements subdivision (a) of Financial Code section 22689. The provision is necessary to identify the analysis of complaints as a risk-based, commercially reasonable procedure for monitoring and testing compliance with the requirements of the law.

Proposed subparagraphs (a)(1)(C) and (a)(1)(D) are deleted, and proposed subparagraph (a)(1)(E) is numbered as subdivision (c) and recast to provide a program administrator must monitor and test whether a PACE solicitor is maintaining the minimum qualifications required under subdivision (e) of Financial Code section 22680 for enrollment of a PACE solicitor. Subdivision (g) of Financial Code section 22680 provides that a program administrator must establish and implement a process for canceling the enrollment of a PACE solicitor or PACE solicitor agent who fails to maintain the minimum requirements of Financial Code section 22680. The purpose of subdivision (c) of this rule is to include the monitoring and testing of a PACE solicitor's continuing compliance with the minimum enrollment standards of subdivision (e) of Financial Code section 22680 as part of a program administrator's process to promote and evaluation the compliance of a PACE solicitor with the requirement of applicable law under subdivision (f) of Financial Code section 22680. This provision is necessary

to incorporate the maintenance of minimum qualifications under subdivision (g) of Financial Code section 22680 into the monitoring of compliance under subdivision (f) of Financial Code section 22680.

Paragraph (c)(1) provides that 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 must track and review the complaints containing allegations of this conduct. The paragraph further provides that notwithstanding the ability to monitor and test for compliance through sampling, a program administrator shall track all complaints that allege dishonesty, misrepresentations, or omissions. The purpose of this paragraph is to require a program administrator to monitor whether a PACE solicitor maintains the minimum qualification of not having a clear pattern of consumer complaints regarding dishonesty, misrepresentations, or omissions by requiring the program administrator to track and review the complaints that allege this conduct. The purpose of requiring all these complaints to be tracked and reviewed, rather than a sampling, is to ensure that PACE solicitors with a clear pattern of consumer complaints regarding dishonesty, misrepresentations, or omissions are identified and do not remain enrolled with the program administrator. The provision is necessary to identify PACE solicitors whose solicitation practices may be harmful to property owners.

Subparagraph (c)(1)(A) provides that 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. The purpose of this provision is to provide a program administrator with guidance on evaluating consumer complaints. The provision is necessary to guide a program administrator towards identifying PACE solicitors with business practices that promote PACE to property owners through dishonesty, misrepresentations, or omissions.

Paragraph (c)(2) provides that 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 must be designed to identify acts set forth in the following subparagraphs. The purpose of the provision is to introduce the acts of a PACE solicitor to be monitored by a program administrator. The provision is necessary to protect property owners from PACE solicitors who will solicit assessment contracts in a manner that does not comply with applicable law. The acts to be monitored are set forth in subparagraphs (c)(2)(A) through (F) and include (1) whether the PACE solicitor has made any untrue statements to the program administrator or to a property owner; (2) whether the PACE solicitor has advised or knowingly permitted a property owner to make any untrue statements to the program administrator; (3) whether the 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; (4) whether the PACE solicitor has a disciplinary action against it by another regulatory agency for fraud, misrepresentation, or deceit; and (5) whether the PACE solicitor has engaged in elder or dependent adult financial abuse as defined in Welfare and Institutions Code section 15610.30. These acts consist of dishonesty and other violations of law that reflect on the PACE solicitor's history of truthfulness and compliance with the law, and therefore warrant monitoring by the program administrator in evaluating a PACE solicitor's likelihood to solicit assessment contracts in a manner that complies with applicable law. The purpose of the provisions is to define the types of acts for a program administrator to monitor to ensure that a PACE solicitor continues to maintain the minimum qualifications for enrollment. The provisions are necessary to protect property owners from PACE solicitors with a high likelihood of soliciting assessment contracts in a manner that does not comply with applicable law.

Paragraph (c)(3) provides that 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. The purpose of the paragraph is to define the types of deficiencies by a PACE solicitor in acting on complaints that a program administrator must monitor to ensure that a PACE solicitor does not have a clear pattern of failing to timely receive and respond to property owner complaints. The paragraph is necessary to protect property owners from PACE solicitors who are generating property owner complaints and failing to act on them.

Paragraph (d)(1) provides that a program administrator must have a risk-based, commercially reasonable process to monitor and test 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. The provision provides that a program administrator may use commercially available cost guides for guidance. The purpose of these provisions is to ensure that a program administrator is monitoring a PACE solicitor for compliance with Streets and Highways Code section 5926, which prohibits a contractor from providing a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner. While a program administrator may not have access to a PACE solicitor's business activities not involving PACE assessment contracts, a program administrator may monitor property owner complaints and assessment contracts for evidence that would suggest that the contractor is providing a different price for a project financed by a PACE assessment. These provisions are necessary to protect a property owner from a PACE solicitor's noncompliance with Streets and Highways Code section 5926.

Paragraph (d)(2) provides that a program administrator must have a risk-based, commercially reasonable process to monitor and test whether the PACE solicitor is

commencing work prior to the expiration of the right to cancel period. The purpose of this provision is to ensure that a program administrator is monitoring a PACE solicitor for compliance with Streets and Highways Code section 5940, which provides that it is unlawful to commence work under a home improvement contract if (1) a property owner entered into a home improvement contract based on the reasonable belief that the work would be covered by the PACE program, and (2) the property owner applies for, accepts, and cancels PACE financing within the right to cancel period. This provision is necessary to ensure that property owners are provided the three days to cancel an assessment contract under Streets and Highways Code section 5898.16.

Proposed paragraph (a)(2) regarding regularly monitoring the license or registration status of PACE solicitors and PACE solicitor agents is renumbered as subdivision (e) and recast to align to paragraph (f)(2) of Financial Code section 22680. The purpose of the changes is to clarify the provision, and the changes are necessary for this same reason. Subparagraphs (a)(2)(A) and (B), clauses (a)(2)(B)(1) through (3), and subdivision (b) are renumbered as paragraphs (e)(1) and (2), and subparagraphs (e)(2)(A) through (C), and paragraph (e)(3), respectively, and the cross-reference in paragraph (e)(2) is updated to reflect the renumbering. Renumbered paragraph (e)(3) is amended to provide that if a program administrator has a process for confirming the licensure or registration status of a PACE solicitor or PACE solicitor agent not less than once every quarter, rather than every 30 days, the program administrator need not confirm licensure when the assessment contract is submitted, or a complaint is received. The purpose of the change is to reduce the regulatory burden by allowing the less frequent review of licensure or registration status while continuing to ensure that status is periodically reviewed for the protection of property owners. The change is necessary to align the cost and burden of compliance with the property owner protections achieved by the requirement.

Paragraph (e)(4) provides that the procedure for monitoring the registration status of PACE solicitor agents must 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. The purpose of this paragraph is to ensure that program administrators are monitoring PACE solicitor agents to ensure that they have completed the training program, including the initial training and testing, and the subsequent six hours required by Financial Code section 22681, and have been reported to the Department as required by Financial Code section 22682. This provision is necessary to ensure that program administrators are monitoring PACE solicitor agents to ensure that they have completed all of the elements of training under Financial Code section 22681 and their enrollment record with the Department is maintained, to reduce the likelihood that property owners will be solicited for PACE financing by a PACE solicitor agent who has not fulfilled the training requirement or been reported to the Department as currently enrolled.

Subdivision (f) provides that 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 agent 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. The purpose of subdivision (f) is to ensure that when a program administrator is evaluating the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law, the program administrator is attributing the acts of PACE solicitor agents to PACE solicitors who engage them. The subdivision is necessary to ensure that a program administrator's process to promote and evaluate PACE solicitor agent compliance includes monitoring the actions of PACE solicitor agents on behalf of a PACE solicitor, to promote accountability for acts of PACE solicitor agents that may harm property owners.

Proposed subparagraph (a)(1)(F) is renumbered as subdivision (g) and recast to provide that a program administrator must maintain in its books and records the written process required by the rule and documentation that the monitoring and testing required by the rule are ongoing. The purpose of clarifying the provision is to better align the recordkeeping requirement with the requirements of the rule, which contemplates ongoing monitoring. The amendments are necessary to clarify the type of documentation to be maintained.

Section 1620.15. Periodic Review Standards

The amendment to subdivision (a) provides that a program administrator must design the procedures for the periodic review of solicitation activities of a PACE solicitor to measure a PACE solicitor's compliance with the standards for solicitation activities. The purpose of the change is to align the periodic review of solicitation activities with the statutory and regulatory requirements for PACE solicitations, and the amendment is necessary for the same reason. Proposed subdivision (b) and paragraphs (b)(1) through (3) are incorporated into section 1620.14 of the rules regarding monitoring compliance. As amended, subdivision (b) introduces periodic review procedures set forth in paragraphs (b)(1) through (b)(4). Proposed paragraph (b)(4) is renumbered as paragraph (b)(1). Proposed paragraph (b)(5) is renumbered as paragraph (b)(2) and amended to provide that a program administrator's analysis of PACE solicitor's compliance controls may be tailored based on size of the PACE solicitor and the volume of PACE business conducted by the PACE solicitor. The paragraph further provides that the program administrator must 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. The purpose of the amendments is to describe the manner and use of the program administrator's analysis of the PACE solicitor's compliance controls. The amendments are necessary to provide context to a program administrator's periodic analysis of a PACE solicitor's controls, and to link the periodic assessment of controls to the ongoing monitoring so that PACE solicitors with weaker controls may be more closely monitored for compliance.

Proposed paragraph (b)(6) is renumbered as paragraph (b)(3). Proposed paragraphs (b)(7) and (8) are incorporated into section 1620.14 of the rules regarding monitoring compliance. Paragraph (b)(4) requires the periodic review to include an analysis of complaints made against the PACE solicitor regarding the solicitation activities of the PACE solicitor, and the resolution of the complaints. The purpose of requiring an analysis of complaints against a PACE solicitor regarding solicitation activities is to use complaints as a tool to identify potential shortcomings or weaknesses in a PACE solicitor's solicitation processes that may pose a risk to property owners or be out of compliance with the law. The paragraph is necessary to ensure that an analysis of property owner complaints against a PACE solicitor is included as part of the periodic review process so that a program administrator can work with a PACE solicitor to address any deficiencies not previously identified through monitoring or complaint handling or take other remedial action.

Subdivision (c) requiring a review of a sample of assessment contracts is amended to provide that the compliance evaluation may include contacting property owners. The purpose of this amendment is to provide guidance to a program administrator on a method for gathering compliance information, and the amendment is necessary for the same reason. The amendment to paragraph (c)(3) requires the review to confirm that the efficiency improvements installed are those represented to the program administrator. The amendments remove the phrase "of the same quality and grade" because this language implied that a PACE solicitor may misrepresent to the program administrator the installed efficiency improvements. The purpose of this amendment is to eliminate this implication. The amendments to paragraph (c)(4) recast the requirements by separating the requirements into subparagraphs (c)(4)(A) and (B). As proposed, paragraph (c)(4) required the periodic review to evaluate whether the efficiency improvements were completed, all outstanding permits obtained final approval by a building inspector, if necessary, and if provided in the home improvement contract, solar improvements were connected, as necessary. As amended, paragraph (c)(4) and subparagraphs (c)(4)(A) and (B) require the periodic review to evaluate whether the efficiency improvements financed through the assessment contract were completed as represented, including (1) 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; and (2) 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. The purpose of the amendments is to clarify the scope of the program

administrator's periodic review regarding the completion of work subject to PACE financing. The amendments are necessary to clarify that the periodic review by the program administrator regarding the completion of work is limited to a review of whether the work financed through the assessment contract is complete.

For purposes sampling data as part of the periodic review, the amendment to subdivision (d) provides that the program administrator 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. The purpose of this amendment is to provide instruction to program administrators on how to develop the sampling size for the periodic review, and the provision is necessary for the same reason. As proposed, paragraph (e)(1) required a program administrator to prepare a report summarizing the periodic review of the solicitation activities of the PACE solicitor. As amended, paragraph (e)(1) requires a program administrator to document that the periodic review was completed and identify any findings. The purpose of these changes is to align more closely with the statutory periodic review requirement and remove the requirement for preparing a report. These changes are necessary to achieve the goal of ensuring the review is completed and findings are documented, without requiring unnecessary work. The amendments to paragraph (e)(1) further provide that If a program administrator uses a method other than sampling as authorized in subdivision (d), the documentation must 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 the rule. The purpose of the amendment is to recognize that sampling may not be possible, and in those instances a program administrator must document the process used to review a PACE solicitor's compliance. The provision is necessary to ensure that the books and records reflect the processes a program administrator uses for the periodic review of a PACE solicitor's solicitation activities. Part of paragraph (e)(1) is renumbered as paragraph (e)(2) and amended to clarify that the program administrator must retain documentation of the periodic review, the findings, alternative review procedures, and any subsequent actions in its books and records. The purpose of the amendments is to clarify the documentation that a program administrator must retain in its books and records, and the amendments are necessary for the same reason.

Proposed paragraph (e)(2) is renumbered as paragraph (e)(3) and amended to provide examples of potential corrective action that may be warranted by the findings from the periodic review, including educating PACE solicitors about areas of noncompliance, remedying consumer harm, and disenrolling PACE solicitors. The purpose of these amendments is to provide instructions to program administrators on how to proceed on findings from a periodic review. The provision is necessary to ensure that any deficiency in a PACE solicitor's solicitation process uncovered as part of the periodic review is addressed to prevent harm to a property owner.

As proposed, subparagraph (e)(2)(B) required the cancellation of enrollment for a PACE solicitor or PACE solicitor agent repeatedly failing to maintain the minimum qualifications for enrollment. As renumbered and amended, the term “repeatedly” is removed from subparagraph (e)(3)(B), and the subparagraph requires the cancellation of enrollment for a PACE solicitor or agent who fails to maintain the minimum qualifications for enrollment. The purpose of this amendment is to align the rule with subdivision (g) of Financial Code section 22680, which requires a process for cancelling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications. The amendment is necessary for consistency with the statute.

Proposed subdivision (g) is renumbered as paragraph (f)(1) and amended to clarify that the periodic review is of the solicitation activities of a PACE solicitor. The purpose of this change is for consistency with paragraph (f)(3) of Financial Code section 22680, and the change is necessary for the same reason. Paragraph (f)(2) provides that program administrators who enroll the same PACE solicitors may collaborate on conducting coordinated joint periodic reviews. The purpose of this provision is to authorize coordinated periodic reviews. This provision is necessary so that program administrators may obtain efficiencies by coordinating on periodic reviews of solicitation activity.

§ 1620.16. Canceling Enrollment.

An amendment to subdivision (a) aligns the provision with the statutory requirement for a program administrator establishing and implementing a process for cancelling the enrollment of a PACE solicitor or PACE solicitor agent, by adding the process is applicable to 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. The purpose of the amendment is to ensure the provision is consistent with subdivision (g) of Financial Code section 22680, and any duplication with section 22680 is for the clarity of the remainder of the rule. The amendment is necessary for the same reason.

Section 1620.17. Training Program

The amendment to paragraph (a)(1) clarifies that a training program for PACE solicitor agents must comply with both Financial Code section 22680 and this rule. The purpose of the amendment is to clarify a program administrator’s obligation with respect to a training program, and the change is necessary for the same reason. Paragraph (a)(3) and subparagraphs (a)(3)(A) through (C) provide that the training program consists of three parts: (1) 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; (2) the passage of a test that measures the PACE solicitor agent’s knowledge and comprehension of the training material; and (3) six hours of education that a PACE solicitor agent must complete within three months of completing the enrollment process. The purpose of the paragraph is to ensure that a

program administrator understands the three separate parts of subdivisions (b) and (c) of Financial Code section 22681, and the paragraph is necessary for the same reason. Paragraph (a)(4) provides that 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. The purpose of this paragraph is to allow a program administrator to conflate the introductory training and subsequent training of a PACE solicitor agent if all the training occurs upon enrollment and before the solicitation of property owners. This provision is necessary to allow a program administrator to accelerate the training of PACE solicitor agents without sacrificing any content. This approach ensures a PACE solicitor agent completes all the training before the solicitation of property owners, and therefore promotes greater consumer protection.

The amendments to paragraph (c)(1) clarifies the books and records requirement regarding the training of a PACE solicitor agent to provide that the records must document that the PACE solicitor agent completed the introductory training, including passing the test as part of the training, and the six hours of education. The amendments further require the records include the dates of completion. The purpose of the amendments is to clarify that the records must identify the completion of all three parts of the training, and the dates of each part. The change is necessary to provide clarity to the rule and to ensure that the records reflect whether a PACE solicitor agent has completed each part of the training, and the dates, to ensure that the complete training requirement has been completed.

An amendment to subdivision (d) provides that a program administrator may provide a PACE solicitor agent with information on changes to the PACE program through the PACE solicitor. The purpose of this amendment is to clarify that a program administrator may use enrolled PACE solicitors to distribute information to PACE solicitor agents. The amendment is necessary to allow a program administrator flexibility in distributing changes to the PACE program and previous training material.

The amendments throughout subdivision (e) revise the requirements for the training. As proposed, paragraph (e)(1) required the training to include information on PACE programs and assessments. Subparagraphs (e)(1)(A) through (k) set forth areas that may be covered related to PACE programs and assessments. As amended, subparagraph (e)(1)(A) instead sets forth information that must be covered under training on PACE programs and assessment contracts. Former subparagraphs (e)(1)(A) and (B) are renumbered as clauses (e)(1)(B)(1) and (2) and continue to allow for the inclusion of training on the origin of PACE programs and the public benefits behind PACE programs. Subparagraph (e)(1)(C) is renumbered as clause (e)(1)(A)(1) and requires the training to include 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. The purpose of the

amendments is to require training on the consequences of the first lien position, including the risks to the property owner if the property owner is unable to pay the property taxes and a mortgagee pays on the owner's behalf. The amendments are necessary to ensure that PACE solicitor agents understand the risks of the first lien position so that this information may be provided to property owners who are solicited for PACE financing. Subparagraph (e)(1)(D) is renumbered as clause (e)(1)(A)(2), and as amended requires training on 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. The purpose of the amendments is to require training on public agencies so that PACE solicitor agents understand the relationship and roles of the different agencies and are prepared to answer property owner questions. The amendments are necessary to ensure the PACE solicitor agents are educated about how PACE programs are implemented by local government and able to provide this information to property owners.

Proposed subparagraph (e)(1)(E) regarding the treatment of PACE assessments by federal housing finance agencies is renumbered as clause (e)(1)(A)(3) and required as a training topic. The purpose of mandating this training topic is to ensure that PACE solicitor agents are educated about the federal lending policies that impact a property owner with a PACE lien. This amendment is necessary to ensure that PACE solicitor agents are able to answer questions by property owners that may be affected by federal lending policies, such as the impact on refinancing or selling the property. Proposed subparagraph (e)(1)(F) regarding the risks to property owners is renumbered as clause (e)(1)(A)(4) and required as a training topic. As amended, the clause requires the training to include the risks to property owners who finance efficiency improvements through PACE assessments, including the risk that the property owner may be breaching the property owner's mortgage agreement by allowing a PACE lien. The purpose of this amendment is to ensure a PACE solicitor agent receives training on the risks to property owners from entering into an assessment contract, and to educate a PACE solicitor agent on the specific risk of potentially breaching a mortgage agreement. The amendments are necessary to ensure that the PACE solicitor agent can provide a property owner with information on risks to consider when obtaining PACE financing, including the potential breach of a property owner's mortgage agreement. Subparagraph (a)(1)(G) regarding the potential barriers to property transfers is renumbered as clause (a)(1)(A)(5) and required as a training topic. The amended clause requires the training to include 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. The purpose of requiring the topic is to educate PACE solicitor agents about potential barriers a property owner may encounter when attempting to transfer property with a PACE lien to a new owner, including that the buyer or the buyer's mortgagee may require that the lien be paid off upon sale, and the potential for prepayment penalties. This amendment is necessary to

ensure a PACE solicitor agent may accurately represent to a property owner the potential impact of a PACE lien on property transfers and the potential costs to the property owners upon transfer.

Proposed subparagraph (a)(1)(H) regarding the potential concerns of mortgagees is renumbered as clause (a)(1)(A)(6) and is recast to require that the training include the potential barriers to refinancing property with a PACE lien, including the risk that the mortgagee will require the PACE lien to be paid off before refinancing the property. The purpose of requiring this topic is to educate PACE solicitor agents about potential barriers to refinancing the property with the PACE lien, including the risk that the mortgagee will require the lien be paid as a condition of refinancing the property. The amendments are necessary to ensure that a PACE solicitor agent may accurately represent to a property owner the potential impact of a PACE lien on a property refinancing, including the potential additional costs to the property owner. Proposed subparagraph (a)(1)(I) regarding the potential requirements of mortgagees is renumbered as clause (a)(1)(A)(7) and is recast to require that the training include the potential for a property owner's mortgagee to increase the amount of funds required to be escrowed monthly for the payment of property taxes. The purpose of these amendments is to educate PACE solicitor agents about the potential for a property owner's monthly mortgage payment to increase if the mortgagee increases the amount of money that the property owner must pay monthly for upcoming property taxes because of the PACE lien. These amendments are necessary to ensure that a PACE solicitor agent is aware of the potential impact to a property owner's monthly mortgage payment because of an increase in the amount the mortgagee requires be escrowed for the payment of property taxes that include a PACE lien, so that the PACE solicitor agent can accurately represent this information to a property owner considering a PACE lien.

Proposed subparagraph (a)(1)(J), regarding training on the requirements under division 7 of the Streets and Highways Code, is renumbered as clause (a)(1)(A)(8) and required as part of the training unless covered elsewhere. The purpose of requiring training on the PACE requirements under the division is to ensure that PACE solicitor agents are educated about the statutory requirements, including those that restrict the eligible projects and properties, those requiring disclosures, those that restrict practices by contractors, and those that restrict practices by program administrators. The amendments are necessary to ensure that PACE solicitor agents are familiar with the statutory requirements that impact PACE solicitation activities. Proposed subparagraph (a)(1)(K), regarding training on the general requirements under the California Financing Law, is renumbered as clause (a)(1)(A)(9) and required as part of the training. The purpose of requiring training on the California Financing Law is to ensure a PACE solicitor agent is educated about the statutory requirements impacting the solicitation of PACE financing. The amendment is necessary to promote a PACE solicitor agent's compliance with the California Financing Law.

Proposed paragraph (e)(2) is expanded and separated into paragraph (e)(2), subparagraph (e)(2)(A), and clauses (e)(2)(A)(1) and (2). Paragraph (e)(2) identifies PACE disclosures as the topic, and consistent with proposed paragraph (e)(2), subparagraph (2)(A) requires the training to include information on the required disclosures identified in clauses (e)(2)(A)(1) and (2) when a property owner finances efficiency improvements through an assessment contract. Consistent with proposed paragraph (e)(2), clause (e)(2)(A)(1) requires the training to include information on the Financing Estimate and Disclosure Form required by Streets and Highways Code section 5898.17 and further requires the training to include an explanation of 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 purpose of the training requiring an additional explanation on the finance charges required to be disclosed in the home improvement contract is to ensure that all financing costs are disclosed to property owners. The amendment is necessary to ensure the transparency of financing costs to property owners. Clause (e)(2)(A)(2) requires the training to include information on the three-day or five-day Right to Cancel notice required by Streets and Highways Code section 5898.16. The purpose of this addition is to ensure a PACE solicitor agent receives training on the mandatory Right to Cancel notice. The amendment is necessary to educate PACE solicitor agents about the requirement that a property owner receive this notice, and the impact of the notice on a contractor’s ability to begin the project.

Clause (e)(2)(A)(3) requires the training to include information on the oral disclosures required under Streets and Highways Code section 5913. The purpose of this requirement is to educate PACE solicitor agents about the mandatory oral confirmation required by Streets and Highways Code section 5913. Section 5913 requires that a program administrator confirm that at least one property owner has a copy of the contract assessment documents with key terms completed, the financing estimate and disclosure form, and the right to cancel form, and requires an oral confirmation of the key terms of the assessment contract, as set forth in the statute. The purpose of requiring training for PACE solicitor agents is to educate the PACE solicitor agents about the information that must be disclosed to a property owner and confirmed by a property owner prior to the execution of an assessment contract. The rule is necessary to ensure a PACE solicitor agent is knowledgeable about a core requirement for the protection of property owners that must precede a property owner entering into an assessment contract.

Proposed subparagraphs (e)(2)(A) through (E) are renumbered as clauses (e)(2)(B)(1) through (5). As amended, subparagraph (e)(2)(B) requires training on the remaining topics under the subject of PACE disclosures in clauses (e)(2)(B)(1) through (6). The disclosure topics include repayment terms, the assessment process, interest and fees on assessment contracts, penalty and interest for late payments, and the prohibition against entering into assessment contracts on properties subject to a reverse mortgage. The purpose of requiring training on the topics is to educate a PACE solicitor agent

about the aspects of an assessment contract so the PACE solicitor can accurately provide the information to a property owner and answer questions. The requirement is necessary to ensure a PACE solicitor agent understands the details related to PACE financing when discussing the financing product with property owners. Renumbered clause (e)(2)(B)(2), regarding the assessment process, is amended to add that training on the assessment process must 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 purpose of requiring the training to include this information is to train a PACE solicitor agent on the need to disclose this information to a property owner. This requirement is necessary to ensure that a property owner is told of the obligation to pay the PACE assessment through the owner's property tax bill, to ensure the property owner understands that the efficiency improvement is not a free government benefit. The amendments add clause (e)(2)(B)(6), requiring the training to include the statutory prohibition of assessment contracts on property subject to a reverse mortgage, as provided by AB 1551 (Stats. 2020, ch. 156). The purpose of this amendment is to incorporate the change to the law into the PACE solicitor agent training, to ensure that a PACE solicitor agent is aware that a property that is subject to a reverse mortgage may not be subject to an assessment contract.

An amendment to paragraph (e)(3) on ethics requires the information in subparagraphs (e)(3)(A) and (B) to be included in the PACE solicitor agent training. The provision is necessary to ensure that PACE solicitor agents are aware of the property owner protections in these subparagraphs. The amendments to subparagraph (e)(3)(A) clarify that the training must include the prohibition on incentives provided in Streets and Highways Code section 5923 and Business and Professions Code section 7157, as applicable to PACE financing. Streets and Highways Code section 5923 prohibits a program administrator from paying a property owner, contractor or third party as an inducement for an assessment contract and prohibits a program administrator from reimbursing a contractor or third party for advertising or marketing. Business and Professions Code section 7157 prohibits offering to pay compensation for procuring home improvement business and prohibits a home improvement salesperson from accepting compensation for a home improvement transaction except from a contractor. The purpose of including this information in the training is to ensure that a PACE solicitor agent receives training on the statutory limitations related to payments as inducements for entering into contracts related to PACE financing. This training is necessary to promote compliance with the statutory restrictions. Amendments to subparagraph (e)(3)(B) require training on the restriction on PACE pricing under Streets and Highways Code section 5926. Section 5926 prohibits a contractor from providing a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner. The purpose of requiring this property owner protection be included in the training is to educate PACE solicitor agents about

this restriction. This provision is necessary to promote compliance with the statutory restriction.

The amendments to paragraph (e)(4) mandate that the training on fraud prevention include information on misrepresentations or omissions in connection with PACE financing in the areas of government sponsorship, tax benefits, repayment obligations, refinancing a mortgage, and selling a property. The purpose of mandating training in these areas is to educate PACE solicitor agents on areas that are prone to representations that are misleading to property owners. The mandatory training on the specific areas is necessary to ensure PACE solicitor agents are not misrepresenting information to property owners. The amendments add subparagraph (e)(4)(D) which requires the training on fraud prevention to include training on the potential effects of PACE assessments on refinancing a mortgage, and subparagraph (e)(4)(E), which requires the training on fraud prevention to include training on the potential effects of PACE assessments on a property sale. The purpose of adding these additional areas is to ensure the training specifically covers areas that have been subject to misrepresentations in the past. The mandatory training in these areas is necessary to educate PACE solicitor agents about permissible and impermissible representations so that property owners are protected from misrepresentations.

The amendments to paragraph (e)(5) mandate that training on consumer protection include information on property owner protections under section 1620.10 of the rules. Section 1620.10 identifies acts constituting dishonest dealings by a program administrator, PACE solicitor, and PACE solicitor agent. The purpose of mandating the training is to ensure a PACE solicitor agent is aware of prohibited misrepresentations and other acts. The amendments are necessary to ensure that PACE solicitor agents are educated about the property owner protections section 1620.10 of the rules. The amendments add subparagraphs (e)(5)(A) and (B), requiring the consumer protection training also include information on (1) the potential negative consequences of a hard inquiry on a property owner’s credit file pulled from a credit reporting agency; and (2) the need to identify whether the property is subject to a reverse mortgage. The purpose of training PACE solicitor agents on the potential negative consequences related to a hard inquiry on a property owner’s credit file is ensure a PACE solicitor may accurately communicate this information to a property owner. This provision is necessary to protect property owners against the adverse consequences related to a credit inquiry. The purpose of training a PACE solicitor agent on the need to identify whether the property is subject to a reverse mortgage is to ensure that properties with reverse mortgages are not subject to assessment contracts. This provision is necessary to prevent PACE solicitor agents from subjecting properties with a reverse mortgage to PACE financing.

Paragraph (e)(7) regarding elder financial abuse is expanded to include elder and dependent adult financial abuse, and the reference to senior financial abuse in subparagraph (e)(7)(A) is revised to instead refer to elder and dependent adult financial abuse. While Financial Code section 22681 mandates training on senior financial

abuse, dependent adults are included in recognition of their unique need for protection from financial abuse. Paragraph (e)(7) is amended to provide that elder and dependent adult financial abuse is defined to have the same meaning as in Welfare and Institutions Code section 15610.30. The purposes of these changes are to protect elder and dependent adults from financial abuse, to provide guidance on the meaning of elder and dependent adult financial abuse by referencing the definition in the Welfare and Institutions Code, and to educate PACE solicitor agents on the need to identify possible elder and dependent adult financial abuse. These provisions are necessary to protect elder and dependent adults and to clarify the meaning intended by the phrase “elder and dependent adult financial abuse.”

Section 1620.19. Annual Report Data

Proposed paragraph (a)(2) is deleted, and proposed paragraph (a)(3) is renumbered as paragraph (a)(2). Proposed paragraph (a)(2) required the annual reporting of the aggregate information required by section 10085 of title 4 of the California Code of regulations, but this requirement is deleted because the information is available from the California Alternative Energy and Advanced Transportation Financing Authority, and the parcel-level data is not necessary for the Department’s oversight of program administrators. Subparagraph (a)(2)(A) is amended to require the annual reporting of the number of tax sales and foreclosures that were reported to the program administrator during the prior calendar year on property subject to a PACE assessment, without the condition that the reported number of tax sales or foreclosures be the result of the nonpayment of PACE assessments. The purpose of this change is to provide information on foreclosures and tax sales on properties subject to PACE assessments for the purpose of evaluating whether and how PACE assessments impact the frequency of foreclosures or tax sales. This change is necessary to accurately capture data that may reflect on the frequency of tax sales and foreclosures on properties subject to PACE assessments.

Subparagraph (a)(2)(C) is amended to clarify that reporting on the number of enrolled PACE solicitors and PACE solicitor agents is to include the numbers as of December 31 of the prior calendar year. The purpose of including the reference to the prior calendar year is to avoid any confusion as to the data to be reported. This change is necessary to clarify the year intended by the reference to December 31.

Amendments to clause (a)(2)(D)(1) amend the interest rate ranges for the reporting of assessment contracts. The purpose of the change is to reflect the interest rate reporting required of other licensees under the California Financing Law. This change is necessary for parity with other licensees. Subparagraph (a)(2)(D)(3) is added to require reporting of 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, seller’s points, or as any other type of payment; the aggregate amount of the payments; and the average and median amount of the payments. The purpose of this amendment is to capture information on the cost of PACE financing that

may be paid by a contractor. This amendment is necessary to provide transparency on the associated costs of PACE financing. An amendment to subparagraph (a)(2)(I) provides that a program administrator must report on the number of PACE assessments canceled within five days. The purpose of this addition is to recognize the amendment to Streets and Highways Code section 5898.16 that provides a five-day right to cancel for persons 65 years of age or older. This amendment is necessary to incorporate into the annual report the changes to the law by AB 2471 (Stats. 2020, ch. 158).

Section 1620.21. Ability to Pay Determinations

As proposed, subdivision (a) and paragraphs (a)(1) through (3) were intended to insulate the persons making ability to pay determinations from pressure to reach a favorable determination and was titled “Property Owner Protections.” As amended, the section is titled “Ability to Pay Determinations” and the requirements of subdivision (a) and paragraphs (a)(1) through (3) are redrafted to no longer require written processes directed at the persons making the ability to pay determinations, and instead the subdivision addresses the procedures and requirements for ability to pay determination. Subdivision (a) is recast to provide that a program administrator must 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. The purpose of the amended language is to ensure that a program administrator has written procedures, and the written procedures are necessary to ensure that the program administrator’s procedures for determining a property owner’s reasonable ability to pay the obligations comply with the requirements of the law. Paragraph (a)(1) is recast to provide that the procedures must include the criteria used for identifying whether a property owner has sufficient residual income to meet basic living expenses. Paragraph (d)(4) of Financial Code section 22687 requires a program administrator to determine that a property owner’s income includes a sufficient residual income to meet basic household living expenses, and the purpose of paragraph (a)(1) is to ensure the written procedures for determining a property owner’s ability to pay the annual PACE obligations include the program administrator’s criteria used to determine whether the property owner’s residual income is sufficient. This amendment is necessary to ensure that a program administrator has written criteria for determining the sufficiency of a property owner’s residual income, the criteria support a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment as required under Financial Code section 22686, and the criteria is being uniformly applied in ability to pay determinations.

Paragraph (a)(2) is recast to require a program administrator’s written procedures for determining a property owner’s reasonable ability to pay the annual PACE obligations to include the criteria used for determining whether income is from a temporary source. Subparagraph (b)(2)(A) of Financial Code section 22687 provides that income considered for the ability to pay determination may not be derived from temporary

sources of income. The purpose of the amendments to paragraph (a)(2) is to require a program administrator to identify in its procedures the criteria used to identify whether income is from a temporary source, and the amendments are necessary to ensure that a program administrator is not including temporary sources in income when determining a property owner's ability to pay the PACE assessments.

Paragraph (a)(3) is amended to require a program administrator's written procedures for determining a property owner's reasonable ability to pay the annual PACE obligations to include the criteria used for determining whether assets are liquid. Subparagraph (b)(2)(B) of Financial Code section 22687 provides that income considered for the ability to pay determination may not be derived from nonliquid assets. The purpose of paragraph (a)(3) is to require a program administrator to identify in its procedures the criteria used to identify whether income is from nonliquid assets, and the amendments are necessary to ensure that a program administrator is not including income from nonliquid assts when determining a property owner's ability to pay the PACE assessments.

Paragraph (a)(4) requires a program administrator's written procedures for determining a property owner's reasonable ability to pay the annual PACE obligations to include 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. Paragraph (b)(1) of Financial Code section 22687 provides that a program administrator must determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies on in order to determine a property owner's ability to pay the PACE assessment annual payment obligations; subdivision (d) of Financial Code section 22687 requires the consideration of monthly debt obligations; and paragraph (d)(4) requires a determination that a property owner has sufficient residual income to meet basic household living expenses. The purpose of paragraph (a)(4) of this rule is to ensure that the written procedures include any assumptions used for determining current or reasonably expected income or assets, monthly debt obligations, and basic household living expenses. The provision is necessary to ensure that a program administrator has documented the assumptions, to ensure that the assumptions support a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations, and to confirm that the program administrator's actual ability to pay determinations are consistent with the documented assumptions.

Paragraph (a)(5) requires a program administrator's written procedures for determining a property owner's reasonable ability to pay the annual PACE obligations to include the nature of any permissible exceptions and the conditions for allowing for exceptions to the criteria, if a program administrator allows exceptions to any of its criteria. The purpose of this paragraph is to ensure that the written procedures include the nature of any permissible exceptions and the conditions for allowing for exceptions

to the criteria. The provision is necessary to ensure that a program administrator does not waive criteria when not warranted, to ensure that the assumptions support a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment, and to confirm that the program administrator's actual ability to pay determinations are consistent with the documented exceptions.

Paragraph (b)(1) is recast to provide that 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. The purpose of this provision is to ensure that a program administrator's determination, pursuant to Financial Code section 22686, that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment is a reasonable, good faith determination, and not based on the program administrator's financial motives. This provision is necessary because a property owner's inability to pay a PACE assessment does not affect PACE financing in the same way as the inability to pay would affect other types of financing, given the first position of the lien and the potential ways the lien may be paid, and therefore the typical cost/benefit analysis that would motivate an entity providing financing to ensure a debtor is able to pay may not be present. Consequently, the provision is necessary to establish additional protections to increase the likelihood that a property owner will only be offered an assessment contract if the property owner can establish the ability to pay the PACE assessment. Paragraph (b)(2) provides that the prohibition in paragraph (b)(1) is applicable to any person making an ability to pay determination and any person with the ability to overturn an ability to pay determination. The purpose of this provision is to capture all of the individuals directly involved in the ability to pay determination and is necessary for the same reason. Paragraph (a)(3) provides that the rule does 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. The purpose of this provision is to clarify that the restricted employee compensation is only for compensation directly contingent on a positive ability to pay determination and does not include general incentive programs typically based on the success of the business. This provision is necessary to provide clarity to the scope of the restriction.

Section 1620.22. Property Owner Income

As proposed, paragraph (b)(2) provided that rental income may be included in determining a property owner's current or reasonably expected income, for purposes of determining a property owner's ability to pay the PACE assessments. As amended, paragraphs (b)(2) through (b)(4) set forth revised requirements for temporary sources of income and for rental income. Paragraph (b)(2) provides that 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. The

purpose of this provision is to clarify whether income is from a temporary source, and the provision is necessary in order to calculate the amount of income that may be included. Paragraph (b)(3) provides that the property owner's household income may only include the incomes of the persons identified in subdivision (a) of Financial Code section 22687. It provides 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 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. The paragraph further provides that 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. The purpose of this provision is to recognize the statutory limitation of only considering the income of the persons identified in statute for purposes of the ability to pay determination, which includes persons on title and their spouses or domestic partners but does not include other individuals living in the household. At the same time, the purpose is to recognize property owner income based on a bona fide agreement with a tenant paying rent for a room and board arrangement. The purpose of the six months of documentation from third-party records and a written rental agreement or written statement of the renter is to establish that the arrangement is bona fide, and the income is foreseeable. The provisions are necessary to balance the statutory limitation on the individuals whose income may be considered with the legitimate receipt of rental income from the property owner's household.

Paragraph (b)(4) provides that rental income for properties other than the property owner's household may be included in determining income provided that the 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. The purpose of this provision is to recognize that rental income from other properties may increase the property owner's ability to pay but that mortgage- and property-related fees and expenses must be deducted. The provision is necessary to resolve any uncertainty regarding whether rental income is an excluded temporary source of income, and to clarify that the recognition of income must be net direct fees and expenses.

Proposed paragraph (b)(3) which prohibited estimated income is renumbered as paragraph (b)(5) and recast to provide that a program administrator may 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. The purpose of the revisions is to provide clarity and specificity to the prohibited methods of estimating or predicting income and to align with Financial Code section 22689,

paragraph (b)(1). The revisions are necessary to specify the types of estimated methodologies intended to be captured in the prohibition, and the purpose is to ensure that the determination of a property owner's ability to pay is based on the property owner's actual income.

The amendments add paragraph (b)(6), providing that 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. The purpose of this provision is to clarify the meaning of nonliquid assets. The provision is necessary to ensure that a property owner's ability to pay a PACE assessment is not dependent on a property owner withdrawing or liquidating assets that will incur a penalty. Paragraph (b)(7) provides that funds received from a reverse mortgage may not constitute income. The purpose of this provision is to ensure that a property owner obtaining funds from a reverse mortgage, which typically indicates the property owner is a senior who is accessing the equity in the property owner's home to pay for living expenses, does not incur additional debt through PACE financing and potentially breach a reverse mortgage agreement. This provision is necessary to protect vulnerable property owners from incurring debt in the form of PACE financing that they cannot afford to pay.

Section 1620.25. Emergency

An amendment to this section provides that the list of home improvements not constituting an emergency or immediate necessary, for purposes of the ability to pay determinations, is not exhaustive. Subdivision (e) of Financial Code section 22687 authorizes the waiver of paragraph (1) of subdivision (b) of that section regarding verifying an owner's income through third-party records, in the case of emergency or immediate necessity, and a property owner may also waive the three or five day right to cancel. Rule 1620.25 identifies some home improvements that are never emergencies. The purpose of the additional language indicating that the list of home improvements not constituting an emergency is not exhaustive is to clarify that other efficiency improvements may also not be emergencies. The provision is necessary to ensure that the list is not interpreted as inclusive of all improvements that are not emergencies, which could lead to abuse of the emergency exception.

Section 1620.27. Automated Valuation Model

Amendments renumber the proposed text of section 1620.27 as subdivision (a), and add subdivision (b), providing that 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 must be in writing. The purpose of this amendment is to ensure the property owner receives written documentation of the market value determination for the subject property. The property value is an element of many of the property owner protections in the law and determines the amount of financing a property owner may receive under an assessment

contract. A written disclosure of the market value determination is necessary to provide the property owner with documentation supporting the assessment contract, and to provide the property owner the opportunity to raise concerns if the property owner identifies an error in the valuation.

Section 1620.28. Useful Life of Improvement

As proposed, section 1620.28 required a program administrator to base the useful life of the efficiency improvement on the equipment manufacturer or installers' specifications. The Department removed the requirement based on concerns that the requirement was inconsistent with subdivision (j) of Financial Code section 22684, which provides that the program administrator must determine useful life based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations. The section is amended to require the program administrator to base the useful life of the efficiency improvement as of the date of the execution of the assessment contract. The purpose of this amendment is to provide certainty and uniformity in the implementation of subdivision (j) of Financial Code section 22684, which prohibits the term of the assessment contract from exceeding the estimated useful life of the measure for which the greatest portion of funds disbursed under the assessment contract is attributable. The amendments are necessary to facilitate compliance with subdivision (j) of Financial Code section 22684.

Section 1620.29. Commercially Reasonable

As proposed, subdivision (b) provided that a program administrator may rely on the representation of the property owner to verify the criteria in Financial Code section 22684, where the program administrator documented the reason the information was not available through an independent source. As amended, subdivision (b) recasts the provision to provide that if the program administrator does not verify the criteria for eligibility for an assessment contract in Financial Code section 22684 through the commercially reasonable and available sources identified in subdivision (a) of the rule, the program administrator must identify the source of the information in the records related to the assessment contract maintained under section 1620.07 of these rules. The amendments further provide that the subdivision is not applicable to any criteria where Financial Code section 22684 requires or authorizes the verification directly with the property owner. The purpose of recharacterizing the provision is to clarify that if the sources used to validate the eligibility requirements for an assessment contract are not the sources identified in subdivision (a) of the rule, then the program administrators must keep a record of the sources in its books and records. The purpose of the amendments is to clarify the information sought by the Department. The amendments to subdivision (c) provide that a program administrator need not use tax payment histories to verify whether taxes are current if the payment tax history is unavailable at the time or Financial Code section 22684 authorizes verification directly from the property owner. Subdivision (a) of Financial Code section 22684 requires a program administrator to ask

a property owner whether there has been no more than one late payment of property taxes on the property for the previous three years or since the current owner acquired the property, whichever period is shorter. The purpose of the amendments to subdivision (c) is to allow for alternative methods to verify whether property taxes are current when property tax payment histories are unavailable. The rule is necessary to ensure that program administrators have authority to use an alternative means to validate whether property taxes are current in the event that property tax payment histories are unavailable. Proposed subdivision (d) is renumbered as subdivision (e), and a new subdivision (d) is added providing that the verification of criteria for an assessment contract must 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. The purpose of the provision is to prevent a program administrator from entering into an assessment contract without considering other assessment contracts on the property in the analysis of a property owner's ability to pay the PACE assessment. The provision is necessary because PACE assessments do not immediately appear on a county's tax records, and therefore confirmation with the PACE solicitor will assist in identifying whether a property owner has entered into other assessment contracts to finance the work performed by the PACE solicitor or other work on the property that the PACE solicitor may have encountered during the PACE solicitor's work on the home improvement project.

Determination of Mandate on local Agencies or School Districts

The Department has determined that this rulemaking action does not impose a mandate on local agencies or school districts.

Summary of Each Objection or Recommendation

Comments Received During the 45-Day Comment Period from October 25, 2019 through December 9, 2019

The following persons submitted comments to the Department during the 45-day comment period from October 25, 2019 through December 9, 2019:

1. Golden State Properties, Geoff Soumakian - by email received October 28, 2019.
2. Channel Islands Leasing and Loan, Vincent Diglio, CFO – by email dated October 25, 2019.
3. Geraci Law Firm, Kevin Kim, Esq. and Olivia Durnell, Esq. – by letter received December 9, 2019 received via email.
4. Keesal, Young & Logan, Sandor X. Mayuga – by letter dated December 9, 2019 received via email.
5. Ygrene Energy Fund, Michael Lemyre, Senior Vice President – by letter dated December 9, 2019, received via email.
6. California Low-Income Consumer Coalition, National Housing Law Project, National Consumer Law Center, and Housing and Economic Rights Advocates,

Ted Mermin and Lisa Sitkin – by letter dated December 9, 2019 received via email.

7. California Association of Realtors, Anna Buck, Legislative Advocate - by letter dated December 4, 2019 received via email.
8. PACE Funding Group, Robert Giles, Chief Executive Officer – by letter dated December 9, 2019 received via email.
9. Energy Efficient Equity, Inc. (now FortiFi), Brad Knyal, Chief Executive Officer – by letter dated December 9, 2019 received via email.
10. Renew Financial, Olivia White, Vice President, Government Affairs – by letter dated December 9, 2019, received via email.
11. University of California, Irvine, School of Law, Consumer Law Clinic, Stacey L. Tutt, Director of the Consumer Law Clinic, Kevin Shone, Certified Law Student, Matthew Ketcham, Certified Law Student – by letter dated December 9, 2019, received via email.
12. Renovate America, Michael Mildenberger, Chief Risk and Compliance Officer – by letter dated December 9, 2019, received via email and overnight delivery.

Commentor No. 1: Comments by Geoff Soumakian, Golden State Properties ("GSP")

Comment No. 1.01: GSP provides that transferring onto NMLS is unneeded and overly burdensome for California-only lenders that do not have any desire to operate in other states. According to GSP, "The regulation of Lenders that only operate in California should be left to California regulators only because they understand California lenders best, not federal entities." By transferring to NMLS, GSP suggests the legal costs to remain in compliance will put small and principal-only lenders out of business. According to GSP, small and principal-only lenders serve a huge part of the market left behind by large institutions that do not want to waste their time with anything that does not fit into their cookie cutter business model. GSP warns that thousands of mom-and-pop borrowers will not be able to participate in the marketplace because they will be shut out of the credit markets, thus slowing down the growth in our state. GSP urges the Department not to allow this overreach to occur.

Response No. 1.01: NMLS is a depository of state licensing information, so transitioning to NMLS does not place licensees under federal oversight. While businesses operating in other states benefit from a central depository because data is centralized, NMLS will provide benefits to both the Department and licensees. NMLS will allow applicants to apply for licensure electronically instead of through the mail. Maintaining all license records on NMLS will allow licensees to log into their NMLS accounts to review the license information maintained by the Department, and to update information as needed, without having to send updates through the mail, such as changes to addresses and officers and directors. The electronic surety bond process will allow licensees to electronically establish and renew surety bonds, without the requirement to create a notarized paper surety bond. When annual license fees are transitioned onto

NMLS, a licensee will receive notices and be able to pay annual fees through NMLS. NMLS also allows the Department to modernize licensure and maintenance of licensing records by utilizing an existing online platform. NMLS aids the public by providing consumers access to information on licensees for every state licensing program that participates in NMLS. While NMLS provides many benefits, a licensee will incur the initial set up fee of $100 for a main office application and $20 for each branch office, and the annual fee will be the same. While this amount is not negligible, it is not significant for a business that is not a small business under California law (see paragraph (b)(1) of Government Code section 11342.610). Under the California Financing Law, the annual assessment for each licensee is the licensee's pro rata share of all costs and expenses incurred in administering the law. By the Department utilizing an existing national licensing depository, the Department is not incurring the cost of developing an online platform for receiving and maintaining license information, and so these costs would not be incurred in the future for the administration of the division. Instead, licensees directly pay an annual renewal fee to NMLS for this functionality. The Department disagrees that transitioning to the national depository will decrease access to credit, harm licensees, stifle competition, or raise costs for consumers. To the contrary, the Department believes failing to transition to electronic methods of licensing will have a negative impact on business.

Commentor No. 2: Comments by Vincent Diglio, CFO, Channel Islands Leasing and Loan

Comment No. 2.01: Vincent Diglio, CFO, provides as follows: There is a vast difference between property lending and Commercial Equipment lending. As such CFL licensees that do not deal in Property Lending (commercial or consumer) should not be transitioned to NMLS. I believe this would be a hardship as Property lending would encompass many additional regulations that do not pertain to commercial equipment lending. As such I believe Commercial Equipment Lending should be kept separate and remain under CFL licensing requirements."

Response No. 2.01: The Department has considered your concern and has concluded that the burdens of having a segment of licensees remain outside of NMLS defeats the economies intended by the full transition of all licensees onto NMLS. Further, CFL licensees are not restricted to a single product line, so having a different license process based on product line would needlessly complicate licensing for licensees who have more than one line of business. It would also deny licensees not on NMLS the benefits of managing their license electronically and require those licensees to interact with the Department through mail, an increasingly outdated method of regulatory oversight. In light of the benefits of transitioning described above in Response 1.01 and the difficulty of administering a program with a segment of licensees not on NMLS, the Department has determined that all licensees must transition onto NMLS for the effective and uniform administration of the program.

Commentor No. 3: Kevin Kim, Esq. and Olivia Durnell, Esq., **Geraci Law Firm ("GLF")**

Comment No. 3.01: GLF provides, "First, we are concerned with §1409.l(c) of the proposed regulations which states that, '[a]ny change that cannot be submitted through NMLS shall be filed directly with the Commissioner.' We object to this section of the proposed regulations. We believe that this lack of specificity as to which documents can and cannot be submitted through NMLS creates confusion which could lead to our clients missing deadlines and thus incurring penalties."

Response No. 3.01: Subdivision (c) of section 1409.1 of the rules is applicable to mortgage loan originators, who already file through NMLS. You raise concerns about an existing provision that is not proposed to be amended by the regulatory action. We will take your concerns under consideration for future rulemaking actions.

Comment No. 3.02: GLF provides, "Second, we are also concerned with the lack of specificity in §1422(a)(2) of the proposed regulations. It is unclear whether the Department of Business Oversight intends to allow the Applicant to choose to file through NMLS or with the form in subdivision (c) of that section. Under what circumstances does the Department believe that an applicant is 'unable to file through NMLS?' Does this provision apply to the entirety of the application and exhibits or just particular documents? As previously mentioned, we believe a lack of specificity in the regulations may lead to late filings and penalties therefore we object to this portion of the proposed regulations."

Response No. 3.02: The Department agrees with your concern and the language has been amended to no longer provide any exception to filing an application for a license through NMLS.

Comment No. 3.03: GLF provides, "Third, we would like to express our concern with the amendments to the application which now require any entity or individual listed in Exhibit M to now disclose whether they have been convicted of or pleaded nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit within the last 10 years; and/or if they have at any time violated the California Financing Law or regulations, or any similar regulatory scheme of California or a foreign jurisdiction. We object to this amendment to the application as it is an overreach which will create barriers to entry for many. For passive investors listed on the organizational chart, this would be a serious invasion of privacy especially considering passive investors have no direct involvement in the business plan of the applicant. For entities with complex organizational structures, answering these two questions is likely to be costly and time consuming as it would require significant research and reporting. For these reasons we object to this new requirement under the proposed regulations."

Response No. 3.03: The amendments to disclosures by persons listed on Exhibit M are intended to facilitate the investigation required under Financial Code section 22105. However, the Department acknowledges the potential burden and therefore in

transitioning to NMLS, the Department is limiting the individuals who must be disclosed on Form MU1 and Form MU2. As provided under subparagraph (a)(3)(A) of section 1422.5 of the rules, a Form MU2 is only required of an individual who owns 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant, and an officer, director, managing member, or partner of an entity who owns 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant, if that individual has the power to direct the management or policies of the applicant's lending activities or PACE program administration activities in this state. The revised definitions in subdivisions (l) and (m) of section 1404 exclude passive investors, as defined in those subdivisions. Subparagraph (a)(7)(A) of section 1422.5 is amended to only require the organizational chart to identify each entity or individual owning or controlling 10 percent or more of the outstanding interests or equity securities of the applicant and the entity or owner's percentage of ownership in the applicant. The revised definitions in subdivisions (l) and (m) of section 1404 allow passive investors, as defined in those subdivisions, to be excluded. These streamlined rules are intended to reduce regulatory burdens and streamline the licensing process, while ensuring that individual owners with the power to direct the management or policies of the applicant's lending activities or PACE program administration activities in this state are investigated in the licensing process.

Comment No. 3.04: GLF expresses concern that the proposed regulations do not address whether the move to the NMLS portal will create new obligations for commercial lending applicants. GLF provides, "Primarily, we would like clarification as to whether commercial lenders will now be required to comply with mortgage loan originator licensing and other similar requirements should the application be submitted through the NMLS portal."

Response No. 3.04: All licensees will be required to transition onto NMLS and to annually renew with NMLS. Most supporting documentation required for the original license is already on file with the Department and need not be submitted through NMLS as part of the transition (see subdivision (e) of section 1422.5). A licensee will be required to make any necessary updates to their license through NMLS, rather than through postal mail to the Department. Commercial lenders will be required to comply with the NMLS procedures for submitting information and annually renewing through NMLS, the same as mortgage loan originators, but commercial lenders are not subject to continuing education and do not "sponsor" mortgage loan originators, so these aspects of NMLS will not be applicable to a commercial lender. A commercial lender who is not engaged in the business of making or servicing residential mortgage loans is not required to submit the quarterly mortgage call reports through NMLS. Note, however, that because some licensees make residential mortgage loans under the authority of a California Financing Law license, all CFL licensees may receive system-generated notices from NMLS reminding them to submit these reports. The Department will notify licensees not engaged in the business of making or servicing residential mortgage loans that they may disregard these notices.

Commentor No. 4: Sandor X. Mayuga, Keesal, Young & Logan (“KYL”)

Comment No. 4.01: KYL supports the transition to NMLS and the streamlining of the licensing process.

Response No. 4.01: The Department appreciates the support for the transition.

Comment No. 4.02: KYL suggests that as a precursor to licensure, in addition to investigating applicants, Financial Code section 22105 requires the Commissioner to investigate persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any person responsible for the conduct of the applicant’s lending or program administration activities in this state, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any person responsible for the conduct of the applicant’s lending activities in this state. However, KYL notes that neither the CFL nor the Department’s regulations define what constitutes “outstanding interests” or “outstanding equity securities.” According to KYL, while the statute specifies the investigations that must be conducted to ensure that “bad actors” do not operate or own controlling interests in CFL licensees, the Commissioner has acknowledged through the existing authority to waive background checks that is not always necessary to conduct a background check of direct or indirect owner for public protection. However, the existing rule does not provide guidance or criteria for applicants who may wish to request such a waiver, nor guidance on the facts and circumstances that would make an investigation unnecessary for the public’s protection. KYL suggests that the Department amend its rules to add definitions of “outstanding interest” and “outstanding equity securities,” for purposes of the investigation of owners in Financial Code section 22105, to define the scenarios where owners lack the power to elect officers, directors, or management of the applicant or licensee, or otherwise direct, conduct, or manage the activities of the applicant or licensee. In addition to adding the definitions, KYL suggests the Department integrate these definitions into the application requirements so that the individuals and entities holding ownership interests that are excluded from the definitions of “outstanding interests” and “outstanding equity securities” will not be subject to background investigations.

Response No. 4.02: The Department agrees that the recommendation provides a transparent and reasonable way to protect the public while reducing regulatory burdens on applicants in the interpretation of the requirement under Financial Code section 22105 to investigate owners of 10 percent or more of the outstanding interests or outstanding equity securities. Consequently, the Department has included definitions for “outstanding interests” and “outstanding equity securities” in section 1404 of the rules and has incorporated these definitions into the licensure requirements of sections 1422 and 1422.5 of the rules.

Comment No. 4.03: In investigating the background of owners, KYL recommends the Department exclude certain reporting companies and wholly owned subsidiaries of

current CFL licensees from background checks during the investigation of owners, because this additional process is unnecessary for the protection of the public.

Response No. 4.03: The Department has revised the background check of 10 percent or more owners to align with the background investigations more closely under other financial services laws administered by the Department, such as the California Deferred Deposit Transaction Law and the Student Loan Servicing Act, which have similar statutory language relating to fingerprints of applicants and investigations of owners. The amendments to section 1422 of the rules only require Statement of Identity and Questionnaire forms and fingerprints from individual owners, and individuals with the power to direct the management or policies of the applicant's lending activities in this state. Consequently, the recommended amendments to exclude reporting companies is unnecessary.

Comment No. 4.04: KYL recommends the Department use the Short Form Application for licensure applications of affiliates of licensees, to avoid duplicate investigations during the licensing process.

Response No. 4.04: The Short Form Application in section 1423 is currently for additionally licensed locations, typically referred to as a branch office license. As the Department transitions to NMLS, the Short Form Application will eventually become obsolete. Consequently, the Department declines to use the Short Form Application as a vehicle for licensure of affiliates of licensees. On NMLS, each company will need a separate Form MU1, and each branch office will require a Form MU3. NMLS may provide some efficiencies for applicants that are affiliates of licensees, but not equivalent to KYL's request.

Comment No. 4.05: KYL recommends the Department amend the definition of Form MU2 to incorporate the definitions of "outstanding interests" and "outstanding equity securities," to ensure that owners not owning or controlling 10 percent or more of the outstanding interests or outstanding equity securities of the applicant are not subject to filing an MU2 with NMLS.

Response No. 4.05: The Department declines to use the definition of Form MU2 for this purpose, because the Department seeks to keep the definitions of the NMLS forms reasonably consistent with NMLS's descriptions of the forms. However, the Department has revised section 1422.5 of the rules to clarify the individuals who must submit the MU2 form, consistent with KYL's request.

Comment No. 4.06: KYL recommends that the proposed regulations be amended to require written or electronic notification to applicants when their applications are determined to be complete and accepted for filing and forwarded for a decision on the license. KYL recommends the time period for reaching a decision on a license after the submission of a completed application be decreased from 60 to 30 days.

Response No. 4.06: The Department declines to make the proposed changes at this time by rule because the time for the approval of a license is typically influenced by workload and obtaining criminal history background information from the Department of Justice and amending the regulations will not resolve either of these elements. However, the Department is amending the scope of persons subject to background investigations and transitioning all licensing online through the NMLS process, including transitioning to an electronic surety bond process and reducing exhibits that must be submitted by postal mail, and all of these changes may help reduce the time for licensing. The Department declines to require the Department to communicate when an application is complete because this communication may lead to delays in licensing, for example if the Department implements a process to require a secondary review before this notice is issued to a licensee. Nevertheless, the Department remains open to continued discussions with stakeholders on process improvements to expedite licensure without compromising public protection.

Commentors No. 5 though 12

5. **Michael Lemyre, Senior Vice President, Ygrene Energy Fund (“Ygrene”)**
6. **Ted Mermin and Lisa Sitkin, contacts for California Low-Income Consumer Coalition, National Housing Law Project, National Consumer Law Center, and Housing and Economic Rights Advocates (“Consumer Coalition”)**
7. **Anna Buck, Legislative Advocate, California Association of Realtors (“C.A.R.”)**
8. **Robert Giles, Chief Executive Officer, PACE Funding Group (“PACE Funding”)**
9. **Brad Knyal, Chief Executive Officer, Energy Efficient Equity, Inc. (“FortiFi”)**
10. **Olivia White, Vice President, Government Affairs, Renew Financial (Renew”)**
11. **Stacey L. Tutt, Director of the Consumer Law Clinic, Kevin Shone, Certified Law Student, Matthew Ketcham, Certified Law Student, University of California, Irvine, School of Law, Consumer Law Clinic (“CLC”)**
12. **Michael Mildenberger, Chief Risk and Compliance Officer, Renovate America (“Renovate”)**

The comments by commentors number 5 through 12 generally relate to the sections added under article 15 of the regulations. To the extent the comments pertain to the same section, the Department will address comments by section rather than by commentor. The Department will address comments outside of article 15 by commentor.

Commentor No. 5: Ygrene

Comment No. 5.01: Ygrene suggests that certain of the Department’s proposed regulations would inadvertently undermine the public policy behind California’s PACE program by raising the costs, burdens, and complexity of PACE financing with few or no

benefits to consumers. The effect of certain of the Department's proposed regulations will be to discourage investment in these projects and diminish access to property owners. Ygrene indicates there is tremendous public and government support for PACE programs because PACE financing offers an innovative way to deliver the environmental, health, and protection benefits of eligible improvements to property owners. However, aspects of the Department's implementing regulations as set forth above would severely impair the policy goals of PACE as well as impair the expanded access to affordable financing options to all Californians through programs that provide the strongest consumer protections in the home improvement finance market.

Response No. 5.01: The Department appreciates the comment and has considered the comment in evaluating concerns raised for each section.

Comment No. 5.02: Ygrene suggests that the proposed PACE Program Administrator Application Request for Information form in Proposed Rule 1422.5.1(a)(3) should be revised to reflect the 2018 amendments to state law. The proposed form contains certain certifications which appear to be based on prior versions of the relevant statutory sections. Ygrene suggests that the Department revise questions 3 and 4 of the form to incorporate amendments made by Assembly Bill 2063 (Stats. 2018, ch. 813) to the statutory sections.

Response No. 5.02: The Department has made the requested change.

Commentor No. 6: Consumer Coalition

Comment No. 6.01: The Consumer Coalition is concerned that the October 25, 2019 draft of proposed rules left out provisions included by the Department in a prior draft the Department released for input and does not address some of the issues that Consumer Coalition considers critical to providing meaningful protections to property owners considering taking out PACE loans, which operate in practice like super-priority mortgages. The Consumer Coalition indicates that the majority of its comments focus on a few main areas of concern: (1) ensuring that property owners have a meaningful opportunity to review and understand the details and consequences of a PACE transaction before they become obligated on a home improvement or PACE assessment contract; (2) ensuring that the rules implementing the underwriting and ability-to-pay requirements actually protect property owners from entering into unaffordable assessment contracts; (3) preventing abuses related to electronic transactions and communications; (4) ensuring that record retention and reporting requirements are sufficiently comprehensive and robust to allow the Department, local governments and consumers to monitor PACE program activity effectively and hold non-compliant parties accountable when necessary; and (5) ensuring that the procedures for receiving and handling property owner complaints are accessible, transparent and effective at delivering meaningful assistance to consumers.

Response No. 6.01: The Department appreciates the context for considering concerns raised under each section.

Comment No. 6.02: The Consumer Coalition recommends that as part of the licensing application requirements, the Department should also require each program administrator to submit a copy of its most current standard template for assessment agreements with property owners.

Response No. 6.02: The Department agrees with this comment and paragraph (a)(3) of section 1422.5.1 requires this template.

Comment No. 6.03: The Consumer Coalition indicates that a previous draft of the rules included a section on PACE pricing requiring program administrators to track price data for PACE improvements in order to ensure and monitor compliance with Streets and Highways Code section 5926. This section has not been included in the proposed regulations. The Consumer Coalition urges the Department to restore the rule regarding PACE pricing with the additions recommended below in order to address the rampant problem of price gouging by PACE solicitors and solicitor agents. The Consumer Coalition notes that in one recent case, a contractor charged $35,000 for a PACE-financed project that an investigator for the Contractors State License Board determined should have cost closer to $7,900. Los Angeles County has recognized the danger of price gouging in its PACE program and uses a "PACE Measure Cost Guide" to rein in the practice. The Consumer Coalition recommends that the PACE pricing rule include the following: (1) A clear requirement that program administrators track pricing for PACE improvements at least annually to keep up with changes in a fast-moving market. (2) The price-tracking requirement should apply to any item included on a program administrator's list of eligible improvements. (3) A requirement that the data sets used to track prices must include prices charged for non-PACE-financed improvements and that the data must be reported in a manner that allows for easy comparison of prices charged for PACE-financed improvements to those charged for non-PACE-financed improvements. (4) A requirement that program administrators provide the price data to the Commissioner as part of their annual reporting, so the Commissioner is able to monitor PACE pricing issues on a regular and comprehensive basis. The price data should also be publicly available.

Response No. 6.03: The Department has not included any requirements related to tracking pricing because of concerns raised that such a requirement imposes a significant burden and is not necessary to enforce any of the requirements for program administrators set forth in statute, including the prohibition against charging more for a PACE-financed improvement than the same improvement that is non-PACE-financed. The Department is persuaded by these concerns. However, subdivision (d) of section 1620.14 requires a program administrator to monitor whether a PACE solicitor is providing a different price for project financed by a PACE assessment than the solicitor would provide if paid in cash by a property owner. This provision is intended to monitor a PACE solicitor's compliance with Streets and Highways Code section 5926 without imposing an additional reporting requirement.

Comment No. 6.04: The Consumer Coalition indicates that a prior draft of the rules included a rule regarding Completion of Work that required program administrators obtain evidence of any required final permits and inspections before disbursing funds to contractors. This section has been removed from the current proposed regulations. Los Angeles County, which runs the largest PACE program in the State, has recently adopted more stringent completion of work standards, and we strongly recommend that the Department do the same. For example, in the LA's PACE program, all PACE-financed home improvement contracts over $40,000 are subject to independent inspection to ensure the work has been completed prior to funds being disbursed to contractors. In addition, smaller projects require geo- and time-tagged photographs verifying completion of the work before funds are released. We urge the Department to restore the Completion of Work rule and include requirements in that rule as follows: (1) Prohibit disbursement of any (not just final) payments to contractors until the program administrator receives copies of final permits and building inspections as required by the local jurisdiction. (2) Prohibit disbursement of any (not just final) payments to contractors undertaking the installation of solar panels until proof of interconnection to the utility company has been provided (either by the utility company in writing or verified by independent inspection). (3) Require independent inspections of any PACE financed home improvement contract over $40,000. (4) Require proof of completion to include geo- and time-tagged photos for smaller jobs before disbursement of any payments to contractors.

Response No. 6.05: Subdivision (a) of section 1620.10 addresses the issue of a program administrator paying a PACE solicitor before work is complete, by providing that the act constitutes dishonest dealings and is therefore prohibited. Further, Business and Professions Code section 7159.5 prohibits a contractor from requesting or accepting payment that exceeds the value of the work performed or material delivered. The regulatory program and the rules significantly increase accountability of program administrators and PACE solicitors, and therefore the Department is not persuaded that additional requirements are necessary at this time.

Comment No. 6.05: The Consumer Coalition indicates that a prior draft of the rules included provisions relating to general standards for underwriting. This section has been removed from the current proposed regulations. The Consumer Coalition urges the Department to include a rule regarding general standards for underwriting or, in the alternative, separate rules that address all of the following issues: Underwriting Criteria: In order to fulfill its supervisory authority over program administrators, the Department should require transparency by program administrators regarding their underwriting criteria. Nothing in the proposed regulations requires a program administrator to disclose its substantive underwriting standards or method for making the critical ability to pay determination. Without such information, it will be impossible for the Department to determine for purposes of supervision and enforcement whether a program administrator has made a proper determination based on its underwriting guidelines. For example, if a program administrator considers the consumer’s monthly debt-to-

income ratio but fails to disclose the specific ratio it applies, the Department would not be able to verify whether the underwriting standard is being applied consistently, accurately, and in a nondiscriminatory manner. Similarly, if a program administrator uses a table of estimated basic living expenses to determine residual income, the table with dollar amounts based on household size should be provided to the Department so that the Department is able to verify that program administrators are accurately determining whether property owners have sufficient residual income to meet basic household living expenses.

Response No. 6.05: Paragraph (b)(4)(C) of section 1620.07 requires a program administrator to maintain its procedures for determining a property owner's ability to pay as required by Financial Code section 22686, and the Department reviews the information during regulatory examinations of program administrators. In addition to ensuring that the procedures are consistent with statutory requirements, the Department identifies deficiencies where program administrators fail to follow their procedures and the statutory requirements, and the Department requires corrective action. The Department will continue to evaluate its experiences during regulatory examinations to determine whether additional regulations are necessary.

Comment No. 6.06: The Consumer Coalition is concerned that nothing in the proposed regulations addresses verification of a household's debt obligations. Subdivision (c) of Financial Code section 22687 requires program administrators to "consider the monthly debt obligations of the property owner to determine a property owner's ability to pay the annual payment PACE assessment obligations using reasonably reliable third-party records, including one or more consumer credit reports …." The final rule should state explicitly that a credit report does not serve as a reasonably reliable third- party record for purposes of verifying items that do not appear on the credit report. Some recurring debt obligations of the property owner will not generally be shown on credit reports, such as certain housing expenses and obligations for alimony or child support. For example, if the owner does not have a mortgage with an escrow account, the owner's credit report will not have information about obligations for property taxes and assessments, hazard and flood insurance, private mortgage insurance, cooperative, condominium, or property owner's association fees (including any special assessments if paid on a recurring basis), and ground rent or lease payments. In order to reasonably determine a property owner's debt obligations, a program administrator will need to obtain records or billing statements for these obligations issued by the relevant third parties. The Department should provide guidance in the final regulations on the types of debt obligations that are not customarily found on credit reports and will likely require third-party records other than credit reports for verification.

Response No. 6.06: The Department has considered this request but is not moving forward with adopting rules in this area at this time. The Department will continue to evaluate the data it reviews during regulatory examinations to determine whether

additional regulations are necessary to identify the third-party records necessary to verify housing expenses, alimony and child support.

Comment No. 6.07: The Consumer Coalition indicates that a prior draft of the rules included a provision requiring a program administrator using a recognized standard formula for estimating the owner's household living expenses to add to the formula the amount of the owner's actual expenses for any childcare payments, medical expenses, and caregiving expenses. The Consumer Coalition strongly supported inclusion of this provision in the final rule and urges the Department to require program administrators to collect and document this expense information from property owners on their application forms. The Consumer Coalition also believes that a final rule on household living expenses must do more to fully implement the residual income provision in subdivision (d)(4) of Financial Code section 22687. Section 22687(d)(4) defines basic household living expenses as "expected expenses which may be variable based on circumstances and consumption patterns of the household." A program administrator must therefore consider the unique circumstances of the household and may not rely solely upon a chart or table containing minimum residual income figures, such as the VA's Table of Residual Incomes by Region. In addition to requiring inclusion the owner's actual expenses for childcare payments, medical expenses, and caregiving expenses, the final rule should instruct program administrators to consider the individualized expenses of the property owner's household based on its unique "circumstances and consumption patterns." For example, if a property owner has extraordinary food expenses due to special dietary requirements related to a medical condition, the program administrator should be required to make an appropriate adjustment to any pre-determined food expense amount on a residual income chart or table. Section 22687(d)(4) permits a program administrator to make a reasonable estimation of basic living expenses "based on the number of persons in the household." Importantly, this requires consideration of the entire household's expenses, not simply those of the property owner. The Department should require that any chart or table of estimated expenses reflecting minimum residual income consider household size, and that program administrators include in determining household size all members of the household without regard to the nature of their relationship. In addition, the Department should require program administrators to submit to the Department for approval any chart or table they intend to use for estimating basic living expenses. The submission should include information on how the chart or table was developed, the process by which it is updated, and evidence that it provides reasonable estimation of living expenses based on household size. This is very important because residual income charts or tables, such as the VA's Table of Residual Incomes by Region— which was never intended to be used in isolation—do not provide sufficient granularity to provide a realistic estimate of living expenses in the various California communities. For example, the VA Table indicates that a family of four in the West region (which includes California) should have residual monthly income of $713. This amount is intended to cover a household's expenses other than shelter costs and major recurring debts and obligations, and includes expenses for food, health

care, transportation, telecommunications, and miscellaneous expenses. The UC Berkeley Labor Center Living Wage and Self-Sufficiency chart suggests that the VA figures significantly underestimate the expenses of a California family. For example, UC Berkeley estimates the following monthly expenses in the residual income expense categories for a household with two adults in San Diego: $533 for food, $446 for health care, $558 for transportation, and $257 for miscellaneous expenses, for a total of $2,031. Thus, the VA Table underestimates this San Diego household's needed residual income by $1,318 per month without even considering income taxes.

Response No. 6.07: The Department has considered this request but is not moving forward with rules in this area at this time. The Department will continue to evaluate the data it reviews during regulatory examinations to determine whether additional regulations are necessary related to residual income.

Comment No. 6.08: The Consumer Coalition indicates that program administrators should be required to consider the timing of when the first assessment payment will come due in relation to when the assessment contract was signed, as the property owner may not have had sufficient time to budget for the lump-sum payment. This can also be an issue for property owners with a mortgage escrow account, as the servicer will account for the large increase in tax disbursements by adjusting the monthly escrow payment, and the timing of the escrow analysis in relation to when the first assessment payment is due may cause the escrow account to have a deficiency or shortage. Recovery of this shortage together with the payments required to fund the escrow account going forward (including the typical two-month cushion) can produce a sharp increase in the monthly escrow payment amount that significantly exceeds the monthly cost of the PACE assessment. Program administrators should consider the effect of this payment shock when making the ability to pay determination.

Response No. 6.8: The Department has noted the request but is not moving forward with rules in this area at this time. A program administrator must make a reasonable, good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment. The Department will continue to evaluate the data it reviews during regulatory examinations to determine whether additional regulations are necessary related to the timing of the first assessment payment.

Commentor No. 7: C.A.R.

Comment No. 7.01: In addition to comments regarding specific sections, CAR generally provides that the additional sections regarding advertising standards, complaint processes and procedures as well as proposed regulations regarding dishonest dealings are appropriately strict and should not be weakened given the reported past abuses.

Response No. 7.01: The Department has taken this comment under consideration when evaluating the need for changes to those sections.

Commentor No. 8: PACE Funding

Comment No. 8.01: PACE Funding expresses concerns that a few of the Department's proposed regulations would inadvertently raise the costs, burdens, and complexity of PACE financing with little to no benefit to consumers.

Response No. 8.01: The Department has taken the comment about the costs, burdens, and complexity into consideration in evaluating the need for changes to each section.

Comment No. 8.02: PACE Funding suggests the regulations should require all residential PACE program administrators to participate in a real-time lien registry to address the problem of "assessment stacking" and expressly prohibit the placement of residential PACE assessments on properties where the owner has also encumbered the property with a reverse mortgage.

Response No. 8.02: With regard to the request for a real-time lien registry, the Department is not moving forward with the recommendation at this time. Diverting resources to establish a registry will distract from the Department’s current efforts to administer the law. The Department understands that some licensees have entered into information-sharing arrangements to prevent against lien stacking and encourages licensees and stakeholders to continue to consider ways to address this issue. Since the public accesses both title records and property tax records through the county, the Department suggests stakeholders consider whether a lien registry with the Department is the most transparent place for the maintenance of information that the public would typically seek from county records. With respect to prohibiting the placement of residential PACE assessments on properties where the owner has also encumbered the property with a reverse mortgage, the Department acknowledges that this comment has been addressed by legislation that prohibits the practice (AB 1551 (Stats. 2020, ch. 156)).

Comment No. 8.03: PACE Funding requests the Department clarify whether certain project categories without clear environmental or resilience benefits, such as water softeners and sunrooms, should be eligible for PACE financing.

Response No. 8.03: The Department defers to local jurisdictions to make these determinations under their authority to establish PACE programs.

Commentor No. 9: FortiFi

Comment No. 9.01: FortiFi has concerns regarding certain provisions which conflict with legislative authorizations and statutory requirements, and/or impose unreasonable expectations, liability and burdens on program administrators or others.

Response No. 9.01: The Department has considered these concerns as raised for each section.

Comment No. 9.02: FortiFi suggests that the requirement in California Financial Code section 22687(b) requiring verification of every PACE financing applicant’s income or

assets using third-party records in all cases added three to seven or more days to the PACE application process. According to FortiFi, as noted in several program administrators' comments on the Draft Rules back in 2018, such documentation requirements in California are widely believed to have resulted in at least a 50 percent reduction in residential PACE financings among three of the industry's largest residential PACE providers. FortiFi represents that when such burdensome paperwork requirements and delays are required, property owners and contractors will typically use alternative financing tools, such as unsecured credit or home equity line of credit ("HELOC") lending, that require a tiny fraction of the consumer protections required by California state and local law for PACE financings. FortiFi indicates these other financing products lack the required public purpose of PACE (e.g., making homes safer in the event of earthquakes and extreme weather events, more wildfire resistant, and more drought resistant, helping homeowners save on energy costs and creating local jobs). FortiFi states that unsecured credit and HELOCs lack the involvement and protections of a state and local government program that PACE provides. Finally, FortiFi indicates that PACE does not impact a homeowner's FICO score, as such forms of credit-based financing do. FortiFi suggests that one important impact on consumer protection that the Department should consider is that the third-party record income verification requirement frequently drives higher-income, higher- credit score applicants out of PACE. According to FortiFi, these applicants are able to obtain other forms of financing more quickly and without providing sensitive financial information to home improvement contractors. In addition to lacking the public purpose benefits of PACE outlined above, this provision has had the impact of increasing the risk profile of the remaining pool of PACE applicants and participants. If such higher-credit applicants stop applying for PACE, leaving a remaining pool of applicants with lower credit scores and/or income levels, FortiFi suggests that this may increase the interest rates on PACE, thereby harming lower-income homeowners who want to make their homes safer from wildfires, earthquakes or to save on their monthly energy and water bills. FortiFi proposes that the Department clarify section 22687(b) in a manner that will serve to protect consumers and carry out the important statutory goals of PACE. FortiFi proposes that the income verification requirement be applied according to credit score-based tiers:

Tier 1: property owner attestation of income required without need for additional third-party record documentation.

Tier 2: verification required, but automated verification using prediction or estimation methodologies may be used. No employment verification required.

Tier 3: verification required. Automated verification may be used but may not be based on prediction or estimation methodologies, but rather must be specific to the income of the property owner. Verification requires the use of reasonably reliable third-party records, such as pay stubs, tax returns, W-2s, payroll statements, financial institution

records, or records from an employer or government agency (with respect to benefits or entitlements). Employment verification required.

According to FortiFi, the credit-score thresholds to be applied could be the subject of further discussion and analysis by stakeholders and the Department. FortiFi notes that this proposal is not a form of credit-score based underwriting, as FortiFi is not proposing to use credit scores to determine whether or not property owners will be offered or can qualify for PACE. Instead, this tier-based set of requirements for the process of verifying a property owner's income or assets would substantially reduce the time and burden involved in the PACE assessment underwriting process for the property owner in cases where the property owner is statistically more likely to have the ability to pay the assessment. In such cases, the property owner will have the opportunity to benefit from the state and local government-required public purposes and consumer protections required for PACE, as compared to unsecured credit or HELOCs.

FortiFi states that for property owners in the middle range of credit scores, verification will be required, but again, reasonable, data-driven prediction or estimation methodologies could be used to verify income quickly and efficiently. Again, this will prevent property owners from choosing other forms of financing that supply far fewer consumer protections and do not necessarily fulfill California's public purposes for PACE.

Finally, for property owners with lower credit scores, FortiFi suggests the existing provisions of section 22687(b) would be required to ensure such property owners' ability to pay the assessments. Yet, the tier- based system will prevent flight of higher-credit applicants, thereby preventing an increase in interest rates for all property owners, making PACE more affordable and accessible to all.

Response No. 9.02: Because the statute sets forth the requirement that a program administrator use reasonably reliable third-party records of the property owner's income or assets, and restricts the use of predictive or estimation methodologies, FortiFi would need to bring this proposal to the Legislature. The Department cannot by rule adopt this proposal.

Commentor No. 10: Renew

Comment No. 10.01: Renew notes that in some instances, the proposed rules are overly prescriptive and would pose considerable implementation costs and feasibility concerns.

Response No. 10.01: The Department has considered these concerns as raised for each section.

Commentor No. 11: CLC

Comment No. 11.01: CLC is concerned that the proposed regulations do not address some of the issues CLC considers critical to providing meaningful protections to property owners considering taking out PACE loans.

Response No. 11.01: The Department has considered these concerns as raised for each section.

Commentor No. 12: Renovate

Comment No. 12.01: Renovate suggests that the proposed regulations reflect certain misconceptions about PACE. Further, the proposed regulations conflict with chapters 29 and 29.1 of division 7 of Streets and Highways Code, and division 9 of the Financial Code, and are internally contradictory with other provisions within the proposed rules. In other cases, the proposed regulations create more uncertainty or impose requirements that are impractical or impossible to satisfy. The proposed regulations fail to strike the proper balance between consumer protection and support of PACE viability. Renovate has thematic concerns that the proposed regulations depart from the statute in important ways; are unnecessarily prescriptive towards participants in PACE programs, especially home improvement contractors; are internally inconsistent, and in some cases provide confusing guidance; and misconstrue the relationships between program participants, including the Department and other government bodies. The proposed regulations subject PACE participants to extraordinary and disproportionate burdens, and overly micromanage the details of participants' businesses and straitjacket their operations. The proposed regulations would impose extraordinary burdens on PACE solicitors, imposing training and oversight requirements, and going so far as to tell them what they can say, who they can associate with, and require them to turn over their agreements with homeowners to third parties. According to Renovate, these contractors also would be subject to disciplinary procedures, through a detailed complaint process, that would give them less due process than they receive from their own regulators. The proposed regulations shift responsibility to oversee PACE contractors onto program administrators, by requiring administrators to have their own enforcement procedures and making them guarantors of contractors' compliance with the Department's regulation.

Response No. 12.01: The Department has considered concerns raised on each proposed rule and made changes, as necessary. With regard to the burdens exceeding that of other licensees, the Department notes that paragraph (b)(1) of Civil Code section 1770 of the Consumer Legal Remedies Act provides that it is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and that is used to finance a home improvement contract or any portion of a home improvement contract. However, this section is not applicable to PACE assessments, and program administrators may

arrange with home improvement contractors to offer PACE financing with priority liens to property owners. The Consumer Legal Remedies Act places other forms of financing secured by a residence at a disadvantage to PACE. The consumer protection purposes underlying the Consumer Legal Remedies Act's prohibition on using home improvement contractors and residential loan brokers equally support the need to protect property owners from potential misleading practices in the solicitation of PACE financing. The Department's regulations are intended to achieve a balance between the need to protect property owners and the need for accessible financing for water and energy efficiency, and other PACE-authorized home improvements.

Section 1620.02. Definitions

Comment No. 1620.02.01: Proposed subparagraph (a)(1), defining "ability to pay" (subsequently deleted): Ygrene and FortiFi suggest the definition of "ability to pay" is not aligned with the Initial Statement of Reasons ("ISOR") because the definition defines the phrase to means the ability of a property owner to pay every PACE assessment installment on or before the final date to pay the assessment as scheduled throughout the term of the assessment contract, whereas the ISOR specifically indicates that a program administrator is not required to confirm that a property owner's income will continue throughout the term. Instead, the ISOR indicates the standard is a reasonable expectation that the income will continue. Ygrene suggests the definition be revised to clarify that the program administrator may reasonably expect that both income and assets at the time of contracting will continue throughout the term of the assessment. Ygrene and FortiFi suggest that the definition of "ability to pay" in the rules is inconsistent with the statute. In paragraph (a)(5) of Financial Code section 22687, a program administrator may not consider the equity of the property that will secure the assessment contract. The proposed rule provides that a program administrator may not consider the equity in a residential property owner's home. These may not be the same properties. Ygrene requests the rule follow the statute. The Consumer Coalition states that the definition does not address the situation of property owners with escrowed property tax payments who will be required to pay for PACE assessments by making monthly escrow payments to their mortgage servicers that can include an additional payment toward an escrow reserve of up to 1/6 of the total annual assessment plus supplemental charges to make up for any escrow account deficiency or shortage resulting from a PACE assessment. The Consumer Coalition further states that the definition could be interpreted to imply that the income that can be considered is a broader category than permitted by the relevant statute. The definition does not clarify the meaning of "reasonably expected income" and also fails to track the language in Financial Code section 22687(b)(1), which references a determination of "current or reasonably expected income" and not just "reasonably expected income." In order to avoid any confusion over the relevance of a borrower's current income to this analysis, the definition should refer to "current or reasonably expected income." Finally, the Consumer Coalition indicates that the definition makes no reference to "basic household

living expenses," which are an integral part of the statutorily required ability to pay determination.

Response No. 1620.02.01: The Department has considered these concerns and decided not to move forward with the proposed definition of "ability to pay."

Comment No. 1620.02.02: Proposed subparagraph (a)(2), defining "authorized by a program administrator" (subsequently deleted): Ygrene and FortiFi recommend that the definition of "authorized by a program administrator" be eliminated because it is unnecessary and inconsistent with the statute. Ygrene and FortiFi suggest the definition is unnecessary because the term is already defined by the section in which it appears, through the clause "to solicit a property owner to enter into an assessment contract." Ygrene and FortiFi also suggest that the definition does not achieve the stated reason for the regulation. The ISOR describes the need for defining "authorized by a program administrator" to mean that "the program administrator has implicitly or expressly consented to the PACE solicitor or PACE solicitor agent in the marketing of an assessment contract to a property owner" is to describe the persons that must be enrolled by the program administrator. However, Ygrene and FortiFi point out that Financial Code section 22680 already provides that a person "engaged in the business of a PACE solicitor" must enroll as a PACE solicitor, so the additional definition is unnecessary. Ygrene and FortiFi suggest the definition is inconsistent with the statute because the proposed definition layers in additional concepts that go beyond what is in the statute. PACE Funding suggests that the definition could be interpreted to mean that the program administrator has implicitly or expressly consented to the PACE solicitor or PACE solicitor agent representing the program administrator in the marketing of an assessment contract to a property owner. PACE Funding recommends clarifying the language to exclude circumstances where the PACE solicitor or solicitor agent acts outside of the PACE regulations or program dealer/sales agreement. PACE Funding suggests that in this case they are not acting with program administrator consent.

Response No. 1620.02.02: The Department has considered these concerns and decided not to move forward with the proposed definition.

Comment No. 1620.02.03: Proposed paragraph (a)(3), defining "to solicit a property owner to enter into an assessment contract," renumbered as paragraph (a)(1): FortiFi suggests language too broad and could sweep in activities by employees who are not serving in a sales function. Renovate also indicates the rule is unacceptably vague and overbroad. Renovate suggests the Department proposes a general definition of solicit a property owner to be "to ask, entice, urge, or request a property owner to enter into an assessment contract," but then goes on to include a non-exhaustive list of examples, some of which do not fit within the scope of the proposed generic definition. For example, "[a]ssisting a property owner with applying" is well outside the scope of asking, enticing, urging, or requesting a property owner to enter into an assessment contract. Renovate suggests that subparagraphs (a)(3)(A) through (C) be revised to capture only conduct proscribed by the general definition. Renovate further suggests that the

examples provided in proposed paragraph 1620.02(a)(3) also inappropriately contradict the statutes or capture entirely de minimis conduct. For example, “[a]ssisting a property owner with applying” is an inherently administrative or clerical task, not an act of solicitation, and “[a] person who performs purely administrative or clerical tasks” is expressly exempt – by statute – from the definition of “PACE solicitor” and “PACE solicitor agent” under paragraph (c)(3) of Financial Code section 22017. In addition, acts like “[i]nviting a property owner to apply” and “[a]sking a property owner whether the property owner is interested in a PACE assessment” could capture completely de minimis conduct (like a passing reference or a single-sentence response to an inquiry) by persons with little to no involvement in the PACE financing process generally, let alone solicitation activities. Similarly, “[d]iscussing the terms” and “[d]escribing the characteristics of a PACE assessment,” do not on their own rise to the level of a solicitation. According to Renovate, absent an ability to effectuate a PACE transaction, statements about PACE are just free speech. Renovate suggests that solicitation should be tied to the ability of the soliciting party to effectuate the transaction for a PACE assessment. For example, “[d]iscussing the terms” or “[d]escribing the characteristics of a PACE assessment” are activities that, if more specifically defined, could conceivably become solicitation activities, when paired with the ability to “tak[e] an application for financing.” For this reason, Renovate indicates that two requirements should be satisfied to constitute solicitation: (i) making statements of a sufficient specificity regarding PACE financing, combined with (ii) the ability to submit applications for PACE financing. PACE Funding suggests that the definition effectively prohibits the scenario where contractors send an unlicensed solicitor agent with an enrolled solicitor agent. According to PACE Funding, this would have the unintended effect of restricting the solicitor agent from being able to effectively train new employees that are not yet licensed, as well as deterring a program administrator from being able to send its employees with a solicitor agent for quality control purposes.

Response No. 1620.02.03: The Department revised the definition to remove the overly broad language and to instead provide that that “to solicit a property owner to enter into an assessment contract” includes, but is not limited to, assisting a property owner with completing the application for financing plus one of the following: (1) inviting a property owner to apply for a PACE assessment; (2) asking a property owner whether the property owner is interested in a PACE assessment; (3) discussing the terms of a PACE assessment with a property owner, or (4) describing the characteristics of a PACE assessment to a property owner. The Department also added an exception for training.

Comment No. 1620.02.04: Proposed paragraph (a)(4), defining “administrative or clerical tasks,” renumbered as subdivision (b): FortiFi suggests that the exception for administrative or clerical tasks in section 620.02(a)(4) is too narrow and should be amended to address customer and back end technical support on the electronic, web-based or database elements of PACE applications. The Consumer Coalition indicates that the definition of “administrative or clerical tasks” that are excluded from the definition of solicitation is confusing because it appears to be inconsistent with the

definition of “to solicit a property owner to enter into an assessment contract” in proposed paragraph 1620.02 (a)(3). The definition of soliciting includes “assisting a property owner with applying for financing through a PACE assessment,” while the definition of “administrative or clerical tasks” includes “the receipt, collection, and distribution of information common for the processing of an assessment contract, or an application for an assessment contract, under a PACE program” and “communication with a property owner to obtain information necessary for the processing of an application for an assessment contract, or for an assessment contract.” The latter activities all qualify as “assisting a property owner with applying for financing through a PACE assessment,” so it is difficult to understand what distinction is being made here. The Consumer Coalition recommends that the definition of “administrative and clerical tasks” be limited to activities of employees of a PACE program administrator.

Response No. 1620.02.04: The Department amended the rule to address back-end technical support, as requested. The Department clarified the distinction between soliciting a property owner to enter into an assessment contract, and administrative or clerical tasks, by amending the definition of soliciting a property owner to enter into an assessment contract. The Department has not limited administrative and clerical tasks to activities of employees of a program administrator because the Department is persuaded by another commentor that defining the term in that manner is not consistent with the statutory exclusion from the definitions of “PACE solicitor” and “PACE solicitor agent” for a person who performs purely administrative or clerical tasks. In particular, paragraph (c)(1) of Financial Code section 22017 already exempts employees of program administrators, which suggests the exemption for a person who performs purely administrative or clerical tasks was intended to capture individuals other than employees of program administrators.

Comment No. 1620.02.05: Proposed paragraph (a)(6), defining “maintain a license in good standing” or “maintain a registration in good standing,” renumbered as subdivision (d): PACE Funding suggests additional language stating that it is reasonable and sufficient for a program administrator to rely on the license information shown on the CSLB website. One area where PACE Funding hopes to see improvement is quicker response by the CSLB to its complaints. PACE Funding suggests that CSLB has historically been slow not only to reflect negative information, but also to reflect positive information once an issue has been rectified. PACE Funding suggests a program administrator should not be responsible for the license status of a solicitor or solicitor agent where CSLB has failed to update the public website in a timely fashion.

Response No. 1620.02.05: The Department has amended the definition to provide that the status of a license or registration on the CSLB website that a license or registration is active, without any notice that the license or registration is expired, suspended, revoked, surrendered, conditioned, or restricted, constitutes the maintenance of a license or registration in good standing.

Comment No. 1620.02.06: Proposed paragraph (a)(7), defining “extinguishment of a PACE assessment,” renumbered as subdivision (e): Consumer Coalition suggests that the definition of “extinguishment of a PACE assessment” to mean “the property owner has satisfied all obligations under an assessment contract and no further amount related to the PACE assessment will appear on the property owner’s taxes” is too narrow and could result in a program administrator's failure to maintain the required records. Consumer Coalition indicates that there have been ‑ and will continue to be ‑ cases in which a PACE assessment is extinguished and the property owner’s obligations are satisfied even when the property owner has not been the party to satisfy those obligations. For example, in some cases, a program administrator, PACE solicitor or public agency may pay some or all of a property owner’s PACE assessment obligations in connection with errors or violations. In other cases, the PACE assessment may be cancelled as part of the resolution of a property owner complaint or a legal settlement. Consumer Coalition suggests that in order to be comprehensive, this definition should be revised to read: “Extinguishment of a PACE assessment" means the property owner’s obligations under an assessment contract have been satisfied or cancelled and no further amount related to the PACE assessment will appear on the property owner’s property tax bill.

Response No. 1620.02.06: The Department has made the recommended change.

Comment No. 1620.02.07: Proposed paragraph (a)(10), defining a “person who advertises a PACE Program,” renumbered as subdivision (h): Consumer Coalition suggests that the definition of a “person who advertises a PACE program” is confusingly written. The Consumer Coalition recommends revising for clarity as follows: a person primarily engaged in the business of advertising and not a contractor, a home improvement salesperson, or other individual directly offering a specific property owner the option of financing a home improvement contract through a PACE assessment by electronic mail, telephone, mail, or in person.

Response No. 1620.02.07: The Department has made the recommended changes.

Proposed Section 1620.02.1. Exclusions (Renumbered as Section 1620.03)

Comment No. 1620.02.1.01 regarding proposed paragraph (b)(1): Consumer Coalition and CLC suggest that the exclusion from the definition of “PACE Solicitor” and “PACE solicitor agent” is confusingly written. Consumer Coalition and CLC recommend revising for clarity as follows: An employee or subcontractor of a PACE solicitor who is performing labor on a job site for an efficiency improvement contract who is not authorized by a program administrator or PACE solicitor to solicit a property owner to enter into an assessment contract and does not solicit a property owner to enter into an assessment contract.

Response No. 1620.02.1.01: The Department has made the recommended changes.

Proposed Section 1620.03. Obligations (Recast as Section 1620.06)

Comment No. 1620.03.01 regarding proposed subdivision (b): Consumer Coalition recommends that rules regarding the availability of physical copies of PACE documents not be limited to borrowers who have received documents electronically that are in a language other than English. All PACE borrowers need to know that they have the right to receive physical copies of all transactional documents. In this regard, Consumer Coalition suggests moving the requirements currently set forth in section 1620.06(b)(1)-(4) to this section or moving the parallel requirements in this section to section 1620.06(b). Consumer Coalition recommends that the Department address explicitly in the PACE regulations the ongoing problems with the use of electronic communications in PACE transactions. These problems include program administrators accepting electronic signatures from, and conducting only electronic communications with, property owners who do not have email addresses or access to the internet. Despite years of reporting on problems surrounding electronic signature fraud in the PACE program, the Consumer Coalition continues to see instances of blatant electronic signature forgery being accepted by program administrators. Consumer Coalition indicates that a common feature of these cases is that the property owner has not knowingly agreed to contract electronically, is not left with a physical copy of any contract and has no way to access any electronic copy that is created. Consumer Coalition indicates that it is critical that the required procedures for obtaining consent to the electronic delivery of documents and communications be spelled out clearly, either here or elsewhere in these regulations. Consumer Coalition suggests that as written, the proposed rules about physical copies could be read to imply that electronic delivery of PACE documents is the expected default procedure. However, the statutory requirements regarding the provision of physical copies of the Notice of Right to Cancel and the Financing Estimate and Disclosure pursuant to Streets and Highways Code section 5998.16(b)(1) and section 5998.17(a), respectively, make a printed (i.e., physical) copy the default for these documents. The Consumer Coalition suggests that moreover, the California Uniform Electronic Transactions Act only applies where each party “has agreed to conduct the transaction by electronic means,” and the federal E-SIGN Act only validates the use of electronic communications if a consumer "has affirmatively consented" to electronic communications after receiving "clear and conspicuous" disclosures. In practice, program administrators commonly require property owners to agree electronically, as part of the application process, to receive all PACE-related documents electronically. Consumer Coalition provides that given the risks and ongoing incidence of electronic signature fraud and forgery, it recommends that the Department require program administrators and solicitors to provide every property owner who enters into a PACE transaction with a physical copy of every document they electronically review and/or sign at least 48 hours before the property owner is asked to sign a completion certificate authorizing disbursement of PACE funds.

Response No. 1620.03.01: The Department has combined proposed section 1620.03 with section 1620.06 and redrafted the section to require the notices required by the

Streets and Highways Code in paper unless the property owner opts into electronic copies. As provided in Streets and Highways Code section 5898.17 as amended by AB 2471 (Stats. 2020, ch. 158), the property owner must sign a printed paper document to opt out of receiving the Financing Estimate and Disclosure in paper. The revised rule also requires the consent to an electronic transaction be obtained in a manner that demonstrates that the property owner can access the electronic form, and as a separate document unless the property owner will also receive a written copy. The revisions require the program administrator to make a printed copy of the contract available to the property upon request, and if documents are only provided electronically, requires the program administrator to ask and confirm that the property owner has access to the internet and agrees to accept the documents at an electronic mail address of the property owner's choosing. The program administrator must confirm that the property owner's email address was not created during the solicitation for PACE financing, must maintain evidence that the documents were received by the property owner electronically, and must take reasonable steps to ensure the signature belongs to the property owner. However, the Department is not requiring a program administrator to provide every property owner who enters into a PACE transaction with a physical copy of every document. The issue of receiving the Financing Estimate and Disclosure in paper was recently before the Legislature, and the Legislature did not mandate a paper copy. Consequently, the Department also declines to mandate this requirement, and the Department further acknowledges that other federal and state laws such as the Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transactions Act set forth governing principles regarding electronic transactions. The revised rules recognize that Streets and Highways Code section 5913 requires a program administrator to confirm that at least one owner of the property has a copy of the assessment contract documents, with all the key terms completed. The Department has clarified in the regulations that in complying with this provision, the program administrator must confirm that the physical or electronic documents have been delivered to the property owner, and if the documents are delivered solely in electronic format, that the property owner has received the documents and the property owner has successfully accessed the documents through the property owner's own electronic device, before proceeding with the remainder of the oral confirmation required under that section. This practice is intended to ensure that property owners have received their documents, whether physical or electronic.

Comment No. 1620.03.02 regarding proposed subparagraph (b)(5): The Consumer Coalition is pleased to see the addition of a provision requiring that "[t]he program administrator shall confirm that the property owner has internet access, maintains an electronic mail address, and understands how to access, save, and print a document received by electronic mail," but believes that this rule does not provide sufficient specificity regarding the manner of confirmation and what "maintains an electronic mail address" means. Based on the experience of clients of several of the undersigned organizations, leaving such matters to the discretion of the program administrators can

result in serious abuses, such as the forging of electronic signatures described above. The Department should therefore (1) include a statement that program administrators using electronic signatures and electronic communications must comply with all applicable state and federal laws pertaining to the use of electronic signatures; and (2) clearly define the operative terms "confirm" and "maintains an electronic mail address." The Consumer Coalition provides that the Department should define “maintains an electronic mail address” as “uses an electronic mail address created by the property owner prior to the property owner's first contact with a program administrator, solicitor or solicitor agent, and is able to access correspondence sent to that electronic mail address without assistance from others.” The Consumer Coalition recommends that the Department require, as confirmation of internet access and the ability to utilize their electronic mail address, that program administrators ask property owners during the confirmation of key terms call to affirmatively state: their full electronic mail address, when approximately it was created, and who created it. Program administrators should consider recently created email addresses to be indicia of potential fraud and should take appropriate action to address the risk that a property owner is not actually able to access documents sent electronically. If a property owner states that a third party, such as the PACE solicitor, created the electronic mail address, the property owner would not qualify as “maintain[ing] an electronic mail address.” The Consumer Coalition also recommends that the Department require that any documents sent electronically to property owners be sent either as attached pdf's or via a link that does not expire. Clients of several Consumer Coalition organizations have received emails from program administrators containing time-limited links to critical transactional documents and have therefore been unable to access these documents after a set expiration date. Using time-limited links in this manner reduces the chance that a property owner will actually be able to access, review and, if needed, refer back to these records. PACE Funding indicates that the proposed regulation should be clarified to avoid vague terms that will be difficult to enforce. PACE Funding’s concern in paragraph(b)(5) is that program administrators would be required to confirm that the property owner has internet access, maintains an email address, and understands how to access, save, and print documents from email. PACE Funding suggests it would be better to require program administrators to ask if property owners are able to save and print documents sent to their email address. If they cannot, then require the program administrator to provide a hard copy. CLC suggests that the provision “maintains an electronic mail address” should be clarified or a definition should be given. According to CLC, PACE solicitors have created email accounts for homeowners solely for the purpose of the PACE transaction. These homeowners did not maintain an email account prior to the PACE transaction and have not always understood how to access the account after it was created. Renovate suggests that the rule is ambiguous and imposes burdens on program administrators to “confirm” information about a property owner which it cannot possibly confirm. For instance, in this context the term “has internet access” is ambiguous. Must the property owner have Wi-Fi at the residence? Is the Starbucks internet down the street from the property owner sufficient? According to Renovate, a

program administrator is left to guess. Moreover, Renovate provides, a program administrator should not “confirm” a property owner has internet access beyond asking a property owner to so confirm. As currently worded, the rule could be construed to require the program administrator to “confirm” with an internet provider or other reliable source that the property owner has internet access at the residence. Additionally, Renovate indicates that it is unclear what is meant by the program administrator confirming the property owner “maintains” an e-mail address. This language could be construed to prohibit use of a spouse’s or family member’s e-mail address. If a property owner provides an e-mail address to a program administrator and indicates the pertinent documents can be sent to that e-mail address, nothing more should be required of program administrators. Finally, Renovate asserts that program administrators cannot be responsible for confirming a property owner understands how to access, save, and print documents received by e-mail. If a property owner provides an e-mail address and agrees to accept documents electronically, it should be assumed they are able to use that e-mail account as an average person would. Renovate indicates that this requirement is unnecessary and serves no purpose in light of the property owner being able to request physical copies of the documents. Renovate proposes the provision be amended as follows: “The program administrator shall ask and confirm with property owners that they have access to the internet and agree to accept the documents at an electronic mail address of their choosing.”

Response No. 1620.03.02: As described in Response No. 1620.03.01, the changes made to section 1620.06 provide a framework to ensure that property owners have access to documents provided electronically. Under paragraph (a)(3), a program administrator must obtain the consent of a property owner to enter into the assessment contract electronically in a manner that demonstrates that the property owner can access the information in the electronic form. Further, subdivision (b) provides that if documents are provided electronically, the program administrator must ask and confirm that the property owner has access to the internet and agrees to accept the documents at an email address of the property owner’s choosing. The program administrator must confirm that the property owner’s email address was not established during the solicitation for PACE financing by asking the property owner during the oral confirmation of key terms call to confirm the property owner’s email address, when it was created, and the person who created it. Alternatively, a program administrator may use technology to detect newly created email addresses. The documents must be provided in a manner that does not limit the time period that the property owner has access to the electronic records unless the program administrator notifies the property owner of this limitation and provides the property owner a printed copy of the documents. The documents must be in a format that allows a property owner to download, save on and print on 8 ½ x 11-inch paper. Further, the program administrator must advise the property owner to print, read, and save a physical and electronic copy of the documents. Finally, the program administrator must retain evidence in its records that the documents were received electronically by the property owner, which may be

obtained during the oral confirmation, or through another method. Subdivision (e) requires the program administrator to confirm that the property owner has received and can access the documents through the property owner's own electronic device, prior to proceeding with the oral confirmation of key terms. The Department finds the changes made are necessary for the protection of property owners, and adequately ensure that records received by property owners electronically will be available to the property owners.

Comment No. 1620.03.03 regarding proposed subparagraph (c)(1): Ygrene suggests that section 1620.03(c)(1) may be inconsistent with the statute, which requires a program administrator to tell a property owner that the property owner has a right to have other persons present on the phone call confirming terms, and to ask whether the property owner would like to exercise the right to include anyone else on the call. Proposed section 1620.03 requires a program administrator to make a reasonable, good faith effort to make the confirmation of key terms call required by section 5913 when the PACE solicitor and solicitor agent are not present, which could interfere with a property owner's right to have others present. PACE Funding indicates that the terms "reasonable effort" or "good faith effort" to make the confirmation of terms call during a time when the solicitor or solicitor agent is not "known" to be with the homeowner are vague and therefore will be difficult to enforce. PACE Funding indicates that ambiguity over what these terms mean in the context of this regulation would likely invite unnecessary litigation. Additionally, PACE Funding provides that it is impossible to integrate vague requirements into the flow of how home improvement services are sold and how these contracts are entered into from an operational standpoint. Given that the solicitor/solicitor agent is almost always present during this call, PACE Funding suggests that a more effective solution would be to require program administrators to ask the property owner whether they consent to the solicitor/solicitor agent being present during this call. C.A.R. applauds this commonsense regulation as an attempt to ensure a homeowner is not unduly pressured or influenced by a salesperson being present during the call. According to C.A.R., a homeowner should be able to focus on the phone call and the disclosures during the call without distraction. CLC asserts that program administrators should not allow a PACE solicitor or PACE solicitor agent to participate in the confirmation of key terms call under any circumstances. Before conducting the confirmation of key terms call, CLC provides that program administrators should be required to wait at least 24 hours from when the homeowner was provided with physical copies of the documents. CLC suggests that the call should not occur during the solicitation process. Renovate asserts the provision has no statutory foundation. Renovate suggests that the rule assumes that the mere presence of a PACE solicitor or PACE solicitor agent during the terms confirmation call poses a risk to consumers so significant that it should be prohibited. Renovate is unaware of the Department's evidentiary basis to support such a conclusion. PACE solicitors are typically small home improvement businesses that provide positive social and economic benefits to their communities. Renovate indicates that PACE solicitor agents inform

property owners about the goods and services offered by these businesses, and often assist property owners in navigating the sometimes daunting process of improving their homes, often with improvements that provide economic, energy, or water savings. These businesses and individuals are subject to licensure or registration by the CSLB and should not be subjected to a blanket assumption that they pose an inherent risk to consumers. California law has long permitted such businesses and individuals to engage directly with property owners in their homes, and to assist property owners in obtaining financing for home improvement projects. The CFL expressly authorizes such businesses and individuals to "solicit a property owner to enter into an assessment contract." Renovate indicates that the confirmation of key terms calls is often completed as part of a PACE solicitor's home improvement sales visit. Renovate states that the key terms call is not a stand-alone event in the sales process from which PACE solicitors can (or should) be excluded. According to Renovate, such a requirement would be a substantial impediment to the sales process and be an additional barrier to homeowners actually deciding to use PACE financing. Renovate suggests that requiring program administrators to make good faith efforts to exclude PACE solicitors from key terms calls lacks all justification and will be extremely disruptive to the sales process for all parties involved, ultimately to the detriment of the consumer. Renovate requests this Rule be withdrawn.

Response No. 1620.03.03 regarding proposed subparagraph (c)(1): In its administration of the law, the Department has encountered instances where PACE solicitor agents are coaching property owners on how to respond to questions, and where the PACE solicitor agents have represented themselves as the property owner on the call. These actions deny property owners the protections intended by the call and prevent property owners from affirmatively representing that they understand the terms of the assessment contract. However, the Department recognizes that subparagraph (a)(2)(A) of Streets and Highways Code section 5913 provides that a property owner has the right to have other persons present for the call, and expressly requires a program administrator to inquire whether the property owner would like to exercise this right and include anyone else on the call. Therefore, the Department is not retaining the requirement that a program administrator make a good faith effort to make the confirmation of key terms call when the PACE solicitor and PACE solicitor agent are not present. Instead, in paragraphs (e)(2) through (4) of Financial Code section 1620.06, the rules set forth requirements intended to ensure that property owners receive the protections afforded by the confirmation of key terms, while also ensuring that property owners may have others present for the call. Paragraph (e)(2) provides that if the program administrator determines the PACE solicitor agent is providing the property owner with answers during the oral confirmation, the program administrator must advise the property owner that the program administrator cannot confirm that the property owner understands the terms unless the property owner can respond without the assistance of the PACE solicitor agent. Under paragraph (e)(3), if the PACE solicitor agent is present during the oral confirmation of key terms, the program administrator

shall confirm that the property owner consents to the PACE solicitor agent's presence. And under paragraph (e)(4), a program administrator may not proceed with the oral confirmation if the property owner objects to the presence of the PACE solicitor agent and the PACE solicitor agent remains present. These protections ensure a property owner has the right to have other persons present for the call, but also require the property owner to confirm the key terms without the assistance of the PACE solicitor agent.

Comment No. 1620.03.04 regarding proposed subparagraphs (c)(2)(A) and (B): Proposed subparagraphs (c)(2)(A) and (B) would have prohibited a PACE solicitor and PACE solicitor agent from participating in the confirmation of key terms call unless the property owner requests their participation and would have required a program administrator to terminate the call if the PACE solicitor or PACE solicitor agent is on the confirmation call without the express request of the property owner. The Consumer Coalition indicates that there is no valid reason for allowing a PACE solicitor or PACE solicitor agent to participate in the confirmation of key terms call between a program administrator and a property owner. According to the Consumer Coalition, the presence of solicitors and solicitor agents on such calls has in fact created serious problems for property owners. For example, the undersigned have talked to many property owners who state that solicitors and their agents coached the property owners through these calls, telling them to just say yes to everything and not to worry about what the person on the phone is saying. In addition, according to the Consumer Coalition, while property owners may request that third parties participate in the calls, participation by a solicitor or solicitor agent is an indication that the property owner believes the solicitor is acting as their representative or agent, rather than as a counterparty in an arms-length transaction. C.A.R. indicates that it supports prohibiting a program administrator from allowing a PACE solicitor or PACE solicitor agent to participate in the confirmation of key terms call with the homeowner unless the homeowner expressly requests such participation. C.A.R. also supports requiring a program administrator to terminate a confirmation of terms call if the program administrator finds that the program administrator is on the call without the express permission of the homeowner. C.A.R. indicates that PACE solicitors should not be permitted to be in a position of having the opportunity to influence a homeowner during these calls. PACE Funding indicates that the paragraph allowing participation with the property owner requests participation contradicts the paragraph that requires a good faith effort to make the call when the PACE solicitor or PACE solicitor agent is not present. According to PACE Funding, SB 242 already requires the confirmation of terms call to occur before the contract is signed. PACE Funding indicates that the proposed regulation changes this standard by requiring the call to occur after a solicitor agent generates the contract but before the homeowner signs it and prohibits the solicitor or solicitor agent from being in the house with the homeowner, which is a very unlikely scenario. Renovate indicates that given the valuable addition of PACE solicitors on key terms calls, the Department's stringent regulation of PACE solicitors, and the Department's lack of justification for excluding

PACE solicitors from the key terms calls, PACE solicitors should be permitted to participate in key terms calls unless the property owner expressly requests that the PACE solicitor not participate. Renovate incorporates the same objections raised under Comment 1620.03.03, discussed above.

Response No. 1620.03.04: After weighing comments supporting and objecting to the requirements in proposed subparagraphs (c)(2)(A) and (B), and considering the statutory provision providing the property owner the right to have other persons present on the call, the Department has concluded the revised requirements in paragraphs (e)(2) through (4) of Financial Code section 1620.06, and in particular paragraph (e)(2), set forth a standard that protects consumers from being coached on answers and provide clear direction to program administrators for compliance. The revised requirements are discussed in Response No. 1620.03.03, above.

Comment No. 1620.03.05 regarding proposed subparagraph (c)(2)(C): Proposed subparagraph (c)(2)(C) would have required a program administrator to initiate a call at a later time prior to executing the assessment contract if the program administrator terminated the call under proposed subparagraph (c)(2)(C). The Consumer Coalition indicates that the rule as written undermines the purpose of limiting the potential for undue influence or manipulation by a solicitor during the confirmation of key terms call because it would allow a program administrator to have a property owner execute an assessment contract even if the property owner's acknowledgement of some of the statutorily required information on the call took place when a solicitor was on the call. The Consumer Coalition recommends that if a program administrator is required to terminate such a call with a property owner pursuant to subparagraph (c)(2)(B) without obtaining an acknowledgement for all of the statutorily required information and then initiate the call at a later time, the program administrator should be required to obtain an acknowledgement of all of the statutorily required information during the subsequent call and not just the remaining information prior to the property owner executing the assessment contract.

Response No. 1620.03.05: Since the revised regulations have moved away from the directive to discontinue the call, the provision regarding initiating the call at a later time is no longer applicable. However, the Department acknowledges the Consumer Coalition's concerns. As noted in Response No. 1620.03.04, the Department has determined that the revised requirement in paragraph (e)(2) of section 1620.06 sets forth a standard that protects consumers from being coached on answers and provides clear direction to program administrators for compliance. In addition, the Department recognizes global concerns with the proposed regulations being overly prescriptive. The revised provisions effectuate Streets and Highways Code section 5913 by requiring the program administrator to obtain the oral confirmation of the key terms without permitting the PACE solicitor agent to coach the property owner on the answers, while reducing the prescriptive requirements under the proposed rules.

Comment No. 1620.03.06 regarding proposed subdivision (d): As proposed, subdivision (d) required every program administrator to provide every property owner who enters into an assessment contract with contact information, including the name, telephone number, mailing address, and website address (if available), for the program administrator, the public agency, and the Department. Renovate asserts that the requirement has no statutory foundation, is ambiguous, and would impose a substantial burden on the program administrator. Renovate requests clarity on how the Department would require contact information be provided to a property owner. It is also unsure why additional paperwork to a property owner, with something like contact information which can be found online, is necessary or appropriate. It seems to be simply an additional layer of regulation serving no purpose.

Response No. 1620.03.06: As amended, subdivision (g) of section 1620.06 requires a program administrator to provide in writing to every property owner who enters into an assessment contract the Department of Financial Protection and Innovation's consumer services toll-free number ((866) 275-2677), email address (Ask.DFPI@dfpi.ca.gov), and website (dfpi.ca.gov). The information may be provided with any of the documents provided to the consumer; the amended requirement is not ambiguous; the Department has authority under its general authority to administer the licensing requirements and protect consumers; and the requirement serves the purpose of providing consumers with a resource for assistance related to PACE financing. While Renovate requests clarity on how the department would require contact information be provided to a property owner, the Department declines to prescribe further requirements in deference to other concerns regarding the prescriptive nature of the proposed regulations.

Comment No. 1620.03.07: The Consumer Coalition recommends that the Department require program administrators, as a condition of disbursing funds, to obtain a copy of the underlying home improvement contract, signed by the property owner, and confirm that the work listed in the contract matches what the program administrator is funding under the assessment contract. The Consumer Coalition also recommends that the Department require program administrators to verify that home improvement contracts comply with the requirements of Business and Professions Code section 7159. The Consumer Coalition further recommends that the Department require that program administrators provide property owners with documents that are legible and written so as to be reasonably understood by the least sophisticated consumer. The Consumer Coalition recommends that the Department require program administrators to provide ready access, both in physical copies and electronically, to any materials that are referenced or incorporated by reference into their assessment contracts, such as program handbooks. At present, it is often difficult for property owners to access the program handbooks applicable to their respective transactions.

Response No. 1620.03.07: Regarding the recommendation that the Department require program administrators, as a condition of disbursing funds, to obtain a copy of the underlying home improvement contract, signed by the property owner, and confirm that

the work listed in the contract matches what the program administrator is funding under the assessment contract, and that the Department require program administrators to verify that home improvement contracts comply with the requirements of Business and Professions Code section 7159, the Department has added subdivision (f) to section 1620.06. Subdivision (f) provides that, for purposes of confirming that the efficiency improvement being installed is being financed by a PACE assessment, the program administrator must confirm with the property owner 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. While a program administrator would benefit from obtaining the home improvement contract from the PACE solicitor, the Department recognizes that a PACE solicitor may be unwilling to provide its home improvement contract to a program administrator. The purpose of obtaining the home improvement contract is to confirm that the scope of work being financed through PACE is included in the scope of work described in the home improvement contract. This confirmation may be achieved in a less burdensome manner by having the program administrator confirm this information during the confirmation of key terms call. The Department declines to require a program administrator to verify that home improvement contracts comply with the requirements of Business and Professions Code section 7159 because this requirement is beyond the role of a program administrator under the licensure scheme in the CFL. With respect to the request of the Consumer Coalition for the Department to require that program administrators provide property owners with documents that are legible and written so as to be reasonably understood by the least sophisticated consumer, the Department declines to adopt this requirement because a local agency may be responsible for the contents of the documents. With respect to the recommendation that the Department require program administrators to provide ready access, both in physical copies and electronically, to any materials that are referenced or incorporated by reference into their assessment contracts, such as program handbooks, the Department notes that to the extent these materials are part of the contracts, they are included within the requirements for the agreements, including that the property owner be able to access the agreement.

Section 1620.05. Advertising Standards

Comment No. 1620.05.01: PACE Funding suggests the proposed regulation needs additional clarifying language to avoid the argument that there is an agency agreement between the program administrator and the solicitor/solicitor agent.

Response No. 1620.05.01: The CFL sets forth the minimum requirements for the relationship between program administrators and the PACE solicitors and PACE solicitor agents who solicit property owners for PACE financing on behalf of the program administrator. Further, subdivision (b) of Financial Code section 22689 makes a program administrator subject to the enforcement authority of the commissioner for any violation of the CFL, to the extent those violations have been committed by a PACE solicitor authorized by that program administrator, in connection with activity related to

that program administrator. Thus, for purposes of oversight, a program administrator is accountable for the activities of a PACE solicitor authorized by a program administrator, in connection with activity related to that program administrator. Consequently, the Department does not believe the request for additional language is supported by the law.

Comment No. 1620.05.02: PACE Funding indicates that the term "prohibit" in subdivision (a) needs additional clarifying language stating that program administrators are required to communicate that untrue, deceptive, or misleading advertising is not allowed and have procedures for dealing with violations of the rule when discovered. To suggest that it is ultimately the responsibility of a program administrator to "prevent" untrue, deceptive, or misleading advertising is tantamount to making an argument that there is an agency relationship between a program administrator and solicitors/solicitor agents. The Consumer Coalition suggests that in order to emphasize the seriousness of misleading or false advertising by a program administrator and to make this requirement consistent with the rules applicable to PACE solicitors and solicitor agents, we recommend that the rule be revised to state that refraining from engaging in advertising that is untrue, deceptive, or likely to mislead a property owner is a condition of remaining licensed as a program administrator as well as a condition of remaining enrolled as a solicitor or solicitor agent.

Response No. 1620.05.02: To address these concerns, the Department has amended the rule to eliminate the term “prohibit,” and instead to provide a program administrator shall “condition remaining enrolled as a PACE solicitor or PACE solicitor agent on a PACE solicitor or PACE solicitor agent refraining from advertising a PACE program” in an untrue, deceptive, or misleading manner.

Comment No. 1620.05.03 regarding proposed paragraph (a)(1): Subdivision (a) of section 1620.05 prohibits advertising in a manner that is untrue, deceptive, or likely to mislead a property owner, and paragraph (1) provided that suggesting that the full assessment payment may be tax deductible as a state or local real estate tax was untrue, deceptive, or likely to mislead a property owner. FortiFi suggests that the representation may not always be false, so the prohibition should be qualified on the statement being false at the time it is made. FortiFi suggests the Department’s PACE regulations should and must be consistent with Streets and Highways Code section 5924, enacted in SB 242, which provides “A program administrator, contractor, or a third party shall not make any representation as to the tax deductibility of an assessment contract unless that representation is consistent with representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency with regard to the tax treatment of PACE assessments.” According to FortiFi, SB 242 hit the right balance, flagging the issue regarding potential misleading statements relating to tax deductibility, but requiring that representations be consistent with IRS or state law guidance.

Response No. 1620.05.03: The Department agrees and has clarified in paragraph (a)(1) and all of the other provisions in the section, that only misrepresentations are prohibited.

Comment No. 1620.05.04: The Consumer Coalition requests rephrasing proposed paragraph (a)(2) about misrepresenting whether the program is free or the financing is subsidized by the government, because PACE financing administered by program administrators is not a government program but a private business, and because references to government involvement in PACE lending tend to "mislead a property owner" about the risk of PACE financing regardless of whether claims about free or subsidized loans are made. CLC suggests that the PACE solicitor or PACE solicitor agent not be allowed to represent PACE as providing a subsidy or benefit to property owners because of the property owner's limited resources or income under any circumstances. According to CLC, PACE solicitors have represented to homeowners that they qualify for tax rebates based on the maximum amount possible, when in reality the homeowner does not qualify for the tax rebate or qualifies for a fraction of the potential amount. CLC further suggests that a PACE solicitor or PACE solicitor agent should not be allowed to represent that a PACE is a government program. According to CLC, PACE is enabled by statute and authorized by Joint Power Authorities which are government entities, however, PACE lending is administered by program administrators as a private business. CLC suggests that PACE solicitors take advantage of homeowners' trust and reliance on government programs, and the risk of confusion to the homeowner is too great to allow this language in any circumstance.

Response No. 1620.05.04: The Department has clarified the provision in the manner requested by Consumer Coalition. The Department notes CLC's request not to permit representations regarding PACE providing a subsidy or benefit to property owners because of the property owner's limited resources or income under any circumstances, but the Department recognizes that a local government may choose to provide a benefit in this manner, and so the blanket prohibition would not be appropriate. Similarly, while the PACE programs are currently the licensed program administrator's programs, the Department's rules are intended to allow for other scenarios and so the Department has not included a blanket prohibition on a program administrator representing that PACE is a government program.

Comment No. 1620.05.05: As proposed, paragraph (a)(5) prohibited suggesting an efficiency improvement will result in an economic savings, suggesting the savings will offset cost of the improvement, or otherwise leading a property owner to believe that efficiency improvement will pay for the PACE assessment, if the representations were false, misleading, deceptive, not supported by evidence, or not consistent with the Public Utilities Commission's inputs and assumptions for calculating electric utility bill savings under Public Utilities Code section 2854.6. The Consumer Coalition suggests that in view of the dangers inherent in door-to-door sales and solicitations, the documented cases of misrepresentations made to property owners by solicitors and solicitor agents on this topic, and the complexity inherent in making accurate estimates

of potential economic savings from PACE-financed improvements, the Consumer Coalition recommends that this paragraph be revised to prohibit solicitors and solicitor agents from making any representations regarding economic savings except to the extent such representations (1) are based on an energy audit conducted by an accredited third-party provider of energy audits, (2) are based on evidence supporting the energy or economic savings that is tailored to the property owner's individual circumstances and is not based on any generalized estimates of energy use or savings, or (3) are consistent with the Public Utilities Commission's inputs and assumptions for calculating electric utility bill savings under Public Utilities Code section 2854.6, as applicable. CLC suggests that the PACE solicitor or PACE solicitor agent should not represent that savings from PACE will offset costs of the improvement under any circumstances. According to CLC, a PACE solicitor could point to some "evidence" to support a general claim of some efficiency savings, but the cost of many PACE assessments far exceeds the energy savings, and the potential for misrepresentation to the homeowner is too high.

Response No. 1620.05.05: As amended, paragraph (a)(5) provides that advertising in an untrue, deceptive, or misleading manner includes suggesting an efficiency improvement will pay for the PACE assessment, unless the representation is supported by evidence, including being consistent with the Public Utilities Commission's inputs and assumptions for calculating electric utility bill savings under Public Utilities Code section 2854.6. The Department has considered the comments but determined that the Department has no basis to prevent representations that are supported by evidence. Further, the Department recognizes that a PACE solicitor may be simultaneously marketing home improvements that are not financed by PACE, and the CSLB has oversight over savings representations not related to PACE financing. Therefore, the revised language is limited to protecting property owners from savings representations solely related to PACE financing that are not supported by evidence.

Comment No. 1620.05.06, regarding proposed paragraph (a)(6): As proposed, paragraph (a)(6) prohibited advertising PACE financing through a method that violates any state or federal "do not call" law, or anti-spam law. Renovate suggests the rule is inappropriate because it purports to incorporate other state and federal laws into the proposed regulations without citation to statutory authority. Renovate indicates that at a minimum, program administrators must be placed on notice of the laws to which they are expected to comply by specific statutory reference. Renovate suggests that this is particularly true for other state laws, and in states that a program administrator may not even operate. Renovate states that without identifying the "do not call" or "anti-spam" laws, this Rule is unconstitutionally vague and violates program administrators' due process rights. Moreover, according to Renovate, there is no statutory foundation for requiring program administrators to be responsible for the calls of PACE solicitors or PACE solicitor agents, let alone their calls that are not even relevant to PACE programs of a particular program administrator. Renovate states that far exceeds the Department's regulatory authority.

Response No. 1620.05.06: The Department agrees that the language is too vague. The provision is amended to only apply to advertising PACE financing through a method that violates the Federal Trade Commission's Telemarketing Sales Rule.

Comment No. 1620.05.07, regarding subdivision (b): Proposed subdivision (b) required a program administrator to develop and implement procedures to protect a property owner from being misled about whether a PACE solicitor or PACE solicitor agent is certified to provide efficiency improvements under any PACE program and sets forth practices that must be included in the procedures. PACE Funding suggests the proposed language is problematic as it shifts this responsibility, which currently falls under CSLB, to program administrators. According to PACE Funding, placing responsibility on the program administrators to "police" contractors would suggest there is an agency relationship between a program administrator and solicitor/solicitor agents, which would be incorrect. PACE Funding recommends amending the section to read: "A program administrator shall develop and implement procedures to report a solicitor or solicitor agent to the CSLB and DBO if the program administrator is made aware that a solicitor or solicitor agent is engaged in any of the following practices listed in items 1-4." Renovate suggests that the rule lacks any statutory support, and the Legislature has not implicitly or explicitly granted the Department the authority to mandate that program administrators implement procedures to protect against PACE solicitors misleading consumers about certifications regarding efficiency improvements. Moreover, according to Renovate, the rule would provide unfettered discretion to the Department when investigating compliance of program administrators within this section. Specifically, "procedures to protect a property owner" could be construed so broadly as to allow the Department to take any enforcement action it wished. Renovate requests that its obligation to create procedures be tied specifically to subsections (1)-(4), for example: a program administrator shall in good faith attempt to protect a property owner from being misled about whether a PACE solicitor or PACE solicitor agent is certified to provide efficiency improvements under any PACE program by creating procedures that address the following practices.

Response No. 1620.05.07: The Department has considered concerns with this subdivision and determined that proposed rule was unnecessarily prescriptive in an area where the Department has not identified or learned of abusive practices. Consequently, the Department has deleted the requirements in the subdivision.

Comment No. 1620.05.08, regarding subdivision (c): Ygrene recommends that the required advertising disclosure that the property improvements is provided by a home improvement contractor or other third-party provider, and not the program administrator or a government entity, needs to be revised to account for self-installation by property owners.

Response No. 1620.05.08: The subdivision does not set forth the wording of the disclosure, and the Department has no objections to Ygrene adding that information to its disclosure.

Comment No. 1620.05.09, regarding subdivision (f): Proposed subdivision (f) provided that a written advertisement on an advertising platform that is limited to 500 or fewer characters need not comply with the mandated disclosures in the rule, except that if the advertising contains a link, the linked location must contain the information required by these subdivisions. CLC suggests that all written PACE advertisements should comply with the disclosure requirements, which require a PACE solicitor to disclose that it is not a government agency and to provide information about the Department. According to CLC, the risk of confusion to homeowners that PACE is a “government program” and PACE solicitors are government agencies is high, and PACE solicitors take advantage of this. CLC supports the disclosures but submit that they must apply to all advertisements regardless of size. CLC indicates that PACE solicitor’s advertisement of less than 500 characters may be the only representation a homeowner sees before applying for a PACE assessment. The Consumer Coalition suggests that in order to safeguard against the use of shorter advertisements designed to evade disclosure requirements, the Coalition recommends that this subparagraph be revised as follows: a written advertisement on an advertising platform that is limited to 500 or fewer characters need not comply with subdivisions (c) or (e) of this section, as long as the advertisement contains a prominent link, and the linked location contains the information required by these subdivisions.

Response No. 1620.05.09: The Department has accepted these changes.

Section 1620.06. Assessment Contracts and Disclosures

Comment No. 1620.06.01: C.A.R. indicates that the proposed regulations require a program administrator to advise a homeowner who opts to receive their disclosures electronically to print, read, and save a physical copy of the documents and to save an electronic copy of the documents. The proposed regulations also require an administrator to provide physical documents upon the request of a homeowner. C.A.R. indicates that this is a good start. However, C.A.R. is of the opinion that the disclosures should be provided in paper form to the homeowner in every instance. According to C.A.R., given that the result of PACE financing is a super priority lien on a property, the terms and disclosures should not have the potential of being hidden away and potentially lost in a homeowners' email. Furthermore, according to C.A.R., a consumer's ability to have other trusted persons review documents during the rescission period is vital. Often consumers do not have printers to print documents and taking a physical document to, for example, a senior center or legal aid for advice is much easier than trying to pull up an email on a phone or other device to have it reviewed.

Response No. 1620.06.01: The Department acknowledges these concerns and refers C.A.R. to Response No. 1620.03.01 for a discussion of the disclosure requirements, and the reasons for the allowing electronic disclosures upon the agreement of the parties.

Comment No. 1620.06.02, regarding providing a property owner with a written copy of the information in paragraph (a)(2) of Streets and Highways Code section 5913 not provided in other disclosures: Renovate indicates the rule expressly contradicts the plain language of the Streets and Highway Code. According to Renovate, Streets and Highways Code section 5913(a)(2) requires “oral confirmation” of a long list of information, and this rule would require a written copy of the same information, directly contradicting the statutory language. Additionally, Renovate asserts that the rule is impermissibly vague in application because a review of the pertinent statutes demonstrates that at times it impossible to tell whether the information provided in the disclosures required by Streets and Highways Code sections 5898.16 and 5898.17 are sufficient to comply with this rule. To the extent that the requirements in subdivision (b) of section 1620.06 of the rules (related to the accessibility of electronic documents) is applicable to the disclosure required under this paragraph (a)(2), Renovate objects to those requirements for the same reason.

Response No. 1620.06.02: The Department has considered these concerns and is not requiring an additional written disclosure of the information in the oral confirmation of key terms.

Comment No. 1620.06.03: Ygrene suggests that program administrators providing documents in paper, as well as electronically, should be exempted from the requirements applicable to electronic records.

Response No. 1620.06.03: The Department has no objections and has amended subdivision (b) of section 1620.06 of the rules to make this change.

Comment No. 1620.06.04: PACE Funding suggests that paragraph (b)(4) could be interpreted as prohibiting property owners without internet access from obtaining a PACE assessment on their property. PACE Funding proposes that property owners without internet access or an email address be provided with printed hard copies of all documents and be allowed to complete the application in printed form or over the phone.

Response No. 1620.06.04: The rules are not intended to prohibit a property owner without internet access from obtaining PACE financing and providing property owners with printed copies is encouraged. The Department has amended subdivision (b) and other provisions to clarify that the requirements related to electronic disclosures and documents are only applicable when information is provided to a property owner solely in electronic format. Further, the Department has added paragraph (a)(6) expressly to provide that nothing in the section restricts the ability of a program administrator to deliver documents to a property owner in printed form or requires the electronic delivery of a document.

Comment No. 1620.06.05, regarding paragraph (b)(2): Paragraph (b)(2) required a program administrator to confirm that the property owner has internet access, maintains an electronic mail address, and understands how to access, save, and print a document

received by electronic mail. Renovate indicates the rule is ambiguous and imposes burdens on program administrators to “confirm” information about a property owner which it cannot possibly confirm. Renovate suggests the term “has internet access” is ambiguous. Must the property owner have Wi-Fi at the residence? Is the Starbucks internet down the street from the property owner sufficient? According to Renovate, a program administrator is left to guess. Moreover, Renovate states that a program administrator should not “confirm” a property owner has internet access beyond asking a property owner to so confirm. As currently worded, the Rule could be construed to require the program administrator to “confirm” with an internet provider or other reliable source that the property owner has internet access at the residence. Additionally, Renovate indicates that it is unclear what is meant by the program administrator confirming the property owner “maintains” an e-mail address. Renovate states that this language could be construed to prohibit use of a spouse’s or family member’s e-mail address. Renovate suggests that if a property owner provides an e-mail address to a program administrator and indicates the pertinent documents can be sent to that e-mail address, nothing more should be required of program administrators. Finally, Renovate opines that program administrators cannot be responsible for confirming a property owner understands how to access, save, and print documents received by e-mail. Renovate states that if a property owner provides an e-mail address and agrees to accept documents electronically, it should be assumed they are able to use that e-mail account as an average person would. Renovate states that this requirement is unnecessary and serves no purpose in light of the property owner being able to request physical copies of the documents. See Rule 1620.06(b)(3). Renovate proposes paragraph (b)(5) be changed as follows: “The program administrator shall ask and confirm with property owners that they have access to the internet and agree to accept the documents at an electronic mail address of their choosing.”

Response No. 1620.06.05: The Department has revised the requirements. If a program administrator does not provide the contract and disclosures in paper, revised paragraph (b)(1) requires the program administrator to ask and confirm with a property owner that the property owner has access to the internet and agrees to accept the documents at an electronic mail address of the property owner’s choosing, and revised paragraph (b)(5) requires the program administrator to advise the property owner to print, read, and save a physical copy of the documents, and to save an electronic copy of the documents. The Department has determined that these provisions are necessary to prevent instances of property owners unknowingly consenting to the electronic receipt of documents that they cannot access, and having no documentation supporting the PACE assessments appearing on their property taxes. The Department has revised the rule to clarify that the program administrator must confirm internet access with the property owner. Since by statute a program administrator already performs a confirmation of key terms call, and by statute must confirm that the owner has a copy of the contract and the disclosures, these requirements align with functions already required by law. With respect to advising the property owner to print, read, and save a physical copy of the

documents, this information can be included in the message sending the documents electronically.

Comment No. 1620.06.06, regarding subdivision (c): Subdivision (c) provides that if the Financing Estimate and Disclosure document is provided with other documents, the financing disclosure must be on the front page. Renovate requests confirmation that the reference to “Financing Estimate and Disclosure document” refers to the disclosure form mandated by Streets and Highways Code section 5898.17. Additionally, Renovate requests confirmation that a cover page may proceed the Financing Estimate and Disclosure document.

Response No. 1620.06.06: The Department has revised the request to clarify the requirements and address Renovate’s questions. Revised subdivision (c) provides that if the disclosure documents in Streets and Highways Code section 5898.16 - the Right to Cancel disclosure, and in Streets and Highways Code section 5898.17 - the Financing Estimate and Disclosure, are attached to the assessment contract, the disclosure documents must be in front of the contract but may be preceded by a cover letter or other introductory information.

Comment No. 1620.06.07, regarding subdivision (d): Subdivision (d) provides that a program administrator must maintain evidence of compliance with section 1620.06 in its books and records. Renovate does not object to the requirement that program administrators maintain documentation regarding the useful life of efficiency improvements. However, under Rule 1620.07, this documentation would be subject to a retention period of up to thirty-three years (three years after the extinguishment of an assessment). There is no basis to require useful life documentation for such an extensive period, as discussed in Renovate America’s response to Section 1620.7.

Response No. 1620.06.07: Financial Code section 22157 provides for program administrator to retain books and records for at least three years after the extinguishment of a PACE assessment, except as otherwise provided. However, the Department recognizes that not every record establishing compliance with the law is necessary for that length of time, and the Department has set forth requirements in section 1620.06.07 based on the nature of the record.

Comment No. 1620.06.08: Before providing a notice of proposed action to the Office of Administrative Law under Government Code section 11346.2, the Department sought input from stakeholders on draft language for a proposed action. Among other things, the draft proposed requiring that property owners be given a mandatory brochure prior to entering into a PACE assessment contract. The Consumer Coalition notes that this section has been removed from the current proposed regulations and replaced with a more general rule regarding written disclosures. The Consumer Coalition urges the Department to require delivery of a mandatory brochure created by the Department at least 48 hours before the property owner enters into a PACE assessment contract. The mandatory brochure should include, at a minimum: (1) A warning about the risk of losing

the home in a tax sale for failing to pay the assessment contract, or in a foreclosure for defaulting on a mortgage that includes an increased escrow impound for property taxes; (2) an explanation of the potential impact of the PACE assessment on the borrower's monthly payment obligation to her mortgage lender, including an explanation that (i) an increased property tax bill will result in increases to any required escrow payment to the mortgage lender; and (ii) for borrowers who currently pay their property tax bills directly, failure to pay the assessment contract as part of the property tax bill could result in the mortgage lender requiring the borrower to make monthly escrow payments for property taxes going forward; and (3) notification to property owners of their right to submit a complaint to the program administrator or the PACE solicitor and description of the applicable complaint procedures. In addition, the Consumer Coalition requests any written disclosures be provided in the same language used in the solicitation for a PACE assessment. The Consumer Coalition states that any reference to the effect of a PACE assessment on a property owner's tax obligations should not refer to "tax benefits" since that phrase implies that any tax impacts would necessarily be beneficial for the property owner. According to the Consumer Coalition, the brochure should instead employ the more neutral phrase "tax impacts" and should also advise property owners to consult a tax professional.

Response No. 1620.06.08: While the Department initially proposed a brochure, the Department did not move forward with this recommendation for several reasons. The offering of PACE financing does not occur at a storefront and holding program administrators responsible for ensuring PACE solicitors and PACE solicitor agents deliver a paper brochure has a large impact on operations, given the thousands of solicitors and agents that have been reported to the Department as enrolled. Further, after receiving comments with concerns about the number of disclosures and different delivery methods for each, the Department recognized that establishing another disclosure document in the form of a brochure may detract from the disclosures implemented by the Legislature under Streets and Highways Code sections 5898.16, 5898.17, and 5913. In addition, the Legislature had not through statute expressed an intent for the Department to impose this requirement on licensees, and for the disclosures required by the Legislature, electronic delivery or oral confirmations were permissible – paper delivery is not mandatory. Finally, the Department considered that given the complexity for a program administrator to get brochures to all of its PACE solicitors and PACE solicitor agents, requiring the delivery of a brochure may become the focus of compliance and overshadow important property owner protections set forth in statute. Although the Department initially proposed brochures, the Department is no longer persuaded that the benefits outweigh the regulatory burdens and costs. For these reasons, the Department has decided not to move forward with developing and mandating a brochure.

Comment No. 1620.06.09: CLC suggests that the proposed provisions should include that the property owner shall receive a physical copy of the documents in the language in which the PACE negotiations or solicitation were conducted. Moreover, CLC

suggests the three-day right to cancel should not toll until three days after the physical copies of the disclosure are received by the homeowner.

Response No. 1620.06.09: The Department declines to require physical copies of documents for the reasons described in Response No. 1620.03.01, above. Further, with respect to delivering the documents in the language that the PACE negotiations or solicitations were conducted, the Department defers to the Legislature's decision in paragraphs (e)(1) and (2) of Financial Code section 5913 that requires a program administrator to deliver a translation in writing of the disclosures and assessment contract in the language the oral confirmation was conducted. With regard to the tolling of the three-day right to cancel, the Department confirms that Streets and Highways Code section 5898.16 provides a property owner at least three days after receipt of the disclosure to cancel the agreement, and therefore adopting the requirement by rule is unnecessary.

Section 1620.07. Books and Records

Comment No. 1620.07.01, regarding subdivision (a): PACE Funding requests that the Department rephrase the requirement that books, records and accounts be maintained at a program administrator's main licensed location in California, to instead provide "physically at or digitally accessible from its main licensed location in California." PACE Funding indicates that best practices for companies with a large number of records is to store them digitally, and on redundant servers in separate locations.

Response No. 1620.07.01: The Department has no objections and has made the requested change.

Comment No. 1620.07.02: The Consumer Coalition suggests the administration agreements with public agencies and the agreements with PACE solicitors and PACE solicitor agents in proposed subparagraphs (b)(1)(B) and (C) should be made publicly available on the Department website.

Response No. 1620.07.02: The Department notes the suggestion. This suggestion does not require a change to the rule.

Comment No. 1620.07.03, regarding subparagraph (b)(1)(G): Proposed subparagraph (b)(1)(G) required a program administrator to maintain in its records documentation of monitoring PACE solicitor and PACE solicitor agent compliance with the requirements under the CFL. The Consumer Coalition requests expanding the provision to include documentation required under proposed subparagraph (a)(1)(C) of section 1620.13 of these rules regarding keeping a record of the program administrator's evaluation of consumer complaints about PACE solicitor during enrollment, and the documentation required under proposed subparagraph (a)(1)(F) of section 1620.14 of these rules regarding maintaining the results of a compliance monitoring and testing of a PACE solicitor.

Response No. 1620.07.03: As revised, subparagraph (b)(1)(E) of section 1620.07 of the rules expressly requires documentation of the background check of PACE solicitors and PACE solicitor agents, and subparagraph (b)(1)(G) of section 1620.07 of the rules requires documentation of monitoring PACE solicitor and PACE solicitor agent compliance. These provisions capture in the books and records the information identified by the Consumer Coalition.

Comment No. 1620.07.04: The Consumer Coalition suggests that in order to help identify potential bad actors, the Department should include in the online PACE solicitor and solicitor agent search as part of the status designation if any PACE solicitors or solicitor agents that have been suspended, terminated, or placed on probation.

Response No. 1620.07.04: The Department currently posts its actions, and for enforcement actions taken by the Department, parties subject to the action have notice and hearing rights. The Department will take under consideration the request to link the actions to the online search functions, but current database limitations do not allow this functionality. With respect to program administrator actions, a program administrator is only required to report enrollments and cancellations under subdivision (b) of Financial Code section 22682.

Comment No. 1620.07.05: Subparagraph (b)(1)(F) requires a program administrator to maintain documentation of the CSLB licensure or registration status of a PACE solicitor and PACE solicitor agent, including documentation supporting the reason that the PACE solicitor or PACE solicitor agent is not subject to licensure or registration with the CSLB, if applicable. Renovate provides that the provision may be difficult to comply with at times, depending on if the CSLB maintains historical status information which can be referenced. Accordingly, Renovate requests the rule be amended to state "Documentation, to the extent it exists and is accessible, of the CSLB licensure of registration statute . . . ."

Response No. 1620.07.05: The Department has no objections and has made the requested change.

Comment No. 1620.07.06: Renovate requests subparagraph (b)(1)(G) regarding maintaining records of monitoring PACE solicitor and PACE solicitor agent be amended as provided in Comment No. 1620.07.05.

Response No. 1620.07.06: The Department does not find the requested change necessary since documenting that records are unavailable establishes monitoring, for purposes of recordkeeping.

Comment No. 1620.07.07: Proposed subparagraph (b)(1)(H) required program administrators to maintain reports summarizing results of periodic reviews. Renovate indicates that the rule would require program administrators to create "reports" for every periodic review of a PACE solicitor. Program administrators may or may not make formal "reports" summarizing the results of its periodic review. Such a requirement

exceeds the Department's rulemaking authority. Instead, program administrators should be required to retain the evidence it considers in connection with its periodic review. The Consumer Coalition indicates that the proposed regulations do not reference which periodic review reports are encompassed by this requirement and recommends that any reports be made publicly available on the Department's website, including any reports required by Streets and Highways Code sections 5898.22 and 5898.23.

Response No. 1620.07.07: The Department agrees with Renovate's concern about the phrasing and has rephrased the provision to require documentation of periodic reviews. The Department has identified the periodic reviews in the revised provision, to address the Consumer Coalition's concern. Regarding making reports publicly available, the Department publishes the annual report data of licensees on its website and is not requiring other reports from program administrators. With respect to reports under Streets and Highways Code section 5898.22 and 5898.23, the Department defers to local agencies regarding these sections since they are not within the Department's jurisdiction under Financial Code section 22689 or any other provision of the CFL.

Comment No. 1620.07.08: Proposed subparagraph (b)(1)(I) required program administrators to maintain records of PACE solicitor agent training. Renovate suggests the rule is ambiguous, leaving program administrators to guess what "[r]ecords" the Department mandates be kept. The Consumer Coalition indicates that the records should be expanded to include records of both PACE solicitor and solicitor agent training.

Response No. 1620.07.08: To provide clarity, the Department has amended subdivision (b)(1)(I) to reference the training under paragraph (c)(1) of section 1620.17 of the rules, which specifies the records to be maintained. The Department has not expanded the requirement to include PACE solicitor training because training is only mandated for individual agents.

Comment No. 1620.07.09: Proposed subparagraph (b)(2)(A) required a program administrator to maintain in its books and records the assessment contract, and an accounting of any payments. Renovate suggests that the rule is ambiguous, leaving program administrators to guess what "accounting of any payments" the Department mandates be kept. Renovate requested clarification of the documents associated with payments that must be maintained.

Response No. 1620.07.09: Subparagraph (b)(2)(A) as amended no longer references an accounting of any payments.

Comment No. 1620.07.10: Proposed paragraph (b)(2)(F) required a program administrator to retain evidence of compliance with the requirements of section 1620.06 of these rules regarding providing disclosures to a property owner. Renovate suggests this rule is ambiguous, leaving program administrators to guess what "[e]vidence of compliance" the Department mandates be kept.

Response No. 1620.07.10: The Department has clarified the records to be maintained related to section 1620.06 by requiring in paragraph (b)(2) that the records include (1) the property owner's consent to an electronic signature and delivery; (2) evidence of a property owner's receipt of an electronically delivered assessment contract; (3) an audit trail related to an electronic signature on the assessment contract; and (4) the disclosures required under Streets and Highways Code sections 5898.16 and 5898.17, as provided.

Comment No. 1620.07.11: The Consumer Coalition encourages the Department to expand the records that are collected for each assessment contract to include the following: (1) the home improvement contract, invoices, and descriptions of the scope of work associated with each assessment; (2) documentation of fair market value and mortgage related debt used in determining the amount of financing and program eligibility; (3) verification that the property does not have a reverse mortgage/home equity conversion mortgage recorded against the property; (4) All permits and inspection reports; (5) electronic signature documentation such as DocuSign envelope history; (6) any credit reports used in determining eligibility to pay; (7) any notices sent to a lender and any responses received; and (8) records of the oral confirmation of key terms and records of the oral confirmation of completion. The Consumer Coalition further suggests that any records maintained under paragraph (b)(2) should be made available to the property owner subject to the assessment within 14 days of the property owner requesting the information. The Consumer Coalition suggests a program administrator should describe how to request the information on each program administrator's website along with a designated address for requesting the information.

Response No. 1620.07.11: With respect to the Consumer Coalition's request that the Department require the books and records include the home improvement contract, invoices, and descriptions of the scope of work, amended subparagraph (b)(2)(I) requires documentation of the scope of work subject to PACE financing from the home improvement contract. The Department declines to require the other documentation because the records are more appropriately within the jurisdiction of the CSLB, and for the additional reasons set forth in Response No. 1620.03.07, above. However, the Department notes that subdivision (a) of Financial Code section 22156 requires a program administrator to keep records that will enable the Commissioner to determine if the licensee is complying with the provisions of the division, which includes limits on the amount of PACE financing and the scope of work that may be financed through a PACE program. With respect to the Consumer Coalition's request that the Department require the books and records include documentation of fair market value and mortgage related debt used in determining the amount of financing and program eligibility, the Department has included amended subparagraph (b)(2)(F) requiring documentation of the fair market value, and with respect to mortgage related debt, subparagraph (b)(2)(C) requires documentation of a property owner's ability to pay an assessment contract. With respect to the Consumer Coalition's request that the Department require the books and records include verification that the property does not have a reverse

mortgage/home equity conversion mortgage recorded against the property, subparagraph (b)(2)(C) requires documentation of a property owner's ability to pay, which includes the prohibition on counting income from a reverse mortgage. With respect to the Consumer Coalition's request that the Department require the books and records include all permits and inspection reports, the Department defers to the CSLB for this documentation on home improvements. With respect to the Consumer Coalition's request that the Department require the books and records include electronic signature documentation such as DocuSign envelope history, the Department has included clause (b)(2)(A)(2), requiring the audit trail for an electronic signature. With respect to the Consumer Coalition's request that the Department require the books and records include any credit reports used in determining eligibility to pay, subparagraph (b)(2)(C) requires the program administrator retain documentation of a property owner's ability to pay the assessment contract, which includes an evaluation of debt under subdivision (c) of Financial Code section 22687. With respect to the Consumer Coalition's request that the Department require the books and records include any notices sent to a lender and any responses received, the Department added subparagraph (b)(2)(J) to include correspondence with any other lienholder on the property. With respect to the Consumer Coalition's request that the Department require the books and records include records of the oral confirmation of key terms and records of the oral confirmation of completion, the oral confirmation of key terms is required by both subparagraph (b)(2)(D) and Financial Code section 5913. The Department did not include the oral confirmation of completion since it is not a requirement. Further, the Department did not require a program administrator make available to a property owner any records maintained under paragraph (b)(2) within 14 days of the property owner requesting the information, nor require a program administrator to describe how to request the information on each program administrator's website along with a designated address for requesting the information. The Department considers these requests for information and responses to fall within the requirements of Financial Code section 22683 and section 1620.08 of the rules.

Comment No. 1620.07.12: Paragraph (b)(3) requires a program administrator to maintain in its books and records any advertising used for direct marketing or provided to PACE solicitors for marketing, and any advertising approved for use by a PACE solicitor. Renovate suggests that this rule is unnecessary and burdensome. Renovate indicates that program administrators create rules and guidance for PACE solicitors to advertise, but they do not require samples be submitted for review. Renovate further provides that there is no legal requirement advertisements be submitted to program administrators for approval. According to Renovate, this language contributes to the expectation that program administrators act as an enforcement authority, in contravention of the PACE statutes. The Consumer Coalition suggests that the reference to advertising in the paragraph should be expanded to include any advertising used or approved for use by PACE solicitor agents to ensure that program administrators are preserving records of any and all advertising used.

Response No. 1620.07.12: The Department has amended the provision to require a program administrator to maintain in its records any advertising used for direct marketing or provided to PACE solicitors for marketing, and any advertising submitted by, or approved for use by, a PACE solicitor. The Department disagrees that this rule is unnecessary, since advertising can involve misrepresentations made to property owners that result in harm. The Department has expanded the language to capture advertising either submitted by, or approved for use by, a PACE solicitor. However, the Department has not expanded the language to include any advertising used by a PACE solicitor or PACE solicitor agent, since a program administrator is not required to preapprove advertising. The provision does not extend the requirement to PACE solicitor agents because under paragraph (a)(1) of Financial Code section 22680, a program administrator's agreement is with a PACE solicitor.

Comment No. 1620.07.13: Paragraph (b)(4) requires a program administrator to maintain records related to compliance with the CFL, as specified. The Consumer Coalition recommends adding in procedures for determining property equity and amount of available financing as well as the verification process for determining the property is not subject to an FHA-insured home equity conversion or other reverse mortgage.

Response No. 1620.07.13: The Department has not specifically identified these items and relies on the requirement under subdivision (a) of Financial Code section 22156 that a program administrator maintain records which will enable the Commissioner to determine if the licensee is complying with the CFL and the regulations. However, if the Department finds during regulatory examinations of program administrators that this information is not transparent, the Department will consider whether additional provisions are necessary.

Comment No. 1620.07.14: Subdivision (c) sets forth periods for the retention of records, based on the type of record. The Consumer Coalition recommends the following: (1) The preservation period should be extended to four years from the date of extinguishment of the last PACE assessment transaction associated with the referenced records in order to preserve documents that might be relevant to a property owner's claims. In particular, administrators should maintain records regarding solicitors and solicitor agents for five years after the recording date of the last assessment contract that PACE solicitor or PACE solicitor agent was involved with (rather than from the date of de-enrollment). (2) The scope of records should be expanded to include records maintained pursuant to subparagraph (b)(1)(I). (3) The record retention period in subparagraph 1620.07(c)(3)(B) should be revised to four years after the extinguishment of the assessment. At a minimum, this retention period should be expanded to four years after the property owner receives the first property tax bill reflecting the PACE assessment. (4) In paragraph (c)(4), the preservation period should be extended to five years to adequately capture all relevant statute of limitations periods and be consistent with Business and Professions Code section 17500 et seq. Although the referenced statute of limitations is only 4 years, many property owners do not become aware of the

PACE assessment until their first property tax bill arrives, which may not be until up to 15 months after the assessment contract is executed. (5) If the Department restores PACE pricing tracking requirements proposed in a draft prior to the notice of rulemaking under the Administrative Procedure Act, the Consumer Coalition recommends that records regarding price tracking be preserved for four years.

Response No. 1620.07.14: The Department has considered the recommendation that the preservation should be extended to four years from the date of extinguishment of the last PACE assessment transaction associated with the referenced records in order to preserve documents that might be relevant to a property owner's claims, and the request that administrators maintain records regarding solicitors and solicitor agents for five years after the recording date of the last assessment contract that PACE solicitor or PACE solicitor agent was involved with (rather than from the date of de-enrollment). These records are regarding the enrollment process for PACE solicitors and PACE solicitor agents, and not documents about the PACE transaction. Therefore, the Department believes that three years after a PACE solicitor or PACE solicitor agent is no longer enrolled is adequate. With respect to expanding the scope of records to include records maintained pursuant to all of the subparagraphs in paragraph (b)(1), the Department agrees and has fixed that citation error. With respect to revising the record retention period in subparagraph (c)(3)(B) to four years after the extinguishment of the assessment, the Department has increased the period to five years. With respect to extending the preservation period in paragraph (c)(4) to five years to adequately capture all relevant statute of limitations periods and be consistent with Business and Professions Code section 17500 et seq., the two years in the rule conforms to Financial Code section 22166. Finally, the Department is not requiring a program administrator to track pricing.

Section 1620.08. Complaint Processes and Procedures

Comment No. 1620.08.01: The Consumer Coalition is concerned that the proposed rules do not adequately delineate the scope of program administrators' responsibilities, particularly as they relate to the actions of solicitors and solicitor agents, and do not provide a sufficiently clear and enforceable set of procedures for how complaints should be handled. In addition, the Consumer Coalition is concerned about the absence of any independent oversight of the complaint process and about the lack of clear and consistent deadlines for resolving complaints.

Response No. 1620.08.01: Section 1620.08 of the rules implements Financial Code section 22683, which requires a program administrator to develop and implement policies and procedures for responding to questions and addressing complaints as soon as reasonably practicable. The regulations set forth requirements for the policies and procedures developed and implemented by the program administrators. The regulations have been substantially amended to address concerns of stakeholders. However, the Department is unwilling to require a program administrator to develop a complaint process that includes the independent oversight of the complaint process without any

evidence that a less burdensome complaint process will effectively address the complaints of consumers, and without evidence the Legislature intended that interpretation.

Comment No. 1620.08.02: Proposed paragraph (a)(1) provides that, among other things, a program administrator's complaint process must provide for adequate consideration, and appropriate resolution, of property owner complaints. Proposed paragraph (a)(2) defined "resolution" to mean that after due consideration and investigation, as necessary, of the issues raised in the complaint, the program administrator has reached a final conclusion on the subjects of the complaint and any request contained therein and has notified the property owner. The Consumer Coalition and CLC indicate that the resolution of complaints by program administrators must provide meaningful relief to property owners harmed by participation in a PACE program, and the definition of "resolution" is inadequate. The Consumer Coalition and CLC indicate "resolution" should require a result where the program administrator and the property owner agree that the complaint has been satisfactorily resolved. Further, according to the Consumer Coalition, the Department should provide guidance for program administrators on what constitutes an appropriate resolution. For instance, the Consumer Coalition indicates that if it is found that the execution of the PACE assessment contract is the product of fraud or forgery, the program administrator should be required to ensure that all appropriate relief is provided, including, for example, that the PACE assessment is fully and permanently cancelled and removed from the property tax rolls, and that any previously paid amounts under the forged or fraudulent assessment contract are returned to the property owner. CLC provides that the complaint should also be forward to the relevant PACE authority for transparency of the process and monitoring purposes. The Consumer Coalition recommends that the complaint process include an automatic elevation to the Department if the property owner is not satisfied with the conclusion reached and the remedy offered by the program administrator. Similarly, CLC provides that if the property owner is not satisfied with the conclusion reached and the remedy offered by the program administrator, the complaint should be automatically forwarded to the Department. Additionally, the Consumer Coalition and CLC indicate that the definition of "resolution" implies that a property owner's rights to pursue a complaint in other forums is restricted only to actions that they are "continuing" during the pendency of the complaint. According to the Consumer Coalition and CLC, lodging a complaint with a program administrator is not a prerequisite for property owners to vindicate their rights in other forums. The Consumer Coalition and CLC recommend that the last sentence paragraph (a)(2) be changed to read: "This definition does not restrict in any way a property owner's right or ability to pursue a complaint through any means available under law."

Response No. 1620.08.02: The Department has considered these concerns with the rules regarding a program administrator's complaint process. The Department has not included a requirement that the program administrator's compliant process ensure that a property owner agrees an issue has been adequately resolved, since this is not

requirement under the CFL. Further, the Department declines to provide guidance on what constitutes an appropriate resolution, to the extent this involves the Department, by regulation, mandating a program administrator to unwind, void, or terminate a contract as part of a complaint process. However, the Department has incorporated into the regulations the requirement that program administrators correct errors as part of their resolution of complaints. While the Department does not agree that complaints not resolved in a property owner's favor must be automatically elevated to the Department, the Department has included the requirement in the amended regulations that property owners be provided with the Department's contact information when a program administrator responds to a complaint. If the property owner disagrees with the program administrator's resolution, the property owner may choose to elevate the complaint to the Department. With respect to CLC's suggestion that the complaint should also be forwarded to the relevant PACE authority for transparency of the process and monitoring purposes, the Department agrees with the policy but declines to include in its regulations any requirements for the relationship between a program administrator and a local agency. With respect to the Department's regulatory oversight, the Department conducts periodic regulatory examinations of licensees and therefore it monitors PACE financing activities, including property owner complaints and a program administrator's administration of its complaint process, through this regulatory process. Finally, with respect to the revised language proposed by the Consumer Coalition and CLC to ensure that the language is clear about a property owner's ability to pursue the matter through other forums, the Department has accepted the language and made the change.

Comment No. 1620.08.03: PACE Funding indicates that the proposed rulemaking should include a clear definition of "resolution" and be relaxed to allow for confirmation of receipt of complaint to be made in the same mode of communication as the complaint was received.

Response No. 1620.08.03: The regulations have been amended to allow this flexibility.

Comment No. 1620.08.04: PACE Funding indicates that the definition of "resolution" should provide for the closure of an open complaint when the homeowner has ceased communication after a certain number of attempts or a predefined period of time. According to PACE Funding, it is not uncommon for a homeowner to initiate a complaint through a program administrator's process and then cease communication if the complaint is resolved by the contractor, or if they decide to pursue their complaint through other means such as CSLB, the Department, or an attorney.

Response No. 1620.08.04: The Department has included subparagraph (a)(2)(C) to allow for the closure of a complaint that has been abandoned.

Comment No. 1620.08.05: According to Renovate, section 22683 of the Financial Code provides that "[a] program administrator shall develop and implement policies and procedures for responding to questions and addressing complaints as soon as

reasonably practicable." Renovate indicates that section 22683 does not require that complaints reach a resolution. Renovate suggests that as is the case for all entities engaged in providing consumer services, a program administrator may encounter scenarios where, after dedicating appropriate resources toward addressing a given complaint, the program administrator is still unable to reach a resolution or final conclusion with the consumer. According to Renovate, if paragraphs (a)(1) and (2) are intended to impose upon program administrators a standard of conclusively resolving all consumer complaints, it will impose a standard that is impossible to satisfy, is not applied to any other industry the Department administers and will place an extreme economic burden on program administrators. Moreover, Renovate states that the rule is vague and overbroad. According to Renovate, what constitutes "adequate consideration" and "appropriate resolution" is ambiguous, leaving program administrators to guess at what the Department's intentions are. Renovate indicates "adequate consideration" should be defined to include consideration of the seriousness of the complaint, the facts associated with the complaint (e.g., complaints are often not supported with facts or evidence), and an element of property owner responsibility when the complaint makes allegations that contradict written disclosures. Additionally, Renovate asserts that while "resolution" is defined, "appropriate" is not, and the Department would have unfettered discretion to determine a program administrator's decision regarding a complaint is inappropriate. Accordingly, Renovate requests that the rule be withdrawn or, alternatively, that the ambiguous language be clarified.

Response No. 1620.08.05: The Department notes that Financial Code section 22683 requires a program administrator to implement procedures for addressing complaints. By rule, the Department is interpreting "addressing complaints" to include the consideration, and as applicable, investigation of the issues raised in the complaint, and the final decision of property owner complaints. The Department has amended the regulations to change "resolution" to "final decision" because a property owner may not agree that a program administrator's final decision on a complaint resolves the complaint. The Department has considered Renovate's suggestion that Renovate may not be able to reach a resolution or final conclusion with the consumer, and the Department has determined that a program administrator can always decide on what action, if any, it intends to take. Therefore, the regulations require a program administrator reach a final decision on the actions it will take on complaint and communicate this decision to the property owner. To resolve Renovate's concerns, as amended, subparagraph (a)(2)(B) provides that "final decision" includes the decision by a program administrator, after consideration and investigation, that the program administrator will take no further action on a complaint, and the communication of this decision to the property owner. With respect to Renovate's concern that the rule is vague and overbroad regarding "adequate consideration" and "appropriate resolution," the Department has amended the rule to remove the adjectives and clarify the meaning of the requirements.

Comment No. 1620.08.06: Paragraph (a)(3) provides that inquiries, questions, requests, criticisms, and correspondence not constituting a complaint requiring resolution need not be included within the complaint process. The Consumer Coalition indicates this section is overly broad and leaves key interpretive questions in the discretion of the program administrators. According to the Consumer Coalition, vulnerable property owners, especially those unfamiliar with formal complaint processes, may struggle to frame their complaints in a way that makes clear they are complaints rather than "inquiries, questions, requests, [or] criticisms . . . ." The Consumer Coalition indicates that all communications from property owners that suggest or imply a criticism, problem, or question should be treated as complaints. The Consumer Coalition recommends adopting a positive definition of "complaint" to make clear that all communications from dissatisfied property owners must be handled through the complaint resolution process. They recommend that the Department follow the definition of "consumer complaint" used by the federal Consumer Financial Protection Bureau, and alter the proposed section 1620.08(a)(3) to read: Complaints include all submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a property owner's personal experience with a PACE program or PACE assessment, including program administrators, solicitors, solicitor agents, advertisers, and all related entities.

Response No. 1620.08.06: The Department has considered the request but notes that the Consumer Financial Protection Bureau's definition and procedures involve the Bureau's own processes for handling complaints, whereas in this instance, the Department is setting forth minimum standards for a licensee's processes. Financial Code section 22683 identifies responding to questions and addressing complaints as two separate functions, and renumbered subparagraph (a)(3)(A) is intended to recognize that distinction. However, based the Consumer Coalition's concerns, the Department has added subparagraph (a)(3)(D), providing that if the response to an inquiry, question, request, or criticism involves a decision by the program administrator about how to respond to factual allegations of a mistake or wrongdoing related to the PACE financing, then the matter is a complaint and must be handled under the complaint process.

Comment No. 1620.08.07: Paragraph (b)(2) provides that the complaint process must include a procedure to provide a property owner with notice of how to contact the program administrator with a complaint. Renovate indicates that the rule would require program administrators to create a "procedure" to provide property owners "with notice" of how to file complaints. Renovate provides that there is no indication of what kinds of procedures the Department would find acceptable, rendering the Rule impermissibly vague. Renovate suggests that if the Department will not withdraw the Rule outright, the Department should standardize how and where the notice is provided to property owners. For example, according to Renovate, the notice could be placed onto a written disclosure or could be provided by program administrators verbally to customers over the phone when a call is received. The Consumer Coalition suggests property owners should have access to information about the complaint process, and to the process

itself, that is both easy to use and consistent with their choices and abilities in other aspects of their PACE transaction. For example, according to the Consumer Coalition, if a property owner declines the option to use electronic forms and signatures, information about, and access to, the complaint process should be provided to them in hard copy consistent with that choice. The Consumer Coalition indicates that it is also important that property owners without internet access be able to receive information about the complaint process, for example by calling their program administrator. The Consumer Coalition suggests that although subparagraph (b)(1)(C) is consistent with these principles, the Consumer Coalition recommends changes to subparagraphs (b)(1)(A) and (B) to clarify that the information should be available to all property owners. The Consumer Coalition recommends that the Department alter subparagraph (b)(1)(A) to read: The notice must be in a form that may be maintained physically or electronically by the property owner. Where a property owner has not agreed to transact electronically, a physical notice must be provided. The Consumer Coalition recommends that the Department alter subparagraph (b)(1)(B) to read: The information regarding how to submit a complaint must be maintained on the program administrator's website, available via telephone on the program administrator's general customer service line and provided to all property owners at the time they enter an assessment agreement.

Response No. 1620.08.07: The Department has considered the concern that paragraph (a)(1) is impermissibly vague because it fails to identify the type of notice the Department would find acceptable. The Department notes, however, that subparagraphs (b)(1)(A) through (C) set forth criteria to provide guidance. The Department has further amended subparagraph (b)(1)(A) to provide that the information may be provided to the property owner in the Financing Estimate and Disclosure document, which provides a standardized procedure as requested by Renovate. To address the Consumer Coalition's concerns, the Department has also amended subparagraphs (b)(1)(A), (B), and (C) to ensure that property owners have access to the information if they do not have access to the internet or electronic communication. If a property owner has elected to receive the Financing Estimate and Disclosure document in paper because the property owner does not have access to the internet, the property owner will receive information on the complaint process in paper on the form, which will include the toll-free telephone number. The Department believes these processes are sufficient and the additional requirements suggested by the Consumer Coalition are not necessary to provide property owners with notice on how to initiate a complaint.

Comment No. 1620.08.08: PACE Funding indicates that subparagraph (b)(1)(C), regarding providing a reasonable and available method for property owners who do not have access to the internet or electronic communication to contact the program administrator, demonstrates the inconsistency of requiring that program administrators confirm a homeowner has internet, email, phone, etc., yet program administrators also need to provide a mode of communication for homeowners without those things.

Response No. 1620.08.08: The Department does not see the inconsistency. A program administrator must confirm during the oral confirmation call that a property owner is able to access an electronically sent contract because of repeated anecdotes about false email addresses created and property owners, including seniors and monolingual English speakers, never receiving documents. However, the program administrator must still maintain a process for providing a property owner without internet access notice of how to contact the program administrator with a complaint.

Comment No. 1620.08.09: Paragraph (b)(2) requires the complaint process to include a procedure for communicating with a property owner regarding the status of the complaint. Subparagraph (b)(2)(A) provides that the communication shall at a minimum include written communication confirming the receipt of the complaint and written communication upon resolution of the complaint. Subparagraph (b)(2)(B) provides that if a reasonable person would not understand the reason for the resolution, the written communication upon resolution of the complaint must explain the reason. Renovate indicates that this rule requires program administrators to create a procedure for "communicating" with a property owner regarding status of a complaint. Besides requiring a written communication upon receipt and upon resolution, Renovate indicates that it is entirely unclear what the Department would deem as adequate communication. Moreover, Renovate indicates that under subdivision (b), it is not clear what the Department intends by stating if a reasonable person "would not understand the reason for resolution," the decision must explain the reason. Renovate asks, if a reasonable person would not understand the reason for the resolution, what good would it be to have it in writing? In addition, Renovate asks, how can a program administrator possibly determine if a reasonable person does not understand the reason for the resolution? Renovate states that the rule is also extraordinarily burdensome on program administrators. Renovate indicates subparagraph (b)(2)(A) would require two rounds of written communication, and subparagraph (b)(2)(B) would require individualized communication for most statements of written resolution. According to Renovate, this would be extremely costly and timely, adding to the already extreme burden of this regulatory scheme. Renovate requests the rule be withdrawn. PACE Funding suggests the proposed language requiring a written communication regardless of the mode of communication by which the complaint was made is too onerous. PACE Funding indicates that a property owner who calls in with a complaint and speaks with a live representative does not need confirmation that the complaint was received. PACE Funding indicates that confirmation of receipt should be via the same method of communication by which the complaint was made.

Response No. 1620.08.09: The Department has substantially revised paragraph (b)(2) to outline the minimum standards for confirming the receipt of complaints and responding to complaints. The provisions continue to require an acknowledgement of receipt; however, the acknowledgement may be in the same form as the complaint and need not be written for oral complaints; the complaint may be acknowledged during the telephone call. Since acknowledgements of complaints received by email are typically

system-generated, the Department believes these changes have mitigated the burden of correspondence. Revised subdivision (e) sets forth requirements for notifying a property owner of a final decision and closing the complaint. Paragraph (e)(1) requires a program administrator to correct errors identified during the review of the complaint, and subparagraph (e)(1)(A) provides that if a program administrator corrects an error, the property owner must be notified of the correction, the effective date of the correction, and a contact for further assistance. The Department does not consider these communications unreasonable for errors in financing that holds a senior lien status on the property owner's property. Finally, the provisions no longer condition providing an explanation of the reason for the resolution on whether a reasonable person would understand the reason.

Comment No. 1620.08.10: The Consumer Coalition provides that where property owners have a third-party advocate or attorney assisting them with their complaint, the Department should require that program administrators track the involvement of the third party to avoid confusion and the need for multiple third-party authorizations. The Consumer Coalition states that a requirement that administrators track the involvement of third parties will also allow the Department to more readily analyze whether complaint outcomes meaningfully differ where a third party is involved, and whether that suggests any problems or deficiencies in the accessibility of the complaint process to unrepresented property owners. The Consumer Coalition recommends that the Department revise subparagraph (b)(3)(A) to read: The procedure must include a process for recording the status of a complaint, including which third parties, if any, the property owner has authorized to assist or represent them.

Response No. 1620.08.10: The Department has added paragraph (a)(4), providing that a complainant may authorize a representative to represent the complainant in communications with the program administrator throughout the complaint process. The paragraph further provides that all of the obligations towards a complainant in the rule shall be applicable to a representative of the complainant. Paragraph (d)(5) provides that the tracking of complaints must include the tracking of whether the complainant has authorized a third party to assist or represent the complainant. These provisions are intended to resolve the concerns raised by the Consumer Coalition.

Comment No. 1620.08.11: The Consumer Coalition provides that, in engaging with program administrators' current complaint processes, the Consumer Coalition has been frustrated by unclear timelines that have sometimes stretched on for months. The Consumer Coalition states that the Department is correct to require administrators to set target dates for actions and resolution. However, according to the Consumer Coalition, leaving those target dates up to the discretion of the administrators may result in unreasonably long timelines. The Consumer Coalition recommends that the Department alter proposed paragraph (b)(4) to read: The complaint process shall include target dates for actions and resolution, and the target date for resolution shall be no more than 30 days from submission of a complaint.

Response No. 1620.08.11: The Department has restructured the rule and proposed paragraph (b)(4) is now paragraph (d)(2). The Department has added subparagraphs (d)(2)(A) through (C), setting forth an initial target date of not more than 30 days, and additional time periods of not more than 15 days each, with requirements for the program administrator to update the property owner on the status when the program administrator cannot reach a final decision in the targeted time period.

Comment No. 1620.08.12: Proposed subparagraph (b)(5)(A) provides that the complaint process must include a procedure for the expedited review of complaints involving the immediate risk of loss of possession of real property, or a substantial financial penalty for a person known by the program administrator to have a limited income. Renovate indicates that the rule is vague and unworkable because it requires expedited review of complaints that involve “immediate risk” of loss of possession of real property or a “substantial financial penalty” for a person with limited income. Renovate indicates that neither of these terms are defined and a program administrator has no guidance to determine when an expedited review is actually required. For example, according to Renovate, if property taxes remain unpaid and a tax default occurs, the public agency responsible for recording the assessment may initiate judicial foreclosure proceedings, but the judicial foreclosure process is slow, and usually takes years. Renovate suggests that while nonjudicial foreclosure proceedings initiated by other parties are faster, these proceedings may be completely unrelated to PACE financing. For example, according to Renovate, a property owner may obtain a second mortgage 10 years after obtaining PACE financing that results in foreclosure five additional years later, even though the property owner’s property taxes remain current. Moreover, Renovate indicates that because PACE assessments are merely one component of a property owner’s property taxes, it cannot be assumed that a property owner’s failure to pay property taxes is even related to the PACE financing. For example, according to Renovate, a property owner may acquire a property with five years of remaining assessment payments, which account for twenty percent of the property owner’s overall property tax liability. If, three years later, that property owner fails to make a property tax payment, Renovate provides that such failure may be used to justify an expeditated review despite the default being unrelated to the PACE program. Additionally, assuming a program administrator determines an “expedited” review is warranted, Renovate asks, what does that actually mean? Renovate asks to what extent must the process be expediated? As currently drafted, Renovate suggests that the rule leaves program administrators to guess. As demonstrated by the examples provided above, Renovate states that proposed subparagraph (b)(5)(A) may cause program administrators to effectively prioritizes complaints unrelated to PACE financing over those related to PACE financing. In addition, Renovate states that it unduly burdens program administrators with a heightened responsibility to address issues involving possible loss of real property subject to a PACE assessment, regardless of whether such delinquencies and foreclosures are related to PACE financing. Renovate requests this Rule be withdrawn.

The Consumer Coalition provides that the Department is correct to address the increased urgency of complaints where property owners face serious risks as a result of the PACE program, including the potential loss of their home. But, in this area especially, the Consumer Coalition states the Department must be clear and precise in its use of terms to ensure that property owners understand their rights, that the PACE industry understands its obligations, and that the Department can effectively enforce reasonably clear standards. The Consumer Coalition is concerned that this subsection uses a structure and terms that are not sufficiently clear to allow for this understanding and effective enforcement. First, according to the Consumer Coalition, proposed paragraph (b)(5) states a requirement for "aging" complaints but does not define "aging." Then, The Consumer Coalition continues, proposed subparagraph (b)(5)(A) lists requirements for expedited review of complaints involving "immediate risk" of real property loss or "substantial financial penalty" without defining "immediate" or "substantial" or "financial penalty." The Consumer Coalition states that this provision does not explicitly address the most common financial harm property owners suffer as a result of problems with the PACE program, which is that their mortgage servicer advances payment of their PACE assessments and increases their monthly payments as a result. The Consumer Coalition indicates that once the PACE assessment payment has been advanced by a lender, property owners face many steeper challenges in undoing the PACE transaction than before the lender has advanced payment. The Consumer Coalition believes the Department should address this situation directly in the expedited complaint procedure provision. The Consumer Coalition provides that proposed subparagraph (b)(5)(B) requires that the expedited review process provide property owners with an option of speaking with a live representative. The Consumer Coalition suggests that such an option should be made available to all complainants, not just those who qualify for an expedited review. As a structural matter, the Consumer Coalition indicates that the requirements for expedited review where there is potential harm, and for the live representative option, are nested under the provision about "aging" complaints, suggesting that only "aging" complaints would be subject to these requirements even though whether a complaint is "aging" has no bearing on whether the property owner is at risk of losing their home. The Consumer Coalition recommends that the Department clarify the language and renumber the provisions as follows: "(b)(5) The complaint process shall include a procedure for identifying and prioritizing aging complaints that have been open for more than 30 days without resolution. (b)(6) The complaint process shall include a procedure for the expedited review of complaints involving the immediate risk of a third-party lender or servicer advancing payments on behalf of a property owner or otherwise exercising its rights as a lienholder, or a loss of possession of real property, or a claim of significant financial hardship. (b)(7) The complaint process shall provide a property owner with the option of speaking with a live representative." CLC also recommends (b)(7). CLC suggests that the complaint process should include a procedure by which the homeowner can obtain an in-person audience. According to CLC, program administrators, solicitors, and solicitor agents have not been accessible to homeowners seeking an in-person audience, often ignoring the

homeowner, or making them jump through unduly burdensome hoops to obtain a meeting.

Response No. 1620.08.12: The Department has considered the concerns of Renovate, the Consumer Coalition, and CLC, and concluded that an expedited process is helpful to property owners facing adverse financial consequences. The Department has renumbered the rule. Paragraph (d)(4) provides that the complaint process must include a procedure for the expedited review of complaints involving (1) a third-party lender or servicer who has advanced 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. Subparagraph (d)(4)(A) provides that the expedited review process shall provide a property owner with the option of speaking with a live representative, which may be a representative accessible through the customer service toll-free telephone number. Subparagraph (d)(4)(B) provides that the investigation of a complaint in an expedited review process should ordinarily be conducted in a week. If additional time is needed, the program administrator must advise the complainant. The Department has considered Renovate's concern that the reasons supporting expedited review may not involve PACE, but the Department concludes that if the property owner were in a situation that would warrant expediated review and also has a PACE complaint, the need to protect property owners from financial harm warrants expedited review. The Department has also considered the Consumer Coalition and CLC's request that a live person be available at the toll-free telephone number for all consumer complaints but determined that since Streets and Highways Code section 5858.17 expressly provides that a property owner will receive a response in 24 hours or one business day, requiring a live representative is inconsistent with the statute.

Comment No. 1620.08.13: Proposed paragraph (b)(6) required the complaint process to include procedures intended to allow property owners with limited English proficiency to participate in the complaint process. Renovate indicates that the paragraph conflicts with and substantially exceeds the scope of the provisions applicable to program administrators with respect to foreign languages. Renovate indicates that these provisions are located within subdivisions (d) and (e) of section 5913 of the Streets and Highways Code. According to Renovate, in short, program administrators are expressly not required by law to support any foreign language. To the contrary, Renovate indicates that a program administrator is required to stop a PACE transaction from proceeding if, during the terms confirmation call, a property owner informs the program administrator that he or she would prefer to communicate in one of five specified foreign languages (Spanish, Chinese, Tagalog, Vietnamese, or Korean), and the "preferred language is not supported" by the program administrator. Renovate states that such support is expressly defined as the program administrator's ability to (i) perform the remainder of the terms confirmation call in whichever one of the five specified languages identified by the property owner as his or her preferred language, and (ii) provide the property owner with a translated assessment contract, financing estimate and disclosure form, and cancellation notice in that language. Renovate indicates that if

a program administrator is able to perform the terms confirmation call and provide those documents in one of the five specified languages, it gains the right to permit the transaction to proceed. Renovate indicates that the PACE statutes do not require foreign language support in any language beyond the five specified languages under any circumstance. To the extent a program administrator opts to support one of those specified languages, Renovate indicates that the support need only extend to terms confirmation calls, assessment contracts, financing estimate and disclosure forms, and cancellation notices. Renovate states that a program may also opt not to support those or any other language if it chooses. Renovate suggests that this rule purports to require program administrators to provide translations of complaint-related forms and correspondence in every language that may be deemed to satisfy the linguistic needs of property owners, and to provide interpreters of every such language. Renovate states that a program administrator can fully comply with section 5913 by preventing transactions from continuing when a property owner indicates a preference to speak in one of the five designated languages. However, according to Renovate, if a property owner initially indicates a preference to speak in a supported language and later indicates a need to speak in any language that is not supported, proposed paragraph (b)(6) would require that program administrator to provide support in that language, including by providing translated correspondence and interpreters (if one is not chosen by the property owner). Renovates states that for example, a property owner may initially indicate a preference to speak in Spanish, a language supported by a given program administrator. Renovate continues, later, that same property owner (or a separate owner of the same property) may indicate a need to speak in French. Renovate states that the rule would compel that program administrator to provide support to that property owner in French. Renovate asserts that this requirement directly contradicts section 5913, and imposes an impossible standard on all program administrators, a standard that is entirely without precedent under any state or federal law, including for large entities such as banks, mortgage lenders, and other finance companies. Renovate provides that not only does the rule contradict section 5913, but it also introduces a vastly greater scope than intended by the Legislature. Renovate suggests that the framework of section 5913 is clearly limited in scope to five designated languages, whereas the Rule 1620.08 would require program administrators to arguably support any foreign language. Renovate continues, proposed paragraph (b)(6)'s requirements are vague and overbroad, providing no indication of what is meant by "limited English proficiency" and how program administrators could achieve compliance with these requirements. Accordingly, Renovate requests this Rule be withdrawn. The Consumer Coalition indicates that the Department is correct to address the need for the complaint process to provide access to people with limited English proficiency. However, as written, the Consumer Coalition suggests that this section only requires procedures "intended" to provide this access, and does not specify that the access must exist, or that the complaint process must be offered in a property owner's preferred language. The Consumer Coalition recommends that the Department revise proposed paragraph (b)(6) to read: The complaint process shall include procedures that

allow property owners with limited English proficiency to participate in the complaint process in the language of their choice.

Response No. 1620.08.13: The Department has considered the input of stakeholders and revised and renumbered paragraph (b)(3) to provide that a program administrator must make the complaint process available to a complainant in the language used to communicate during the oral confirmation under subdivision (d) of Streets and Highways Code section 5913, the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language. In this manner, the minimum requirement for the complaint process is consistent with Streets and Highways Code section 5913 and provides property owners the equivalent protection that the Legislature deemed necessary when entering into an assessment contract.

Section 1620.10. Dishonest Dealings and Misleading Statements

Comment No. 1620.10.01: The Consumer Coalition appreciates clarification that the list of actions in the proposed rule is not exclusive. The Consumer Coalition is also pleased the Department removed language from an earlier draft that could have allowed PACE solicitors to charge higher prices for PACE-financed improvements than for the same improvements paid for by other means by claiming an "economic justification" for doing so; and that that Department has clarified that it is impermissible for a program administrator to inform a PACE solicitor or solicitor agent of the amount of PACE financing available to a property owner. The Consumer Coalition remains concerned, however, about a number of issues in this rule (discussed in this and subsequent comments) and is recommending the following changes to strengthen the standards that program administrators must adhere to and that their enrolled PACE solicitors and PACE solicitor agents adhere to. First, the Consumer Coalition recommends that the actions under subdivision (b) should also be defined as dishonest dealings or misleading statements if a program administrator engages in them.

Response No. 1620.10.01: The Department has amended subdivision (b) to expressly provide that the acts constitute dishonest dealings, so under Financial Code section 22161 a program administrator may not engage in the acts.

Comment No. 1620.10.02: Proposed paragraphs (a)(2), (3), and (4) provided that the following acts constitute dishonest dealings by a program administrator: knowingly paying a PACE solicitor for unperformed work that is financed through an assessment contract; knowingly paying a PACE solicitor for an uninstalled product that is financed through an assessment contract; and knowingly paying a PACE solicitor for a product that materially differs in price from the product installed on the property and provided to the customer, where the installed and provided product costs less, and the product is financed through an assessment contract. The Consumer Coalition indicates that the use of a "knowingly" standard in paragraphs (a)(2), (3) and (4) is inappropriate in this context since it requires less than ordinary care. The Consumer Coalition recommends

that the Department remove "knowingly" from these provisions or, at a minimum, make the standard "knew or should have known."

Response No. 1620.10.02: The Department has revised and recharacterized these requirements and revised the standard to “knows or should have known.” The Department agrees with the importance of a program administrator exercising ordinary care for the protection of property owners.

Comment No. 1620.10.03: The Consumer Coalition suggests that because of the numerous problems advocates have seen involving significant discrepancies between the scope of work and products listed in home improvement contracts and the improvements to be financed listed in PACE assessment contracts, the Consumer Coalition recommends that the Department clarify that a program administrator's failure to obtain and review a final home improvement contract before finalizing and executing an assessment contract also constitutes a type of dishonest dealing.

Response No. 1620.10.03: While the Department agrees that obtaining the home improvement contract is a best practice, the Department is persuaded by program administrators’ concerns that they may not have access to the agreement. Therefore, in lieu of requiring the home improvement contract, the regulations require the program administrator to confirm with the property owner that the scope of work in the assessment contract matches work that the PACE solicitor is committed to perform under the home improvement contract.

Comment No. 1620.10.04: PACE Funding indicates that the statement of reasons is incorrect in supporting paragraph (a)(2) by providing, “The property owner does not have the ability to withhold payment until the work is performed.” According to PACE Funding, typically, program administrators require a completion certificate to be signed before paying the solicitor. PACE Funding notes that by not signing such document, the property owner is preventing the program administrator from paying the solicitor. Consequently, the statement of reasons requires clarification concerning the property owner's ability to withhold payment, and how the program administrator should deal with a solicitor or solicitor agent in cases of dishonest dealings and misleading statements. PACE Funding Group also suggests that there should be a requirement for program administrators to participate in a Lien registry.

Response No. 1620.10.04: The Department agrees with PACE Funding’s concern with the accuracy of the statement in the initial statement of reasons and has updated this final statement of reasons to correct the statement. With respect to developing a lien registry, the Department refers to Response No. 8.02, above.

Comment No. 1620.10.05: Ygrene suggests that the prohibition on knowingly paying a PACE solicitor for an uninstalled product inadvertently interferes with the ability of a contractor to be paid through progress payments upon the completion of phases of a project, by requiring that a project be complete before payment is tendered to a contractor. Ygrene requests that the provision be modified to clarify that the requirement

does not apply to the extent that the property owner agrees to such payment and the uninstalled product has been delivered to the property site.

Response No. 1620.10.05: The Department has amended paragraph (a)(3) to only be applicable to a final payment. The Department believes the amended language addresses Ygrene's concerns.

Comment No. 1620.10.06: The Consumer Coalition has concerns with the language in proposed paragraph (a)(3) providing that a solar system or battery that has been affixed to a customer's real property but not interconnected to the utility grid is not an uninstalled product. According to the Consumer Coalition, a solar system or battery that has been affixed but is not interconnected to the utility grid cannot function as an energy efficient improvement. The Consumer Coalition does not understand, therefore, why the Department has included a rule stating that "A solar system or battery that has been affixed to a customer's real property but not interconnected to the utility grid is not an uninstalled product." Unless the California Public Utilities Commission has specified otherwise, the Consumer Coalition recommends that the Department remove this language.

Response No. 1620.10.06: Upon reconsideration of the language, the Department agrees with the Consumer Coalition and has removed the language. Whether work is performed, including whether a product is installed, is governed by Business and Professions Code section 7159.5, paragraph (a)(5), and therefore the Department has reconsidered including anything in these rules that may affect a determination of when work is performed under a home improvement contract.

Comment No. 1620.10.07: Renovate indicates that the prohibition on knowingly paying a PACE solicitor for an uninstalled product that is financed through an assessment contract would effectively prevent program administrators from paying PACE solicitors for an uninstalled product, without qualification. On occasion, in practice, a property owner agrees that a PACE solicitor should be paid, even when a project is not fully complete, and every facet of the installation may not be complete. This is because property owners voluntarily sign contracts before the entire project is completed to enable a project to be completed in a timely manner and/or to support an agreement they have made with the PACE solicitor associated with progress payments or minor aspects of project completion.

Response No. 1620.10.07: The Department has revised the language to provide that making the final payment on an assessment contract constitutes dishonest dealings if a product financed through an assessment contract is uninstalled. As noted in Response No. 1620.10.06, the Department defers to Business and Professions Code section 7159.5, paragraph (a)(5), and the CSLB for a determination of whether the work is performed, and the PACE solicitor is entitled to payment.

Comment No. 1620.10.08: Proposed subdivision (b) provided that a program administrator shall implement policies and procedures to prohibit a PACE solicitor and a

PACE solicitor agent from doing any of the described misrepresentations and other actions. Renovate supports the sentiment behind the subdivision, which appears primarily concerned with intentional misrepresentations regarding PACE financing. However, Renovate indicates that the approach taken by the Department is problematic for several reasons. Renovate provides that first, as used here, “implement policies and procedures” is vague. Renovate suggests the rule should be updated to read “create policies and procedures.” Renovate provides that second, because most actions identified in paragraphs (b)(1) through (16) are likely already regulated by other laws and regulations pertaining to in-home sales, there is no need to specifically identify these actions as they pertain to PACE and to require program administrators to enforce them. Renovate provides that third, the Department does not provide adequate consideration of the constitutional protections that apply to commercial speech. Renovate states that restrictions of speech by state actors must be sufficiently tailored to ensure that true speech is not being unconstitutionally suppressed. Whether intentional or not, Renovate suggests that the provisions within subdivision (b) are not sufficiently tailored, and would prohibit constitutionally protected commercial expression in many circumstances. Renovate provides that to be constitutionally valid, a regulation that restricts commercial speech concerning lawful activity must: (i) seek to implement a substantial governmental interest; (ii) directly advance that interest; and (iii) reach no further than necessary to accomplish the given objective. According to Renovate, many of the provisions within subdivision (b) fail to satisfy all three of the elements enumerated above, particularly the third element. Renovate suggests that even if some of the provisions would have the effect of prohibiting intentional misrepresentations, they would also sweep in a significant amount of true commercial speech. Renovate concludes that the provisions thus reach beyond what is necessary to achieve the purpose of prohibiting misrepresentations about PACE. Renovate requests this rule be withdrawn or, alternatively, that the clarification identified above be adopted so the rule reads: “A program administrator shall create policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from doing any of the following.”

Response No. 1620.10.08: The Department has accepted Renovate’s proposed clarification in part, and revised the language to provide, “The following constitute dishonest dealings and a program administrator shall create and enforce policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from doing any of the following.”

Comment No. 1620.10.09: Proposed paragraph (b)(7) provides that failing to complete the PACE eligible home improvement contract that is financed by the assessment contract constitutes dishonest dealings, unless completion of the home improvement contract is not a requirement of the assessment contract. Renovate suggests that paragraph (b)(7) is vague and overbroad. Renovate suggests that what qualifies as a “PACE eligible home improvement contract” is unclear, and the term is not defined elsewhere. Renovate recommends that the Department clarify what contracts it would consider subject to this rule. Renovate further suggests that it is also unclear whether

this rule refers to filing in all blank spaces within a home improvement contract so that it is “complete” or whether it refers to completing the work contemplated by the home improvement contract. According to Renovate, if the former, this provision would create a very specific obligation of program administrators, one which would require them to perform an administrative function on behalf of home improvement contractors, and which would also lack statutory foundation. Renovate suggests that nowhere in the PACE statutes is there a requirement for program administrators to obtain copies of home improvement contracts, let alone review them for completeness. Renovate suggests that to do so would impose an undue burden on program administrators, without a commensurate consumer protection benefit. Renovate provides that if paragraph (b)(7) instead refers to completion of the home improvement project, it appears to require program administrators to attempt to ensure that all obligations set forth in all home improvement contracts have been satisfied, rather than rely upon representations from property owners and contractors to that effect. Renovate indicates that this would also require program administrators to engage in detailed reviews of every home improvement contract and would further require them to perform on- site inspections to validate whether every obligation had been satisfied. Renovate provides that nowhere in the PACE statutes are such on-site reviews required or even contemplated. Renovate states that the burden that such a requirement would impose upon program administrators would effectively eliminate the PACE industry in California. Renovate requests this rule be withdrawn or, alternatively, that the ambiguity identified above be clarified.

Response No. 1620.10.09: To address Renovate’s concerns, the Department has revised paragraph (b)(7) to provide that failing to complete the scope of work under a home improvement contract that is financed by the assessment contract constitutes dishonest dealings and defined “home improvement contract” in subdivision (k) of section 1620.02 of the rules to provide that it has the same meaning as in Business and Professions Code section 7151.2.

Comment No. 1620.10.10: Proposed paragraph (b)(14) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and PACE solicitor agent from inflating the price of an efficiency improvement above the market price range for such improvement solely because the improvement is financed through a PACE assessment. Renovate states that this rule attempts to restrict how PACE assessed efficiency improvements are priced in a vague manner, without statutory support. Renovate suggests that program administrators would have to create policies to prevent PACE solicitors from inflating prices “above the market price range” solely because it is a PACE assessment. According to Renovate, in order to do so, program administrators would be required to determine what a market price range is in every geographical area, and ensure all pricing is within that range. Renovate suggests that how program administrators are supposed to do this is entirely unclear, and whether the Department would object to a program administrator’s determination of market price is similarly unknown. Renovate states that in practice, there is simply no

way for program administrators to carry out this immense burden. Renovate provides that this rule would almost certainly require program administrators to engage in price fixing, price discrimination, and other restraints of trade prohibited by the federal Sherman Antitrust Act and the federal Clayton Antitrust Act. Renovate suggests that such activities are by their nature harmful to competition and therefore harmful to consumers, which directly conflicts with the CFL's stated purpose of consumer protection. Renovate further provides that this rule also objectively lacks any statutory support. Renovate asserts that nowhere does the Legislature indicate its intent for the Department (or program administrators) to regulate pricing of efficiency improvements. Renovate concludes that this rule is well outside the Department's rulemaking authority and should not be promulgated. Renovate requests this rule be withdrawn. FortiFi suggests the prohibition on inflating the price standard should be if the improvement is provided above what the solicitor would otherwise provide.

Response No. 1620.10.10: The Department has considered Renovate's concerns and removed the provision. Therefore, the amendment suggested by FortiFi is unnecessary.

Comment No. 1620.10.11: FortiFi indicates that in paragraph (b)(10) regarding misrepresenting to the property owner that the assessment contract will transfer to the buyer upon the sale of the property, "misrepresenting" should be "representing." According to FortiFi, legally, a PACE lien will transfer on the sale of real property because it runs with the land, but the transaction effecting the sale of the real property might not ever close unless the assessment contract is paid off. FortiFi indicates this is because the mortgage lender in such a sale (generally, if the transaction is a conforming loan, eligible for repurchase by Fannie Mae or Freddie Mac) will require such pay off. If, on the other hand, the property sale is in cash or the mortgage financing is a "jumbo loan" or is otherwise not subject to repurchase by Fannie Mae or Freddie Mac, this may not be a requirement.

Response No. 1620.10.11: The Department agrees and has rephrased the entire provision to provide that the act constituting dishonest dealings is stating to the property owner that the assessment contract will transfer to the buyer upon the sale of the property, unless the property owner is also informed at the same time that often lenders will require the remaining balance under the assessment contract to be paid before financing or refinancing a property.

Comment No. 1620.10.12: Proposed paragraph (b)(2) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from misrepresenting to a property owner that the PACE program is a free, no cost, or subsidized government program, unless the program has those characteristics. The Consumer Coalition recommends that the language in paragraph (b)(2) be consistent with the language proposed for paragraph (a)(2) of section 1620.05: representing that the program is a free, subsidized or government program, unless the program has these characteristics.

Response No. 1620.10.12: The Department has amended the language to substantially be the same as the other section.

Comment No. 1620.10.13: Proposed paragraph (b)(2) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from mispresenting to a property owner that a PACE assessment will result in a tax credit or tax benefit unless the representation is consistent with representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency about the tax treatment of a PACE assessment. The Consumer Coalition states that the safest rule for property owners is one that prohibits any representations regarding tax impacts of a PACE assessment and limits discussions of tax impacts to the recommendation that the property owner consult with a tax professional or with the relevant taxing authority. At a minimum, however, the Consumer Coalition recommends that any exception for representation that are "consistent with representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency about the tax treatment of a PACE assessment" require that any such "representations, statements or opinions" of a tax agency be in writing and retained by the party relying on them.

Response No. 1620.10.13: The Department has revised the language to require the representations of a PACE solicitor or PACE solicitor agent be consistent with the written representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency about the tax treatment of a PACE assessment. The Department has not included the requirement that the representations be retained by the party relying on them because the requirement is not necessary, as written tax representations are readily available.

Comment No. 1620.10.14: Proposed paragraph (b)(10) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from misrepresenting to the property owner that the assessment contract will transfer to the buyer upon the sale of the property, unless the property owner is also informed that some lenders will require the remaining balance under the assessment contract to be paid before financing or refinancing a property. The Consumer Coalition recommends revising proposed paragraph (b)(10) as follows in order to avoid property owner confusion regarding the transferability of a PACE assessment: stating to the property owner that the assessment contract will transfer to the buyer upon the sale of the property, unless the property owner is also informed at the same time that many lenders will require the remaining balance under the assessment contract to be paid before financing or refinancing a property.

Response No. 1620.10.14: The Department agrees with the recommended change and has substantially amended the language to reflect this request.

Comment No. 1620.10.15: Proposed paragraph (b)(11) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a

PACE solicitor agent from misrepresenting an increase in a property's market value as a result of the efficiency improvements unless evidence supports the representation. The Consumer Coalition suggests that as written, this provision implies that a misrepresentation about an increase in a property's value as the result of a PACE-financed improvement would be permitted if there were some unspecified evidence supporting the claim. According to the Consumer Coalition, misrepresentations about this topic should never be permitted. Because the effect of a PACE improvement on a property's value is uncertain at best, and because there is no clear standard for evaluating or verifying whether there is sufficient "evidence [that] supports" representations about this issue, the Consumer Coalition recommends prohibiting representations about this topic. At a minimum, the Consumer Coalition recommends deleting the phrase "unless evidence supports the representation". The Consumer Coalition suggests that if a property owner has questions about this issue, they can be advised to consult a real estate professional.

Response No. 1620.10.15: While the Department acknowledges the concerns about representations made in during a solicitation for an efficiency improvement financed by PACE, the Department cannot disregard that evidence may support a representation regarding an increase in a property's market value. Therefore, the Department is not amending the rule to provide that any representation to this effect constitutes dishonest dealings.

Comment No. 1620.10.16: Proposed paragraph (b)(13) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from retaliating against a property owner for canceling the assessment contract during the three-day right to cancel period, including intimidating the property owner with hardship claims or threats, where a reasonable person should know that the intimidation will have the effect of physically or emotionally harming the property owner. The paragraph further states that providing true information regarding the property owner's obligations under a home improvement contract and the consequences of failing to satisfy those obligations does not constitute retaliation including intimidation. The Consumer Coalition indicates they are very concerned that the provision regarding retaliation appears to be inconsistent with Streets and Highways Code section 5940. According to the Consumer Coalition, section 5940 makes the underlying home improvement contract unenforceable if a borrower cancels the related PACE assessment contract during the three-day right to cancel period. The Consumer Coalition states that the Department should therefore delete the final sentence of this subparagraph which states, "[p]roviding true information regarding the property owner's obligations under a home improvement contract and the consequences of failing to satisfy those obligations shall not constitute retaliation including intimidation." The Consumer Coalition states that given the nature of in-home solicitations and transactions, the Consumer Coalition also recommends that the Department omit the qualifying language regarding retaliation and revise this provision to read: retaliates

against a property owner for canceling the assessment contract during the three-day right to cancel period.

Response No. 1620.10.16: The Department has made this requested change.

Comment No. 1620.10.17: Proposed paragraph (b)(14) provides that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from inflating the price of an efficiency improvement above the market price range for such improvement solely because the improvement is financed through a PACE assessment. FortiFi suggests that while this language greatly improves upon a prior draft, it still should not tie PACE pricing to the “market price range.” FortiFi notes that there is nothing in the law that requires a contractor to charge for an improvement in the “market price range,” and contractors and property owners are free to negotiate for specialized improvements or improvements that meet their tastes or quality preferences. FortiFi indicates that separately, program administrators are required to make ability to pay determinations for each financing and property owner. FortiFi states that instead, this language should tie to the statutory requirement under Streets and Highways Code section 5926 which provides that “a contractor shall not provide a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner.”

Response No. 1620.10.17: The Department agrees with FortiFi’s concern and has removed the provision.

Comment No. 1620.10.18: Proposed paragraph (b)(16) provided that a program administrator must implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from facilitating a property owner entering into assessment contracts through more than one program administrator on the same property for the same efficiency improvement. The paragraph further provided that it does not prevent a PACE solicitor or PACE solicitor agent from assisting a property owner with obtaining financing offers from more than one program administrator, provided that the property owner only enters into one assessment contract to finance each efficiency improvement and the program administrator does not provide the PACE solicitor or PACE solicitor agent information on the amount of financing for which the property owner is approved. In addition, the proposed paragraph provided that it does not prevent a PACE solicitor or PACE solicitor agent from assisting a property owner entering into an assessment contract through more than one program administrator on the same property for different efficiency improvements. According to the Consumer Coalition, this rule rightly recognizes that program administrators are the gatekeepers for safeguarding against potential solicitor fraud related to getting paid more than once for the same project. Because clients of some of the undersigned organizations have ended up with multiple assessments contracts from the same program administrator for a single project, the Consumer Coalition states that the Department should revise this subparagraph to cover that situation. In addition, the Consumer Coalition states that it is essential that the Department take steps to combat "stacking" of PACE assessments on the same

property. According to the Consumer Coalition, consumer advocates have repeatedly seen clients signed up for multiple PACE assessments, usually by the same solicitor or solicitor agent, for the same work or for work completed at or around the same time. The Consumer Coalition states that older property owners in particular are targeted in this way, and the Consumer Coalition has seen elders with as many as five separate liens. Because there is a lag time between when assessment contracts are signed and when the related assessment liens are recorded, in the absence of a real-time registry for assessment contracts in which all program administrators participate, the Consumer Coalition states that the risk to homeowners of ending up with multiple PACE assessments that place them underwater and/or make their property tax bills unaffordable remains high. In order to ensure that underwriting for subsequent assessment contracts considers all PACE assessments attached to a given property, the Consumer Coalition states that the Department should include a rule in these regulations that sets a deadline for program administrators to begin using a comprehensive real-time registry for all PACE assessment transactions. In the meantime, the Consumer Coalition indicates that the Department should prohibit a PACE solicitor or solicitor agent from facilitating a property owner entering into more than one assessment contract on the same property in any 12-month period. In order to address these issues, the Consumer Coalition states that the Department should revise this paragraph. The Consumer Coalition suggests revising the first sentence as follows: "Facilitating a property owner entering into more than one assessment contract on the same property for the same efficiency improvement." The Consumer Coalition suggests adding this language to the end of the paragraph: "[…] provided that, until such time as all program administrators are using a real-time registry that provides real-time information about all assessment contracts entered into by all program administrators, whether recorded or unrecorded, no PACE solicitor, PACE solicitor agent or program administrator may assist a property owner entering into more than one assessment contract on the same property in any 12-month period."

Response No. 1620.10.18: The Department has revised the first sentence substantially as recommended. With regard to the lien registry, the Department declines to develop a registry at this time as discussed further in Response No. 8.02, above. Further, the Department has not prohibited a PACE solicitor, PACE solicitor agent, or program administrator from assisting a property owner entering into more than one assessment contract on the same property in any 12-month period, because the CFL does not prohibit more than one assessment contract in a 12- month period where the property owner has the ability to pay for the financing.

Comment No. 1620.10.19: PACE Funding indicates that paragraphs (b)(1) through (16) pose the same problem as with subdivision (b) of section 1620.05, in that they seem to shift responsibility for policing solicitors and solicitor agents to the program administrators. PACE Funding suggests that this section should be re-written to require program administrators to report a solicitor or solicitor agent to CSLB, the Department,

or the appropriate law enforcement agency if they become aware of a solicitor or solicitor agent engaging in any of the practices listed in paragraphs (b)(1) to (16).

Response No. 1620.10.19: The Department refers to Response No. 1620.05.01 regarding a program administrator's responsibility for the actions of PACE solicitors and their PACE solicitor agents. When the licensure of PACE was enacted in AB 1284, the policy decision was to hold program administrators accountable for the actions of PACE solicitors and PACE solicitor agents enrolled by the program administrators. This structure was intended to protect property owners while at the same time avoiding having the Department directly regulate PACE solicitors and PACE solicitor agents, so that PACE solicitors and PACE solicitor agents would continue to participate in the PACE programs. As noted in Response No. 12.1, the Consumer Legal Remedies Act prohibits a mortgage broker or lender from using a home improvement contractor to negotiate the terms of any loan that is secured by the residence of the borrower that is used to finance a home improvement contract. However, the law permits program administrators to use PACE solicitors and PACE solicitor agents to solicit property owners to enter into an assessment contract, under the protections set forth in the law. While the CSLB directly licenses and registers contractors and home improvement salespersons and has responsibility for ensuring that no misrepresentations occur in the solicitation of home improvement contracts, the solicitation of PACE financing falls under the Department's jurisdiction and the jurisdiction of local agencies authorizing PACE programs.

Comment No. 1620.10.20: PACE Funding Group suggests that all program administrators should be required to make commercially reasonable efforts to check whether the property owner is entering into multiple assessment contracts at the same time by participating in a real-time lien registry.

Response No. 1620.10.20: The Department agrees with this recommendation, but the Department has not mandated participation in a private real-time lien registry. The Department has not established a registry and declines to mandate a program administrator participate in a private registry at this time because of concerns regarding the cost, the terms, the efficacy, the continued existence of such a registry, the impact on trade secrets, the impact on market share, the security, the monopoly of a single registry, and all of the other business reasons a program administrator may consider in deciding whether to participate in such a registry.

Comment No. 1620.10.21: PACE Funding suggests that regulations expressly prohibit program administrators from recording an assessment on a property prior to the complete installation of the relevant product.

Response No. 1620.10.21: The Department sees the benefit of conditioning the recording of an assessment on the complete installation of the relevant product. While the Department has not proposed the prohibition, the Department will consider the efficacy of the provisions in subdivision (a) to ensure that products subject to a PACE

assessment are installed, to determine whether PACE Funding's suggestion is necessary in future amendments to the law or regulations.

Section 1620.11. Solicitor Enrollment Standards and Processes

Comment No. 1620.11.01: Proposed subparagraph (b)(3)(D) provides that the PACE solicitor will be responsible for the actions of a PACE solicitor agent when the agent is acting on behalf of the PACE solicitor. PACE Funding indicates that the Proposed Rulemaking requires clarification in a situation where an unlicensed solicitor/solicitor agent accompanies a licensed solicitor/solicitor agent, and also where a homeowner wishes to use PACE financing after a project has begun.

Response No. 1620.11.01: A person who is not enrolled with a program administrator as a PACE solicitor or PACE solicitor agent may not solicit a property owner to enter into an assessment contract. If an individual is observing but not engaging in solicitation activities, such as for training, the individual's activity would not meet the definition of "PACE solicitor agent." If an individual is participating in solicitation activities, the individual must be enrolled. With regard to using PACE financing after a project had begun, the statutory requirements would still be applicable, such as the three- or five-day right to cancel and the prerequisites for commencing work under the home improvement contract financed by the assessment contract have been satisfied.

Comment No. 1620.11.02: As proposed, paragraph (a)(2) provides that a program administrator may not fund a home improvement contract if the PACE financing was arranged by a person not enrolled as a PACE solicitor or PACE solicitor agent. PACE Funding indicates that this restricts a solicitor/solicitor agent from effectively training new employees and restricts a program administrator from being able to observe the selling process. Renovate provides that as written, this rule creates uncertainty regarding a program administrator's potential liability. According to Renovate, it is unclear what is meant by the term "arranged." Renovate suggests that applied broadly, it could cover a wide range of otherwise innocent actions. FortiFi indicates that the language would prohibit a program administrator from "arranging" the PACE financing. FortiFi notes that the proposed rule does not define "arrange", but the language is overbroad and vague and could preclude the basic work of most program administrators, which is to arrange and provide PACE financing on behalf of California local governments and joint powers authorities thereof. Moreover, FortiFi indicates that there should be an exception here for the circumstance where the program administrator solicits the property owner for PACE financing itself, without the use of a third-party PACE solicitor or PACE solicitor agent.

Response No. 1620.11.02: The Department has amended the paragraph to provide that a program administrator may not fund a home improvement contract if the PACE financing was solicited by a person not enrolled as a PACE solicitor or PACE solicitor agent unless the person was not required to be enrolled as a PACE solicitor or PACE solicitor agent at the time of solicitation. The Department does not restrict a new

employee or a program administrator from observing the selling process. However, a new employee must complete the introductory training and testing, and complete the program administrator's enrollment process, prior to engaging in the solicitation of property owners.

Comment No. 1620.11.03: Proposed subparagraph (b)(3)(C) conditions the enrollment of PACE solicitors to those who agree that the PACE solicitor will not begin work on a home improvement contract if the property owner enters into the home improvement contract based on the reasonable belief that the work would be covered by the PACE program, and the property owner cancels the PACE financing within the right to cancel period or is not approved for PACE financing. PACE Funding indicates that this is problematic in scenarios where a homeowner was going to pay cash or utilize other financing, but then switches to PACE after a project begins because other financing has not come through or personal finances are no longer available.

Response No. 1620.11.03: As the Department indicated in Response No. 1620.02.03, the statutory requirements continue to be applicable where PACE Funding is initiated at a time other than the beginning of a project, such as the three- or five-day right to cancel and the prerequisites for commencing work under the home improvement contract financed by the assessment contract have been satisfied. These provisions are in statute and therefore cannot be amended by regulation.

Comment No. 1620.11.04: FortiFi suggests that the term "arranged" in proposed paragraph (a)(2) is too broad. As proposed paragraph (a)(2) provided that a program administrator may not fund a home improvement contract if the PACE financing was arranged by a person not enrolled as a PACE solicitor or PACE solicitor agent. The Consumer Coalition also indicates that it is not clear what the phrase "PACE financing was arranged by" means in this provision prohibiting funding projects when the relevant parties are not enrolled as PACE solicitors or solicitor agents.

Response No. 1620.11.04: The Department agrees and amended the provision to change "arranged" to "solicited," for clarification.

Comment No. 1620.11.05: Renew suggests the section be amended to clarify the other persons who may be authorized to arrange the PACE financing.

Response No. 1620.11.05: The Department has clarified in paragraph (a)(2) that if a person is not required to be enrolled as a PACE solicitor or PACE solicitor agent at the time of solicitation, then the restriction on funding a home improvement contract solicited for PACE financing by a person not enrolled as a PACE solicitor or PACE solicitor agent is not applicable. This provision is intended to clarify that in some instances, persons not enrolled may solicit property owners for PACE financing.

Comment No. 1620.11.06: The Consumer Coalition indicates experience has shown that the stacking of PACE assessments is a very real problem. The Consumer Coalition is concerned about lien stacking. The Consumer Coalition suggests that subparagraph

(b)(3)(A) requires revision in order to ensure that property owners are sufficiently protected against this practice. Subparagraph (b)(3)(A) provides that a PACE solicitor may only solicit a property owner for approved efficiency improvements but provides that the restriction does not prohibit a PACE solicitor from offering other types of financing. The Consumer Coalition recommends amending the section similar to Comment No. 1620.10.18, providing that, until a real-time registry is established, no PACE solicitor may assist a property owner entering into more than one assessment contract on the same property in any 12-month period.

Response No. 1620.11.06: For the same reasons as set forth in Response No. 1620.10.18, the Department is not including this requirement in the regulation.

Comment No. 1620.11.07: Subparagraph (b)(3)(B) provides that a PACE solicitor must deliver a copy of the assessment contract and the disclosures required by Streets and Highways Code section 5898.16 or 5898.17 to a property owner, if under the arrangement with the program administrator, the PACE solicitor agrees to deliver these documents. The Consumer Coalition suggests that the subparagraph includes an unnecessary caveat relating to the delivery of the assessment contract and important disclosures to the property owner, mandating that a solicitor is only responsible for this task where they have an arrangement with the program administrator to do so. In the Consumer Coalition's view, this could best be ameliorated by making it clear program administrators are responsible for the actions of the PACE solicitors and their agents. The Consumer Coalition recommends striking the last clause that provides, "if under the arrangement with the program administrator, the PACE solicitor agrees to deliver these documents."

Response No. 1620.11.07: The provision intended to only place the obligation on PACE solicitors to deliver the notice if that is the agreement between the program administrator and the PACE solicitor. For example, the program administrator may directly provide these notices to the property owner, such as providing them electronically, and not rely on the PACE solicitor for delivery of these important disclosures. Thus, the language qualifies the requirement that the PACE solicitor must deliver the disclosures, because that may not be the arrangement between the parties and is necessary for this purpose. To clarify the requirement, the Department has added, "This provision shall not relieve a program administrator from any obligation to ensure a property owner receives the PACE disclosures required by law."

Comment No. 1620.11.08: Subparagraph (b)(3)(C) provides that the enrollment process must include provisions that restrict enrollment to PACE solicitors who agree not to begin work on a home improvement contract during the three-day right to cancel, unless the property owner waives the right to cancel under the provisions regarding emergency repairs that authorize waivers. The Consumer Coalition indicates that the three-day right to cancel is a critical consumer safeguard for home-solicited property owners, and consumer advocates have received multiple similar accounts of property owners being signed up for onerous financing by tapping on an iPad or smartphone. The Consumer

Coalition indicates that most often, their low-income clients do not realize they are applying for financing at all, and the three-day right to cancel in the underlying home improvement contract provides some back-stop protection when property owners receive a copy of the assessment contract and realize they cannot afford the improvement. In the Consumer Coalition's view, there should be no opportunity for property owner to waive this very important right, save for in the most exceptional circumstances.

Response No. 1620.11.08: The Department notes the concerns with the waiver process authorized by section 5940 of the Streets and Highways Code.

Comment No. 1620.11.09: In response to subparagraph (b)(3)(D), which provides that the enrollment process must include provisions that restrict enrollment to PACE solicitors who agree to be responsible for the actions of a PACE solicitor agent when the agent is acting on behalf of the PACE solicitor, the Consumer Coalition commends the Department's recognition that PACE solicitors must be responsible for the acts of their agents. However, in the Consumer Coalition's view, it is imperative that program administrators bear clear liability for the transgressions of their PACE solicitors. According to the Consumer Coalition, as the Commissioner recognized during the August 2019 PACE Stakeholder meeting, the program administrators lay the blame for the majority of consumer complaints about PACE at the door of contractors, yet their business model relies on those same contractors to market and sell their financial products.

Response No. 1620.11.09: The Department notes that subdivision (b) of section 22689 provides that a program administrator is subject to the enforcement authority of the Commissioner for any violations of the CFL, to the extent those violations have been committed by a PACE solicitor authorized by that program administrator, in connection with activity related to that program administrator.

Comment No. 1620.11.10: In response to subparagraph (b)(3)(F), which provides that the enrollment process must include provisions that restrict enrollment to PACE solicitors who agree to notify the program administrator of unresolved property owner inquiries and complaints regarding the assessment contract, the Consumer Coalition suggests that there is no time limit associated with the rule, and the Consumer Coalition believes it should be broadened to include complaints or unresolved issues related to the home improvement contract. The Consumer Coalition suggests that given that complaints relating to the home improvement contract may create liability for the program administrators, the Consumer Coalition anticipates the program administrators will benefit by being placed on notice of such complaints. The Consumer Coalition recommends amending this subparagraph to provide that the PACE solicitor will notify the program administrator on a monthly basis of all property owner inquiries and complaints regarding the assessment contract or the related home improvement contract, noting which inquiries or complaints have not yet been resolved to the property owner's satisfaction. Renovate suggests that this rule exceeds the Department's

rulemaking authority. According to Renovate, neither the PACE statutes nor any other provision of law imposes notification requirements on PACE solicitors. Renovate suggests that section 22683 of the Financial Code sets forth the only requirement in the PACE statutes relating to the complaint handling process, and it applies only to program administrators, not PACE solicitors: "[a] program administrator shall develop and implement policies and procedures for responding to questions and addressing complaints as soon as reasonably practicable." According to Renovate, from this one provision, the Department purports to impose reporting requirements not just on program administrators, but also on PACE solicitors. Renovate suggests that this exceeds the scope of the Department's rulemaking authority.

Response No. 1620.11.10: The Department has amended the provision to provide that the PACE solicitor will notify the program administrator of property owner inquiries and complaints regarding the assessment contract and the home improvement contract that are unresolved to the property owner's satisfaction for a month or more. The Department believes adding a time period is helpful since it will identify complaints that have not been resolved. Also, including complaints about home improvement contracts financed by PACE assessments are helpful because these complaints will alert program administrators to the possibility that work under the contract may be outstanding. The Department is not requiring monthly reporting because this requirement is neither practical nor necessary, given that PACE solicitors are typically contractors engaged in construction. The Department disagrees that it lacks authority to adopt this rule. Among other things, a program administrator must monitor a PACE solicitor's compliance with the law and having a PACE solicitor agree to keep the program administrator informed about outstanding complaints related to projects with PACE financing provides a means for the program administrator to monitor compliance.

Comment No. 1620.11.11: The Consumer Coalition recommends adding a subparagraph under paragraph (b)(3) to restrict PACE solicitors or their agents from arranging PACE financing for property owners with reverse mortgages, a practice that the program administrators currently licensed in California have signaled their commitment to end.

Response No. 1620.11.11: The Legislature has amended the law to prohibit PACE financing on properties with reverse mortgages, and therefore adding a provision in this section is unnecessary.

Comment No. 1620.11.12: In response to subparagraph (b)(3)(H), which provides that the enrollment process must include provisions that restrict enrollment to PACE solicitors who agree to only advertise a PACE program in accordance with the program administrator's procedures to prevent deceptive advertising and will maintain advertising as required by the program administrator to conduct a periodic compliance review, Renovate suggests that the compliance review as contemplated by this rule imposes a substantial burden on both program administrators and PACE solicitors. For instance, Renovate suggests it requires PACE solicitors to maintain every advertisement and

provides no time limit for how long those advertisements must be maintained. Renovate indicates the rule is overbroad, as it fails to limit the advertising retention to advertising related to a PACE program. According to Renovate, as drafted, even if the PACE solicitor places an advertisement for a service having nothing to do with a PACE program, the PACE solicitor must still retain that advertisement for review. Renovate suggests that neither the PACE statutes nor any other provision of law imposes any obligation on PACE solicitors to maintain advertising, and to the extent this rule does so, it exceeds the Department's statutory authority. Renovate indicates that the burdens imposed on program administrators are just as onerous, and perhaps even greater. Unlike some of the Department's other proposed regulations, Renovate suggests that program administrators would not be permitted to review a mere sample of advertisements. Instead, Renovate suggests that this rule could be construed to require a program administrator to review all advertisements placed and maintained by PACE solicitors, regardless of subject matter and regardless of how long ago they were made.

Response No. 1620.11.12: Subparagraph (b)(3)(H) has been amended to clarify that it is only applicable to advertising of PACE financing. The Department disagrees with the burdens described by Renovate. The Department has determined that it is reasonable to limit enrollment to PACE solicitors who agree to only advertise a PACE program in accordance with the program administrator's procedures to prevent deceptive advertising. It is further reasonable to limit enrollment to PACE solicitors who agree to maintain advertising of PACE financing as required by the program administrator to conduct a periodic compliance review. The program administrator can define the advertising to be maintained that corresponds to the procedures implemented by the program administrator for the review of a sampling of advertising as required by paragraph (b)(1) of section 1620.15 of these rules. Since the program administrator must review a sample of the advertising related to PACE, it is reasonable to require the PACE solicitor to maintain its advertising related to PACE financing.

Comment No. 1620.11.13: In response to subparagraph (b)(3)(J), which provides that the enrollment process must include provisions that restrict enrollment to PACE solicitors who agree to maintain a process for responding to complaints about PACE financing that includes any requirements developed by the program administrator to expedite resolution of the complaints and to review complaint resolutions as a component of the periodic review of the PACE solicitor, Renovate indicates that the rule exceeds the bounds of the PACE statutes. Renovate states that the Department lacks statutory authority to require PACE solicitors to maintain processes as a component of the periodic review. Renovate states that to be sure, the Department is authorized to require program administrators to establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents. However, Renovate states that the Department may not piggyback off that grant of authority and impose similar obligations on PACE solicitors.

Response No. 1620.11.13: The Department has determined that it is reasonable and within its authority to require a program administrator to condition the enrollment of PACE solicitors to those solicitors who agree to maintain a process for responding to complaints about PACE financing that include any requirements developed by the program administrator. Under subdivision (g) of section 22680, PACE solicitors must maintain the minimum qualifications under section 22680 to remain enrolled. Under paragraph (e)(3) of section 22680, a minimum qualification includes that the PACE solicitor may not have a clear pattern of failing to timely receive and respond to property owner complaints. This rule is consistent with ensuring that a PACE solicitor does not fail to timely receive or respond to property owner complaints. Further, section 22683 requires a program administrator to develop and implement policies and procedures for addressing complaints. If the complaints related to PACE financing are received by PACE solicitors, a program administrator would need a PACE solicitor to have a process for responding to the complaints.

Comment No. 1620.11.14: The Consumer Coalition provides that, while pleased to see a rule that requires the program administrators to develop a process to evaluate publicly available information about PACE solicitors and their agents in subdivision (c), program administrators should also be required to track complaints against PACE solicitors/agents that are reported to the program administrator directly by property owners, and that appear in the monthly reports they should receive from the solicitors themselves. In addition, there appears to be no guidance under subparagraph (c)(1)(D) as to the frequency with which the administrators should review the publicly available information, which we believe should be checked at least annually.

Response No. 1620.11.14: The provisions in section 1620.11 are applicable to the enrollment of a PACE solicitor, whereas requirements related to ongoing monitoring are set forth in section 1620.14 and requirements for periodic reviews are set forth in section 1620.15 of the rules. Therefore, section 1620.11 does not include those provisions.

Comment No. 1620.11.15: Proposed subdivision (c) stated that a program administrator must develop and implement a written process to evaluate publicly available information on a PACE solicitor for the purpose of obtaining information on the expected future performance of a PACE solicitor and a PACE solicitor agent. Renovate indicates that as written, the rule exceeds the Department’s regulatory authority under the PACE statutes in multiple respects. According to Renovate, paragraph (b)(1) of Financial Code section 22680 directs program administrators to establish and maintain a process for enrolling PACE solicitors, which shall include “[a] review of readily and publicly available information regarding each PACE solicitor.” Renovate suggests that by contrast, subdivision (c) of rule 1620.11 omits the “readily” requirement entirely. Renovate states that this qualifier is crucial because it defines the scope of the program administrator’s inquiry. Under the statutory language, Renovate states that the program administrator is not required to conduct an exhaustive public records search, and instead may rely on

information that is readily available to it. Renovate concludes that the Department exceeds its legal authority because it fails to track the language of the PACE statutes. Renovate provides that second, there is no statutory provision obligating program administrators to evaluate the “expected future performance” of PACE solicitors or PACE solicitor agents, and the phrase itself appears nowhere in the PACE statutes. Renovate argues that it is also unintelligibly vague: it is unclear what “future performance” the rule is referring to, the scope of time it covers, and it is equally unclear what information the program administrator should rely on in making that determination. Renovate states that reliance on all “publicly available information” is unworkably vague. Renovate continues, in addition, even accepting for the sake of argument that authority for such an evaluation might be permissible under subdivision (e) of Financial Code section 22680, a program administrator is only obligated to evaluate a PACE solicitor, not a PACE solicitor agent. According to Renovate, paragraph (e)(2) of Financial Code section 22680 states that “[a] program administrator shall not enroll a PACE solicitor if, as a result of the review conducted as part of the program administrator’s enrollment process, the program administrator finds… [a] high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law.” Thus, Renovate concludes that while a program administrator must deny enrollment if the program administrator finds a high likelihood that the PACE solicitor will not comply with applicable law in the future, no similar provision exists for PACE solicitor agents. Renovate suggests that by requiring the program administrator to obtain information on the expected future performance of PACE solicitor agents, the Department exceeds its statutory authority.

Response No. 1620.11.15: To respond to Renovate’s concerns, the Department has rephrased the requirement to provide that a program administrator must establish and maintain a written process to evaluate readily and publicly available information on a PACE solicitor for the purpose of obtaining information on the qualifications of a PACE solicitor and a PACE solicitor agent for enrollment, and to conduct the review of the PACE solicitor required by subdivision (e) of Financial Code section 22680 and section 1620.13 of these rules.

Comment No. 1620.11.16: The Consumer Coalition sees no reason to limit the evaluation of past civil and criminal actions, license discipline and consumer complaints involving the PACE solicitor under subparagraph (c)(3)(A) only to those “related to the functions of a PACE solicitor.” According to the Consumer Coalition, such a limitation would cabin the review to complaints about the application for PACE financing whereas a broader review would highlight other critical issues such as (but not limited to) whether the solicitor has a history of shoddy workmanship, price gouging, using dangerous/prohibited materials, failing to get necessary permits, elder abuse, and loaning out contractor licenses, and this provision should be broadened accordingly.

Response No. 1620.11.16: The Department has considered this recommendation, but the Department has no basis for requiring a program administrator to consider actions

unrelated to the functions of a PACE solicitor. The Department considers all of the topics identified by the Consumer Coalition as ones related to the functions of a PACE solicitor, and therefore Department believes the provision is sufficiently broad.

Comment No. 1620.11.17: Proposed subparagraph (c)(3)(B) provided that in establishing the standards for evaluating public information about a PACE solicitor, the program administrator shall consider the frequency of activity, the volume of the activity, the egregiousness of the activity, the time since the activity, evidence of rehabilitation, restitution, and accountability. Renovate states that subdivision (c)(3) directs program administrators to "establish standards for evaluating public information obtained pursuant to this rule to guide the program administrator in making any of the findings in subdivision (e) of Financial Code section 22680," but rather than permitting program administrators to carry out that task, subparagraph (c)(3)(B) effectively establishes those standards by fiat. Renovate suggests that duty is reserved for program administrators, not the Department. According to Renovate, in addition to usurping the program administrator's role, the standards promulgated by the Department are vague and difficult to apply. Renovate suggests that it is unclear, for instance, what constitutes an "egregious[]" activity. Renovate asks, is an act egregious only if it is criminal? Only if it is a felony? Renovate states the program administrator is left to guess. Renovate further provides that it is equally uncertain if any of these standards is dispositive, such that (for instance) a single "egregious" act would preclude enrollment as a PACE solicitor, despite the act having occurred long ago and there being evidence of both rehabilitation and restitution. As currently drafted, Renovate suggests that it is unknown whether certain factors should be given more weight than others, making compliance difficult, if not impossible.

Response No. 1620.11.17: In response to Renovate's concern, the Department has changed "the egregiousness of the activity" to "whether the activity resulted in consumer harm." The Department disagrees that it has established the standards that the program administrator must consider, but it has set forth factors that are required for establishing the standards. With respect to giving weight to the factors, these are the standards to be established by the program administrator.

Comment No. 1620.11.18: The Consumer Coalition suggests that subparagraph (d)(1)(D), which sets forth reporting requirements for PACE solicitors without a CSLB license number, appears to allow for PACE solicitors to operate without a CSLB license. The Consumer Coalition indicates that where a PACE solicitor is also a contractor, there should be no circumstance in which they can operate as a PACE solicitor without a CSLB license, and the rule should make this clear.

Response No. 1620.11.18: The definition of PACE solicitor in Financial Code section 22017 is different from the definition of a contractor in the Contractors State License Law, and the law does not require a PACE solicitor to be a contractor. Subparagraph (d)(1)(D) provides that if a PACE solicitor is not a contractor, the program administrator must maintain in its books and records documentation supporting the reason that the

solicitor is not subject to licensure by the Contractors State License Board. This provision is intended to allow the Department to ensure that PACE assessments are not used to finance unlicensed contractor activity. The Department believes this framework protects consumers and the Department does not need to adopt a rule stating that contractors must be licensed by the CSLB because that is already law.

Comment No. 1620.11.19: Subparagraph (d)(2)(A) requires a program administrator to transmit to the Department the following information in a .TXT file: the program administrator legal name, the name under which the program is marketed, the NMLS ID of the program administrator, the PACE solicitor legal business name, the Contractors State License Board license number of the PACE solicitor or “exempt” if the PACE solicitor is not licensed by the Board, the physical address of the PACE solicitor, the business phone number of the PACE solicitor, the primary business email address of the PACE solicitor, the status of the enrollment (whether enrolled or not enrolled); the tracking number used by the program administrator for the PACE solicitor, and a contact name and number for the PACE solicitor. Renovate indicates that subparagraph (d)(2)(A) commandeers program administrators and requires them to collect a wide variety of information on behalf of the Department. Renovate states that no provision of the PACE statutes obligates program administrators to collect or maintain this information, nor is there any provision requiring program administrators to provide it to the Department. Renovates states that there is also no conceivable benefit to consumers by requiring program administrators to do so, particularly when in many cases, this information can already be obtained from the Contractors State License Board. According to Renovate, even if the PACE solicitor is not licensed with the CSLB, much of the information is publicly available, which the Department can obtain just as easily as program administrators. Renovate states that the PACE statutes do not envision program administrators becoming data repositories for all PACE solicitors, and this rule’s attempt to do so would be unwieldy and expensive.

Response No. 1620.11.19: Subdivision (a) of Financial Code section 22682 requires a program administrator to notify the Commissioner of each PACE solicitor and PACE solicitor agent enrolled by the program administrator. By rule, the Department is requesting basic information about the identity and CSLB license information about the PACE solicitor. The Department has set forth the reasons for collecting the information in the initial statement of reasons accompanying the rulemaking, and the Department disagrees with all of the concerns that Renovate has raised regarding the submission of the information. Financial Code section 22680 sets forth requirements related to the enrollment of PACE solicitors, and from a practical standpoint, compliance with the provisions would provide the program administrator with the information required under this rule. The Department has considered the burden of obtaining this information and determined that the benefits outweigh the burden.

Comment No. 1620.11.20: Subparagraph (d)(2)(B) sets forth additional instructions for a PACE solicitor to submit information on PACE solicitors, and provides that the data

must include the following conditional fields: if the PACE solicitor does not have a Contractors State License Board license, then the program administrator shall provide the federal Employer Identification Number (EIN) of the PACE solicitor; and if the enrollment status of the PACE solicitor is canceled or withdrawn, then the program administrator shall provide the date enrollment ended. Renovate suggests that this rule suffers from the same deficiencies identified with respect to subparagraph (d)(2)(A). According to Renovate, generally, program administrators will have no reason to know a PACE solicitor's EIN (if the PACE solicitor even has an EIN). Renovate provides that there is no requirement in the PACE statutes that they maintain this information, and certainly no requirement that they provide that information to the Department. Renovate provides that at least with regard to EINs, the Rule should be redrafted so as not to burden program administrators with obtaining and retaining this information.

Response No. 1620.11.20: The Department disagrees with Renovate's comments. An EIN is necessary to identify a PACE solicitor who does not maintain a CSLB license. According to consumer advocates, the media, and complaints received by the Department and other agencies, a significant amount of fraudulent activity has occurred with respect to PACE financing. Identifying information about PACE solicitors is necessary for the Department to protect property owners from bad actors. The Department has considered the burden of obtaining this information and determined that the benefits outweigh the burden.

Comment No. 1620.11.21: Subparagraph (d)(3)(A) requires a program administrator to transmit to the Department the following information about a PACE solicitor agent in a .TXT file: the program administrator legal name, the NMLS ID of the program administrator, the first and last name of each PACE solicitor agent, the phone number of the PACE solicitor agent, the contact email of the PACE solicitor agent, the identification number used by the program administrator to track the PACE solicitor agent, the mailing address of the PACE solicitor agent, the enrollment date of the PACE solicitor agent, the enrollment status of the PACE solicitor agent (enrolled or not enrolled), the identity of the PACE solicitor employing or retaining the PACE solicitor agent, and the program administrator's identification number for the PACE solicitor employing or retaining the PACE solicitor agent. Renovate states that this rule requires program administrators to report similar categories of information as subparagraph rule 1620.11(d)(2)(A) but is even more burdensome and difficult to comply with. Renovate state that rather than being asked to provide the Department with information about PACE solicitors—and, as already stated, such a request has no basis in law—this rule obligates program administrators to provide to the Department information about PACE solicitor agents. Renovate indicates the sheer volume of documentation contemplated by this rule is massive: program administrators will generally enroll numerous PACE solicitors, each of whom in turn may work with numerous PACE solicitor agents. As already indicated, Renovate indicates there is no statutory obligation for program administrators to collect, maintain, or provide to the Department the information referenced in this rule. Renovate

indicates that doing so would require an enormous commitment of time and money by program administrators and would provide no benefit to consumers.

Response No. 1620.11.21: Subdivision (a) of Financial Code section 22682 requires a program administrator to notify the Commissioner of each PACE solicitor and PACE solicitor agent enrolled by the program administrator. By rule, the Department is requesting basic information about the identity of PACE solicitor agents who are soliciting property owners to enter into assessment contracts. The Department has set forth the reasons for collecting the information in the initial statement of reasons accompanying the rulemaking, and the Department disagrees with all of the concerns that Renovate has raised regarding the submission of the information. Financial Code section 22680 requires a program administrator's enrollment process for a PACE solicitor agent to include a background check of each PACE solicitor agent, and therefore the Department believes it is reasonable for a program administrator to have identifying information about each PACE solicitor agent. The Department has considered the burden of obtaining this information and determined that the benefits outweigh the burden.

Comment No. 1620.11.22: Subparagraph (d)(3)(C) provides that data on a PACE solicitor agent reported to the Department must include the following fields, if the following information is available to the program administrator and applicable to the PACE solicitor agent: the PACE solicitor agent's middle name, and the PACE solicitor agent's CSLB Home Improvement Salesperson (HIS) number. Renovate suggests the rule raises the same issues as other comments about reporting information on PACE solicitors and PACE solicitor agents to the Department. According to Renovate, it imposes reporting obligations on program administrators that have no basis in the PACE statutes and does so at great cost to the program administrator. Renovate indicates this rule piles on in those respects but adds an additional caveat that the reporting requirements here are triggered only if the information is "available to the program administrator." Renovate suggests the meaning of the term "available" is unclear in this context. Renovate states that Merriam-Webster defines "available" to mean "possible to get." According to Renovate, under this literal definition, all information contemplated under this rule is "possible to get" so long as enough resources are expended. Renovate believes this rule is both unauthorized by statute and unduly burdensome. Nonetheless, if the Department is committed to enacting some version of this Rule, Renovate respectfully proposes the following language: "The data shall include the following fields, if the following information is already in the possession and control of the program administrator and applicable to the PACE solicitor agent: the PACE solicitor agent's middle name, and the PACE solicitor agent's CSLB Home Improvement Salesperson (HIS) number."

Response No. 1620.11.22: The Department has revised the subparagraph to request the middle name of the PACE solicitor agent if available to the program administrator, but to require the PACE solicitor agent's CSLB Home Improvement Salesperson (HIS)

registration number unless the PACE solicitor agent is not required to be registered with the CSLB. The Department requires this information to identify PACE solicitor agents, since many names are the same, and further to identify which PACE solicitor agents have complied with the CSLB's registration process for home improvement salespersons, which includes a criminal history background check. This information is necessary to protect property owners in the PACE solicitation process. The Department has considered the burden of obtaining this information and determined that the benefits outweigh the burden.

Section 1620.12. PACE Solicitor Agent Enrollment Standards and Processes

Comment No. 1620.12.01: The Consumer Coalition believes consumers' interests would best be served by mandating that solicitor agents undergo re-enrollment and that program administrators update background checks and CSLB license checks at least annually.

Response No. 1620.12.01: The Department has considered this request and does not agree that the re-enrollment is necessary. Based on the annual reports submitted by program administrators and the data on PACE solicitors and PACE solicitor agents, many solicitors and agents are enrolled and authorized to provide PACE financing, but not necessarily facilitating transactions. The burden of repeated enrollment and background checks for the ability to offer PACE financing would impose costs that the Department does not believe support the benefits.

Comment No. 1620.12.02: Paragraph (c)(2) sets forth requirements for a background check of a PACE solicitor agent if a program administrator conducts its own background check. The Consumer Coalition recommends expanding the list of items to be checked to include: an assessment of the number and nature of any lawsuits filed against the PACE solicitor agent in the past three years and the engagement in any act that would constitute grounds for license revocation.

Response No. 1620.12.02: With regard to lawsuits, the Department has included a review of court filings involving fraud, dishonesty, or deceit. With respect to acts that would constitute grounds for license revocation, the Department has added that the background check should include whether a CSLB license or registration has been denied or revoked. The Department believes that the requirements capture the information that a program administrator could reasonably ascertain about a PACE solicitor agent.

Comment No. 1620.12.03: Subparagraph (c)(2)(A) provides that if a program administrator conducts its own background check of a PACE solicitor agent, the background check must be designed to identify, among other things, whether the PACE solicitor agent has been convicted of a crime as provided in subdivision (a)(2) of Business and Professions Code section 480. Renovate states that the rule incorporates Business and Professions Code section 480(a)(1) and would require the background check identify convictions "that [are] substantially related to the qualifications, functions,

or duties of the business or profession for which the application is made." According to Renovate, this standard is vague—background check companies and program administrators cannot be sure which crimes would fit within this standard and which would not. Subparagraph (c)(2)(A) should be clarified to specifically state what crimes a background check must identify.

Response No. 1620.12.03: The Department has amended the language to instead provide that the background check must be designed to identify whether the PACE solicitor agent has been convicted of or pleaded nolo contendere to a crime involving dishonesty, fraud, or deceit.

Comment 1620.12.04: Subparagraph (c)(2)(B) provides that if a program administrator conducts its own background check of a PACE solicitor agent, the background check must be designed to identify, among other things, whether the PACE solicitor agent has engaged in any act involving dishonesty, fraud, or deceit as provided in subdivision (a)(2) of Business and Professions Code section 480. Renovate provides that subparagraph (c)(2)(B) imposes significant burdens on program administrators. Rather than relying on publicly available information, Renovate indicates this section requires program administrators to undertake a fact-finding mission to determine whether the person has ever committed a dishonest, fraudulent, or deceitful act. As written, Renovate indicates this provision is not limited to whether the person has ever been punished or disciplined for their conduct. Rather, Renovate states it applies to the person's entire life, and whether they have "engaged" in certain conduct, without regard for whether law enforcement or a regulatory authority has taken any action against the person. Renovate states that it is unclear what steps would be required in order to make such a determination, but they are likely to be far more intrusive than a standard background check – and no standard background check will offer what is sought in section 1620.12(c)(2)(B). Renovate indicates that program administrators generally do not have devoted investigative units and are ill-equipped to carry out these tasks.

Response No. 1620.12.04: The Department has clarified that a program administrator may rely on publicly available information by adding to the provision, "which can be ascertained through court filings or public records of administrative actions." A program administrator may reduce the regulatory burden by enrolling PACE solicitor agents licensed or registered with the CSLB, by outsourcing the background check, or by subscribing to electronic services that provide the information. However, by statute, a background check is required for enrollment.

Comment No 1620.12.05: Subparagraph (c)(2)(C) provides that if a program administrator conducts its own background check of a PACE solicitor agent, the background check must be designed to identify, among other things, whether the PACE solicitor agent has engaged in any act that would constitute grounds for discipline under Financial Code section 22690. Renovate indicates that the same issues are apparent with subparagraph (c)(2)(C) as described for subparagraph (c)(2)(B) in Comment No. 1620.12.04. Renovate states that whether a PACE solicitor agent has "engaged in any

act that would constitute grounds" would require program administrators to conduct fact finding and in most instances could not be ascertained through a background check without a conviction or something similar. Accordingly, Renovate requests that the Department limit subparagraphs (c)(2)(B) and (C) of section 1620.12 to a criminal conviction or civil liability, which background checks would be more likely to capture.

Response No. 1620.12.05: Subparagraph (c)(2)(C) requires a program administrator to investigate whether the individual seeking enrollment as a PACE solicitor agent has engaged in activities the violate the CFL or rules. These include the misrepresentations identified in section 1620.10 of these rules, and this investigation is critical to keeping bad actors out of PACE. To address concerns regarding the burden, the Department has added the clause "which can be ascertained through court filings or public records of administrative actions." This amendment reduces the burden of the provision.

Comment No. 1620.12.06: Paragraph (d)(1) provides that a program administrator must require each PACE solicitor agent to complete an introductory training that addresses the topics listed in subdivision (c) of Financial Code section 22681 and to pass a test that measures the PACE solicitor agent's knowledge and comprehension of the training material. The Consumer Coalition indicates that the proposed rule mandates introductory training and the passing of a test by PACE solicitors and agents but gives no indication of the standards required nor of the methods of administration. The Consumer Coalition recommends amending this subparagraph to state that the Department will create and administer the test that solicitors and solicitor agents need to pass in order to operate.

Response No. 1620.12.06: Financial Code section 22681 requires the program administrator to establish and maintain the training program, and therefore the Department will not be developing and administering the test. The Department acknowledges that the rules do not have standards for the test and will continue to evaluate the need for standards. Financial Code section 22681 provides that the test is part of the introductory training, whereas the six hours of education can occur up to three months after the test. Because of this timeline with the bulk of education occurring after the test, the Department notes that the amount of material that may be covered in the test may be less than covered in the subsequent six hours of education.

Comment No. 1620.12.07: Paragraph (d)(2) provides that a program administrator must require a PACE solicitor agent to complete the introductory training required by subdivision (b) of Financial Code section 22681 prior to soliciting a property owner to enter into an assessment contract on behalf of the program administrator. The Consumer Coalition recommends the Department add that the PACE solicitor agent must also pass the associated test.

Response No. 1620.12.07: The Department agrees and has made the change.

Comment No. 1620.12.08: Subdivision (e) provides that a program administrator may conditionally enroll a PACE solicitor agent if the program administrator completes the

requirements for conditional enrollment set forth in the subdivision but is waiting for the results of a fingerprint background check from the CSLB. The Consumer Coalition indicates that given the importance of all of the applicable enrollment criteria, a person should not be able to engage in any PACE-related activities limited to enrolled persons without first meeting all of those criteria. The Consumer Coalition indicates that the Department should delete this provision. The Consumer Coalition states that if the Department does not delete the provision, the rule should state that in the event a conditionally enrolled solicitor agent does not receive the required licensure or registration within a prescribed period of time, any contracts in which that individual was involved will be null and void.

Response No. 1620.12.08: The Department has considered the Consumer Coalition's request, but since the conditional enrollment requirements are substantially similar to a non-conditional enrollment, the Department does not share the Consumer Coalition's concerns. The Department declines to invalidate an assessment contract between a program administrator, or local agency, and a property owner, by rule, because a PACE solicitor agent did not receive the required licensure or registration within a prescribed period of time. The Department does not view this remedy as practical or necessary, without any evidence of fraud or other bad acts, and the Department makes no representation regarding whether it is within its authority to take such an action.

Section 1620.13. Enrollment Denial

Comment No. 1620.13.01: Paragraph (a)(1) provides that a program administrator may not enroll a PACE solicitor if as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds, among other things, a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions. Subparagraph (a)(1)(A) provides that a clear pattern may be evidenced by recurring complaints regarding the PACE solicitor in the same geographical area that alleges deception, misrepresentation, or omission of a material fact, or where the complaints contain information that suggests a pattern of dishonest business practices. The Consumer Coalition suggests that the standard for establishing a "clear pattern" of consumer complaints about dishonest business practices set forth in the draft rule is too narrow. The Consumer Coalition states that, as written, the proposed rule confines a "clear pattern" to "more than one complaint in the same geographical area." According to the Consumer Coalition, given that many PACE solicitors and program administrators work in multiple regions of the state, there is no good reason for disregarding multiple complaints merely because they occurred in different geographical areas. Moreover, the Consumer Coalition indicates that the term "same geographical area" is not defined and could be interpreted extremely narrowly by a program administrator to mean just a specific city or even neighborhood. For the same reason, The Consumer Coalition states that the Department should delete the clause "in the same geographical area" where it appears in this subsection as well as in subparagraph (a)(1)(C). In addition, the Consumer Coalition provides that this

subsection should also reflect an expanded list of the types of recurring complaints to include complaints of shoddy workmanship, price gouging, or any other practice that could result in civil or criminal prosecution, or license suspension.

Response No. 1620.13.01: The Department agrees, in part, and has removed the reference to the same geographical area in renumbered subdivision (b) and paragraph (b)(2). The Department does not agree that the list of complaints should be expanded. With respect to shoddy workmanship, the Department notes that the subject of workmanship is the CSLB's jurisdiction. However, the Department's proposed list includes complaints that suggest a pattern of dishonest business practices, and the Department believes this phrase is sufficiently broad to encompass various types of bad behavior.

Comment No. 1620.13.02: Proposed clause (a)(1)(E)(2) provided that the acts of a PACE solicitor agent acting on behalf of a PACE solicitor shall not be considered when considering whether a clear pattern of consumer complaints is present, if, among other things, the conduct giving rise to the complaint was not sanctioned or otherwise expressly or implicitly authorized by the PACE solicitor. The Consumer Coalition states that generally, whether an employer is responsible for the acts of its agents is determined by whether the employee was acting in substantial deviation from the scope of employment in the course of business. The Consumer Coalition states that this standard should apply equally in determining whether a PACE solicitor agent's actions are imputed to the PACE solicitor. According to the Consumer Coalition, the proposed regulations provide that "conduct not sanctioned or otherwise expressly or implicitly authorized by the PACE solicitor" need not be imputed to a PACE solicitor from its agent. The Consumer Coalition indicates that such conduct should be evaluated by customary vicarious liability standards for imputing the actions of an employee to an employer. The Consumer Coalition states that as currently drafted, the terms "sanctioned" and "authorized" are ambiguous, and the statement made in the negative is confusing. The Consumer Coalition proposes the phrasing in this subparagraph be changed to: the conduct giving rise to the complaint was not within the scope of the agency relationship with the PACE solicitor the PACE solicitor.

Response No. 1620.13.02: The Department has decided to eliminate all of subparagraph (a)(1)(E).

Comment No. 1620.13.03: Paragraph (a)(2) provides that a program administrator shall not enroll a PACE solicitor if as a result of the review conducted as part of the program administrator's enrollment process, the program administrator finds a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. The Consumer Coalition indicates that as a general matter, it sees no reason to restrict enrolment denials only to those PACE solicitors that demonstrate a "high" likelihood of soliciting assessment contracts in a manner that does not comply with the law; in the Consumer Coalition's view, evidence that would show any likelihood of non-compliance with the law should be enough to deny enrollment.

The Consumer Coalition believes more robust consumer protections should be implemented with regard to the assessment of whether there is a likelihood that a PACE solicitor will solicit assessments in a manner that does not comply with applicable law. According to the Consumer Coalition, given the legion of misrepresentations made by PACE solicitors to the low-income property owners served by consumer advocates across the state, it is imperative that reports of such misrepresentations be used to weed out bad actors.

Response No. 1620.13.03: The Department is retaining the standard of a “high” likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law because that is the statutory standard for not enrolling a PACE solicitor under paragraph (e)(2) of Financial Code section 22680. Therefore, a different standard would not be consistent with the statute.

Comment No. 1620.13.04: The Consumer Coalition provides that clause (a)(2)(A)(1) should be amended to state, “The PACE solicitor has made a false statement of a material fact to any program administrator or the property owner.”

Response No. 1620.13.04: Clauses (a)(2)(A)(1) and (2) were removed from this section because the acts constitute activities that occur after enrollment. The provisions are included in subparagraphs (c)(2)(A) and (B) of section 1620.14, regarding monitoring a PACE solicitor’s compliance.

Comment No. 1620.13.05: The Consumer Coalition provides that clause (a)(2)(A)(4) currently exempts various forms of bad acts including “disciplinary action for failing to review a license, failure to maintain books and records, failing to maintain a bond, failing to maintain insurance, or failing to maintain a minimum net worth.” According to the Consumer Coalition, all these acts can have serious impacts on property owners and should be explicitly included as items of relevance. The Consumer Coalition adds, further “failing to maintain workers compensation insurance” should be added to the list. In addition, the Consumer Coalition indicates that the clause should be amended as follows to reference acts “that directly resulted in harm to a property owner and/or the public.”

Response No. 1620.13.05: The provision has been renumbered as subparagraph (c)(1)(D) and recast. The provision provides that a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law may be evidenced by the PACE solicitor having at any time had its license revoked by the Contractors State License Board or having a complaint on file with the registrar that, at the time of the review conducted as part of the program administrator’s enrollment process, is available to the public on the website of the Contractors State License Board pursuant to Business and Professions Code section 7124.6. The rule no longer contains a list of excluded types of actions.

Comment No. 1620.13.06: The Consumer Coalition suggests that clause (a)(2)(A)(6) should be amended to explicitly cover financial elder abuse.

Response No. 1620.13.06: The clause has been renumbered as (c)(1)(F), and the Department has accepted the request.

Comment No. 1620.13.07: In paragraph (a)(3), the Consumer Coalition suggests that there should be more clarity for all concerned about what “timely” means in the context of this rule. The Consumer Coalition proposes that complaints are timely responded to within three business days, and timely resolved within one month.

Response No. 1620.13.07: The Department has added paragraph (d)(4) to clarify what constitutes “timely,” for purposes of determining whether a PACE solicitor has a clear pattern of failing to timely receive and respond to property owner complaints. Paragraph (d)(4) provides 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. 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.

Comment No. 1620.13.08: Subparagraph (a)(1)(D) provides that for purposes of establishing a clear pattern of consumer complaints about a PACE solicitor, complaints against a PACE solicitor agent employed or retained by a PACE solicitor shall constitute complaints about the PACE solicitor, while the PACE solicitor agent is engaged by the PACE solicitor during the time of the complaints and the subject of the complaints involves acts by the PACE solicitor agent while soliciting property owners on behalf of the PACE solicitor. Renovate suggests this rule exceeds the Department’s regulatory rulemaking authority. According to Renovate, the CFL does not authorize the review of complaints against individual PACE solicitor agents as part of the PACE solicitor enrollment process. Renovate states that the statute only authorizes the Department to review the conduct of PACE solicitors and therefore this proposed rule is invalid. Additionally, Renovate states this proposed rule would place an extraordinarily burdensome monitoring requirement on program administrators. According to Renovate, it would require program administrators to monitor the activities of the PACE solicitor agents, many of whom are independent contractors who may work on behalf of multiple PACE solicitors, simultaneously. Renovate states that it is unclear how program administrators could possibly obtain complaint information on PACE solicitor agents prior to enrollment. Renovate states that absent easily accessible publicly available information, this information would not be collectible, or it would be cost- prohibitive to gather it. Renovate requests that this proposed rule be withdrawn.

Response No. 1620.13.08: The Department disagrees about the authority to adopt the rule. When a PACE solicitor agent is employed or retained by a PACE solicitor, that

agent is acting on behalf of the PACE solicitor. Program administrators may be able to obtain complaint information on PACE solicitor agents prior to enrollment because many are enrolled with multiple program administrators. Also, when property owners are defrauded or have other complaints about a business transaction, they often post warnings on the internet, such as social media or on review websites. The Department believes the rule is important for public protection and is retaining the rule.

Comment No. 1620.13.09: Renovate states that subparagraph (a)(1)(E) permits program administrators to rebut the presumption in subparagraph (a)(1)(D) that "complaints against a PACE solicitor agent . . . shall constitute complaints about the PACE solicitor." While Renovate appreciates the intention of the proposed rule, the rebuttable presumption is ambiguous and does not provide the necessary clarity to the industry. Renovate states that for example, it is unclear what a PACE solicitor would have to do to implicitly "authorize" PACE solicitor agent conduct. Renovate suggests that making the standard whether the PACE solicitor "did not know and reasonably should not have known" about the conduct is helpful, but then the proposed rule ambiguously imparting a duty to investigate and to not "negligently disregard evidence" onto PACE solicitors. According to Renovate, as written, the proposed rule lacks the clarity necessary to be effective.

Response No. 1620.13.09: The Department agrees and has removed subparagraph (a)(1)(E) and clauses (a)(1)(E)(1) through (3).

Comment No. 1620.13.10: Renovate indicates that subparagraph (a)(2)(A) addresses factors a program administrator must consider when determining if there is a "high likelihood" that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. Renovate states that clause (a)(2)(A)(1) requires a program administrator to determine if "[t]he PACE solicitor has made a false statement of a material fact to the program administrator." According to Renovate, it is extraordinarily difficult, if not impossible, for the program administrator to uncover in the context of enrollment, because it has few points of comparison to confirm the veracity of statements made by the PACE solicitor. In addition, Renovate indicates that whether a false statement is "material" is subject to interpretation: what might be immaterial to a program administrator could be deemed material by the Department, and program administrators are frequently ill-equipped to make such determinations. Similarly, Renovate states that clause (a)(2)(A)(2) requires a program administrator to determine if "[t]he PACE solicitor has advised or knowingly permitted a property owner to make a false statement of material fact to the program administrator." At the point of enrollment, Renovate suggests that a PACE solicitor has not yet participated in the PACE program so it is not possible for the PACE solicitor to have advised a property owner to make a false statement to the program administrator.

Response No. 1620.13.10: The Department agrees that the provisions do not belong in section 1620.13 regarding enrollment denials. The provisions have been moved to subparagraphs (c)(2)(A) and (B) of section 1620.14, regarding monitoring a PACE

solicitor's compliance. In addition, the Department has amended both provisions to no longer reference a "material fact."

Comment No. 1620.13.11: Renovate suggests that the disclosure of the information listed in clause (a)(2)(A)(3), regarding considering a PACE solicitor's past crimes as evidence of whether there is a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that complies with the law, runs contrary to the same public policy considerations underpinning the recently adopted Fair Chance Act, which prohibits employers from inquiring about an applicant's conviction record until they have extended a conditional job offer to the applicant.

Response No. 1620.13.11: The Department notes the comment. The clause, renumbered as (c)(1)(C), is only applicable to crimes involving dishonesty, fraud, or deceit, which pose a risk to property owners.

Comment No. 1620.13.12: Renovate provides that clause (a)(2)(A)(4) requires program administrators to consider if the home improvement contractor has had its license revoked by the CSLB within the last 36 months. According to Renovate, this is also unnecessary. Renovate asks, if the CSLB has revoked a home improvement contractor's license but reinstated it after the home improvement contractor satisfied a corrective action plan, why then should that home improvement contractor be permitted to introduce property owners to every form of home improvement financing except for PACE?

Response No. 1620.13.12: The provision has been renumbered as subparagraph (c)(1)(D) and recast. The provision provides that a high likelihood that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law may be evidenced by the PACE solicitor having at any time had its license revoked by the Contractors State License Board or having a complaint on file with the registrar that, at the time of the review conducted as part of the program administrator's enrollment process, is available to the public on the website of the Contractors State License Board pursuant to Business and Professions Code section 7124.6. This rule is necessary because PACE financing poses unique risks to property owners as a result of the propensity for fraudulent representations, the risks associated with the super priority of the lien, the penalties associated with late tax payments, and the risk of a tax sale or a foreclosure by a mortgagee.

Comment No. 1620.13.13: Renovate provides that clause (a)(2)(A)(5) requires a program administrator to consider a "disciplinary action against [the PACE solicitor] by another regulatory agency for fraud, misrepresentation, or deceit." Renovate states that certainly, if another agency has issued an "order" or enforced a judgment against a home improvement contractor, that should be considered as a part of the enrollment process. However, Renovate indicates that the language in this provision sweeps too broadly and creates a significant due process problem. Renovate states that the provision potentially disqualifies a home improvement contractor prior to a determination

having been made by the regulatory agency, depriving the home improvement contractor of an opportunity to participate in PACE based on pending allegations, not adjudicated facts.

Response No. 1620.13.13: The Department is not persuaded that the language is too broad and notes that the introductory clause (renumbered as paragraph (c)(1)) provides that the severity of the actions is determined by the standards of the program administrator.

Comment No. 1620.13.14: Renovate agrees with the intention of clause (a)(2)(A)(6) but believes it should be contingent on a criminal conviction or civil liability. Program administrators cannot independently make a determination about whether a PACE solicitor has “engaged” in elder abuse.

Response No. 1620.13.14: The Department has no concerns with a program administrator’s standards under renumbered paragraph (c)(1) requiring the acts of elder financial abuse under subparagraph (c)(1)(F) be established by a criminal conviction or civil liability.

Comment No. 1620.13.15: Subparagraph (a)(2)(C) addresses factors a program administrator must consider when determining if there is a “high likelihood” that a PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. Renovate believes that this rule may contain a typographical error. While the rule says that the acts of a PACE solicitor agent “shall be considered if the PACE solicitor agent knows or should have known of the acts,” Renovate believes that this passage should state that the acts of a PACE solicitor agent “shall be considered if the PACE solicitor knows or should have known of the acts.” What matters is whether the PACE solicitor knew or should have known of the agent’s acts and can therefore be held responsible for them. Whether the PACE solicitor agent knew of his or her own acts is beside the point. Alternatively, if Renovate is mistaken and this language is deliberate, it is ambiguous and should be redrafted to avoid confusion.

Response No. 1620.13.15: The Department has made the requested change.

Comment No. 1620.13.16: Subparagraph (a)(3)(A) provides that a clear pattern of a PACE solicitor failing to timely receive and respond to property owner complaints regarding the PACE solicitor may be established by actions of a PACE solicitor such as failing to record multiple complaints; failing to respond to multiple complainants over a sustained period of time, notwithstanding repeated contact by the complainants; or unreasonably delaying the response to, or investigation of, multiple complaints; with the severity of the actions or inaction being determined by the standards of the program administrator. Renovate suggests that subparagraph (a)(3)(A) requires a program administrator to consider a PACE solicitor’s internal complaint processes, the response rates and outcomes of those processes, and the recordkeeping associated with those processes. Renovate asserts that there is no statutory basis for the Department to require such an intrusive review at the point of enrollment. According to Renovate, the

purpose of the enrollment process set forth in Section 22680 of the Financial Code is to provide a mechanism for program administrators to evaluate publicly available information with respect to a prospective PACE solicitor at the time of enrollment. Renovate indicates that the CFL does not contemplate extensive reviews of a home improvement contractor's books and records to evaluate every aspect of every complaint received. According to Renovate, nor does it require program administrators to evaluate a home improvement contractor's recordkeeping and complaint investigation processes as a condition of enrollment. Renovate states that conducting a full-scale investigation in the manner prescribed by Section 1620.13 is impossibly burdensome, and few if any home improvement contractors would permit this level of intrusion into their businesses merely to be able to introduce property owners to another financing option.

Response No. 1620.13.16: The Department agrees with Renovate that Renovate may evaluate a PACE solicitor's pattern of responding to complaints based on readily and publicly available information. The Department disagrees that the provision requires a program administrator to consider a PACE solicitor's internal complaint processes. Subparagraph (a)(3)(A), renumbered as paragraph (d)(1), sets forth the type of information that would establish a PACE solicitor failing to timely receive and respond to property owner complaints. A program administrator may review readily and publicly available information, such as social media and online reviews, for information about a PACE solicitor's complaint processes.

Comment No. 1620.13.17: Subparagraph (a)(3)(B) requires a program administrator to retain documentation regarding the evaluation of whether a PACE solicitor has a clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor. Renovate suggests that this section is unduly burdensome because it places no limit on how long documentation must be kept. As written, Renovate states it would require a program administrator to retain documentation in perpetuity. Renovate contends that this would consume a substantial amount of resources and would provide little to no consumer benefit. In addition, Renovate notes that subparagraph (a)(3)(B) appears to contain a minor typographical error. Rather than stating that "[a] program administrator shall keep in its books and records documentation regarding the evaluation of whether a PACE solicitor has clear pattern…," the Section should state that "A program administrator shall keep in its books and records documentation regarding the evaluation of whether a PACE solicitor has a clear pattern…."

Response No. 1620.13.17: Paragraph (c)(2) of section 1620.07 of the rules sets forth the period for the retention of records related to the enrollment of a PACE solicitor and PACE solicitor agent. Additionally, the Department agrees that proposed subparagraph (a)(3)(B), renumbered as paragraph (d)(2), contains a typographical error.

Comment No. 1620.13.17: Renovate indicates that subparagraph (a)(3)(C) raises the same issues already discussed with respect to subparagraph (a)(2)(C), above in

Comment No. 1620.13.15, and those comments are therefore incorporated by reference here.

Response No. 1620.13.17: The Department incorporates Response No. 1620.13.15.

Comment No. 1620.13.18: Proposed subdivision (b) provides that a program administrator shall not be liable for failing to identify any of the practices in subdivision (a) if the program administrator implements a background check and enrollment process in compliance with sections 1620.11 and 1620.12 of these rules, as applicable. The Consumer Coalition sees absolutely no reason for this provision. The Consumer Coalition cannot understand why the Department would agree to limit the liability of program administrators or provide them with safe harbor through regulation when the legislature did not elect to do so. The Consumer Coalition states that this provision should be deleted.

Response No. 1620.13.18: The Department agrees and has removed the provision.

Section 1620.14. Monitoring Compliance

Comment No. 1620.14.01: Proposed subparagraph (a)(1) requires a program administrator to establish and maintain a written process to promote and evaluate the compliance of a PACE solicitor and PACE solicitor agent with the requirements of applicable law that includes a risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of Financial Code section 22689, subdivision (a). Subparagraph (a)(1)(C) provides that the process must be designed to identify conduct and business practices that would have resulted in the denial of enrollment under section 1620.13 of these rules or the cancellation of enrollment under subdivision (g) of Financial Code section 22680. Renovate objects to portions of subparagraph (a)(1)(C) because the rule incorporates two separate legal provisions. Renovate states that it incorporates rule 1620.13, which sets forth rules governing denial of enrollment as a PACE solicitor. Renovate objects to incorporation of this rule here. As suggested by Renovate, in essence, incorporation of rule 1620.13 here would require program administrators to continuously monitor whether PACE solicitors should have been denied enrollment in the first instance. Renovate suggests that this is unnecessarily burdensome and contrary to the statutory scheme. Renovate states that whether a person should be enrolled as a PACE solicitor is governed by Financial Code section 22680(a) through (e) and the accompanying regulations (to include rule 1620.13). According to Renovate, once a person has been enrolled as a PACE solicitor, however, those provisions no longer govern. Instead, Renovate suggests paragraph (f)(3) of Financial Code section 22680 directs program administrators to conduct periodic reviews at least once every two years to ensure compliance. Renovate provides that under Financial Code section 22680(g), if PACE solicitors or PACE solicitor agents fail to maintain the minimum qualifications, their enrollment will be canceled. Renovate states that it is therefore unnecessary to monitor whether enrollment should have been denied, because the appropriate remedy is

cancelation under Financial Code section 22680(g), not “de-enrollment” under sections 22680(a) through (e). Renovate states that implementing monitoring for both legal frameworks is therefore duplicative, and unduly burdens program administrators.

Response No. 1620.14.01: In revisions to the rule, the Department has deleted subparagraph (a)(1)(C).

Comment No. 1620.14.02: Proposed subparagraph (a)(1) requires a program administrator to establish and maintain a written process to promote and evaluate the compliance of a PACE solicitor and PACE solicitor agent with the requirements of applicable law, and subparagraph (a)(1)(D) provides that the process shall be designed to promote compliance through collaboration with PACE solicitors and PACE solicitor agents. Renovate suggests that the requirement is vague and uncertain, since it is unclear what such collaboration might entail.

Response No. 1620.14.02. The Department agrees and in revisions to the rule, the Department has deleted subparagraph (a)(1)(D).

Comment No. 1620.14.03: Paragraph (a)(2) requires the process to include a procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents, and subparagraph (a)(2)(B) provides a program administrator shall confirm the licensure or registration status of a PACE solicitor or PACE solicitor agent at the following times: (1) when a PACE solicitor or PACE solicitor agent submits a property owner’s application for an assessment contract to the program administrator; (2) when a program administrator processes a complaint about a PACE solicitor or PACE solicitor agent; and (3) when a program administrator enrolls a PACE solicitor or PACE solicitor agent. Subdivision (b) provides that a program administrator that has a process to routinely monitor the license or registration status of a PACE solicitor or solicitor agent not less than once every 30 days need not confirm licensure status during the three times identified in subparagraph (a)(2)(B). In general, Renovate supports the framework, particularly when paired with the safe harbor contained in subdivision (b). However, Renovate is concerned with the burden imposed by clauses (a)(2)(B)(1) and (2). Most significantly, Renovate indicates the requirement in clause (a)(2)(B)(1) that licensure status be confirmed every time an application is submitted is tantamount to requiring continuous monitoring, and such continuous monitoring is not contemplated by the PACE statutes and exceeds the Department’s rulemaking authority.

Response No. 1620.14.03: The Department has considered this concern, but determined that in light of the safe harbor, which has been renumbered as (e)(3) and amended to provide for the monitoring of license and registration status every quarter, the Department has retained former clauses (a)(2)(B)(1) and (2), which have been renumbered as subparagraphs (e)(2)(A) and (B). Paragraph (f)(2) of Financial Code section 22680 requires a program administrator to maintain a procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents.

If the Department strikes subparagraph (e)(2)(A), then the rule would provide for monitoring, after enrollment, solely when a complaint is received. This would not be sufficient to constitute regular monitoring. The Department concludes that a quarterly safe harbor would constitute regular monitoring and is not overly burdensome, but a program administrator may instead monitor upon receiving financing applications and consumer complaints.

Comment No. 1620.14.04: PACE Funding indicates that proposed clause (a)(2)(B)(1) should be amended regarding confirmation of license or registration status of a PACE solicitor or PACE solicitor agent. PACE Funding suggests that requiring a confirmation of the license status of a solicitor or solicitor agent every time an application is submitted is not reasonable. According to PACE Funding, confirming license status should not be required more often than quarterly. PACE Funding indicates that an ideal solution would be that CSLB, the body responsible for policing solicitors and solicitor agents, should update its process and its website so that interested parties, whether homeowners or program administrators, could subscribe to certain license numbers and receive an email notification if and when there is a status change to that license.

Response No. 1620.14.04. The Department has accepted the recommendation and changed the monitoring to quarterly. However, the Department has retained the provision providing that monitoring, if not performed quarterly, must be performed when an application is submitted, for the reasons explained in Response No. 1620.14.03.

Comment No. 1620.14.05: The Consumer Coalition suggests that in order to safeguard consumers, monitoring compliance must include annual re-enrollment to, at a minimum, update background checks, review the assessment contracts solicited against their associated home improvement contracts, ensure compliance with the Code of Conduct and PACE solicitor agreements, and ensure continuing training, education and testing requirements have been met. According to the Consumer Coalition, given that program administrators have opted for a business model and cost structure that eschews in-house sales and marketing in favor of solicitors and their agents, it is incumbent upon them to meaningfully supervise and monitor compliance.

Response No. 1620.14.05: The Department agrees the monitoring compliance should be expanded to meet the intent of the law and has revised the rule to provide various areas for monitoring, as well as options for monitoring compliance. However, the Department has not imposed an annual re-enrollment or monitoring that results in obligations not contemplated under the code. Financial Code section 22680, subdivision (f)(1) requires a risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of subdivision (a) of Financial Code section 22689. That subdivision requires a PACE solicitor to only solicit a property owner in compliance with the CFL and the rules and prohibits violations of specific provisions in the Streets and Highways Code. The Department has revised the monitoring requirements to capture the requirements of Financial Code section 22689, subdivision (a).

Comment No. 1620.14.06: The Consumer Coalition indicates a “risk-based, commercially reasonable procedure” under subparagraph (a)(1)(A) should include investigation of any specific complaints of non-compliance, in addition to an adequate sample of solicitors and efficiency improvements. In addition, there should be specific sampling of the more vulnerable populations regularly served by legal service providers, such as elders and mono-lingual Spanish or non-English speakers.

Response No. 1620.14.06: The Department has revised the rule to incorporate the suggestions. The Department has renumbered the section, and revised paragraph (b)(1) requires sampling to include vulnerable populations. The revisions to the rule include sampling complaints to establish whether the PACE solicitors and PACE solicitor agents are in compliance with the minimum requirements for enrollment. With respect to monitoring a sample of efficiency improvements, this concept is incorporated into section 1620.15 of the rules regarding periodic reviews, where a program administrator must review a sample of assessment contracts.

Comment No. 1620.14.07: The Consumer Coalition indicates that subparagraph (a)(1)(B) should mandate that program administrators test compliance of PACE solicitors/agents in oral completion calls, in addition to during the confirmation of key terms or “welcome” call.

Response No. 1620.14.07: In added (b)(2)(A) and (B), the Department has identified both calls as examples of commercially reasonable processes for monitoring and testing compliance with the law. However, the Department has not mandated a completion call, since only a confirmation of key terms call is mandated by statute.

Comment No. 1620.14.08: Proposed subparagraph (a)(1)(E) provides that if a PACE solicitor or PACE solicitor agent repeatedly 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. The Consumer Coalition suggests that if property owners are to be adequately protected, PACE solicitors and agents cannot be allowed to repeatedly fail to maintain minimum qualifications. The Consumer Coalition states that those qualifications are set as a minimum for a reason. The Consumer Coalition indicates subparagraph (a)(1)(E) should allow for cancellation of enrollment upon any failure to maintain minimum qualifications.

Response No. 1620.14.08: The Department agrees and has removed “repeatedly” from that provision, which has been moved in its entirety to subdivision (a) of section 1620.16 of the rules regarding canceling enrollment.

Section 1620.15. Periodic Review Standards

Comment No. 1620.15.01: The Consumer Coalition agrees that periodic review procedures should be in writing and would like to see the Department play a more active role in approving those procedures and/or assessing their adequacy as part of the examination process.

Response No. 1620.15.01: The Consumer Coalition's comment is noted. While the Department is not requiring approval of the procedures, when the rules are operative the Department will amend its examination protocols to include the requirements of the rules, including developing protocols to confirm a program administrator's periodic review procedures meet the requirements of section 1620.15 of the rules.

Comment No. 1620.15.02: PACE Funding suggests the rule should be clarified as to how solicitation activities of a solicitor or solicitor agent are to be reviewed. PACE Funding would like clarification that a customer survey combined with a robust complaint resolution process is sufficient to meet this requirement.

Response No. 1620.15.02: Both a customer survey and a robust complaint resolution process would cover some elements of the periodic review. However, a program administrator must review additional activities that would not be captured by a customer survey and customer complaints so additional processes would be necessary.

Comment No. 1620.15.03: Renovate states that rule 1620.15 relates back to section 22680(f)(3) of the California Financial Code, which requires a program administrator to perform "[a] periodic review of the solicitation activities of PACE solicitors enrolled with the program administrator, to be conducted at least once every two years." Section 22680(f)(3) expressly limits the periodic reviews to "solicitation activities." However, proposed rule 1620.15 would extend beyond solicitation activities to other aspects of the interactions between program administrators and PACE solicitors. Renovate further suggests it would also require program administrators to make legal determinations and engage in oversight activities far beyond what the Legislature contemplated in section 22680(f)(3).

Response No. 1620.15.03: The Department agrees that some provisions are not limited to solicitation activities and involve general compliance with subdivision (a) of section 22689 of the Financial Code. The Department has restructured rule 1620.16, regarding a periodic review of solicitation activities, and rule 1620.15, regarding monitoring compliance with the law, to resolve this concern.

Comment No. 1620.15.04: Renovate indicates that the processes prescribed by rule 1620.15 are unduly burdensome. According to Renovate, most of the thousands of PACE solicitors in California are small businesses, each of which operates differently. To comply with Rule 1620.15, Renovate states that program administrators would have to expend substantial resources applying the prescriptive process mandated by the Department to thousands of individual home improvement contractors. FortiFi suggests that the while section 22680(f)(3) of the California Financing Law requires program administrators to conduct a "periodic review of the solicitation activities of PACE solicitors enrolled with the program administrator" at least once every two years, section 1620.15(b) of the proposed rules goes well beyond this statutory requirement, imposing many burdensome new analyses upon program administrators. FortiFi recommends that the Department consider these analyses carefully and the impact they may have on

compliance costs, which may be unduly burdensome and negatively impact the fulfillment of California's important public purposes in providing statutory authority for contractual assessment programs including making homes safer from wildfires, earthquakes and more energy and water efficient.

Response No. 1620.15.04: The Department has considered the burden on program administrators. The Department anticipates that a program administrator will scale a review based on the size of the PACE solicitor, the volume of assessment contracts from the PACE solicitor, and complaints. The provisions are intended to ensure a bona fide review is performed, but not to be overly burdensome or prescriptive. However, the rule has left to the program administrators the methods for conducting the review so as not to be prescriptive but notes that some stakeholders prefer more certainty (see Comment No. 1620.15.02).

Comment No. 1620.15.05: Renovate indicates that the periodic review scheme would also lead to considerable duplication, for both reviewers (program administrators) and reviewees (PACE solicitors). According to Renovate, because many PACE solicitors are enrolled with multiple PACE programs, and because program administrators administer PACE programs in which numerous PACE solicitors are enrolled, many PACE solicitors will become subject to near-constant "periodic" reviews, and program administrators will become subject to performing "periodic" reviews constantly. Renovate indicates these activities will create substantial and unnecessary overlap. Renovate suggests that as a result of this duplication, many PACE solicitors will choose to enroll with only one program administrator, which will be harmful to competition (and, therefore, consumer protection), and many PACE solicitors will opt out of PACE altogether.

Response No. 1620.15.05: To address the concern of duplication, subdivision (f) provides that program administrators who enroll the same PACE solicitors may collaborate on conducting coordinated joint periodic reviews. This will reduce the burden on both reviewers and reviewees.

Comment No. 1620.15.06: Paragraph (b)(7) requires the periodic review to include an analysis of whether the PACE solicitor provides a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner, if complaints or other evidence suggest the PACE solicitor may be inflating the price of a project financed by a PACE assessment. FortiFi understands the need to ensure all solicitors comply with the terms of Streets and Highways Code section 5926, but it would be exceedingly difficult, on a practical basis, for program administrators to carry out this requirement. FortiFi indicates that each improvement is unique based on the characteristics of the home, the work required to construct or install the improvement, the features, materials, manufacturers, models, and myriad of other details chosen by the property owner for a project. FortiFi indicates that program administrators would not be able to make apples-to-apples comparisons to conduct fair analyses. FortiFi suggests collecting this data from contractors would be extremely difficult, absent subpoena power, which the program administrators lack. Moreover,

FortiFi suggests that requiring contractors to disclose this data is highly likely to be met with (valid) resistance regarding confidentiality and protected business information. FortiFi recommends that the Department strike paragraph (b)(7) and consider more narrowly tailoring other subsections of this section of the proposed rules. Renew also suggests that proposed rule 1620.15 requiring, as part of a periodic review, a program administrator to perform an analysis of whether the PACE solicitor is providing a different price for projects paid in cash versus PACE financing, is impractical and may encroach on privacy interests. Renew instead suggests the language require program administrators to refer price inflation to CSLB.

Response No. 1620.15.06: The Department has moved proposed paragraph (b)(7) to section 1620.14, because the provision does not involve activity that constitutes the solicitation activities of a PACE solicitor. However, the Department continues to require a program administrator monitor a PACE solicitor's compliance with the provision. The Department acknowledges FortiFi and Renovate's concern over how to implement such a requirement in a commercially reasonable manner. However, the clearest way for property owners to receive the intended protections of that section is for a licensed program administrator to exercise oversight of PACE solicitors – the Department does not have direct oversight, and the Streets and Highways Code section is not within the Contractors State License Law; but the section is captured in subdivision (a) of Financial Code section 22689, which provides that a program administrator shall not permit a PACE solicitor to engage in any act in violation of, among other provisions, chapter 29.1 (commencing with section 5900) of part 3, division 7 of the Streets and Highways Code. While pricing alone does not indicate that a PACE solicitor is charging a different price for cash projects, if pricing is significantly outside the typical range for efficiency improvements, it is an indicator that could suggest a heightened inquiry is necessary to ensure that a PACE solicitor enrolled by the program administrator is not violating Streets and Highways Code section 5926. Also, it is reasonable for a program administrator to spot check a sampling of assessment contracts to consider whether the pricing for typical efficiency improvements, such as solar, roofing, water heaters or HVAC systems, are within the bounds of typical pricing ranges for the installation of the items, or whether an additional inquiry is necessary. It is also reasonable for a program administrator to evaluate the complaints from consumers alleging circumstances that would suggest that a PACE solicitor may be charging a different price for a project financed by a PACE assessment than the contract would provide if paid in cash, and the results of the investigation of the complaint.

Comment No. 1620.15.07: The Consumer Coalition indicates that in addition to covering confirmation that PACE solicitor agents have completed the required hours of education per paragraph (b)(3), the review should also ensure the solicitors and agents passed the required test prior to engaging in solicitation of any property owners.

Response No. 1620.15.07: The Department has removed paragraph (b)(7) based on concerns that the periodic review process is only for solicitation activities. However,

paragraph (e)(4) of section 1620.14 requires a program administrator's procedure for monitoring the registration status of PACE solicitor agents to 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. The test is one of the requirements of the training program under section 1620.17 of the rules and Financial Code section 22681.

Comment No. 1620.15.08: The Consumer Coalition indicates that paragraph (b)(7) needs clarification to specify how the administrator is to analyze whether the solicitor provides a different price for a project funded by PACE than it would if paid for in cash. The Consumer Coalition states that for example, at least one program administrator has contracts that often include a large "Contractor's fee" (sometimes over $10,000) that is paid to the administrator. Having analyzed some of these contracts, as explained in the presentation to stakeholders, consumer advocates believe such fees are related to price gouging. The Consumer Coalition indicates that the regulations need to specify how program administrators that appear to be benefitting from these large fees can adequately protect consumers by assessing price differentials between projects financed by PACE versus those paid for by other methods.

Response No. 1620.15.08: The Department agrees with these concerns. Under revised paragraph (d)(2) of section 1620.14 of the rules, a program administrator must monitor 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. In Response No. 1620.15.06, the Department has addressed how a program administrator may monitor compliance. If a contractor is paying contractor fees to a program administrator, the program administrator should be ensuring those fees do not result in a violation of Streets and Highways Code section 5926, since under paragraph (a)(2) of Financial Code section 22689, a program administrator may not permit a PACE solicitor to violate that provision of the Streets and Highways Code.

Comment No. 1620.15.09: Renovate states that subdivision (b) and the paragraph that follows exceed the Department's authority to dictate how program administrators may conduct periodic reviews. According to Renovate, California Financial Code section 22680(f) states that "[a] program administrator shall establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law that is acceptable to the commissioner." Paragraph (f)(3) of section 22680 provides that process shall include "a periodic review of the solicitation activities of PACE solicitors." Renovate states that by stating that "the program administrator" shall establish and maintain such processes, the statute explicitly leaves it to the individual program administrators to develop periodic review procedures, so long as they comply with applicable law. Renovate provides that it

envisions no role for the Department to set such processes in the first instance, and therefore the text of this proposed rule contradicts the Legislature's intent.

Response No. 1620.15.09: The Department disagrees that it lacks authority to adopt by rule activities that must be included in periodic review of the solicitation activities of a PACE solicitor. Subdivision (f) of section 22680 expressly states the process established by the program administrator must be acceptable to the Commissioner. By rule, the Department is defining the content of the process established by a program administrator that is acceptable to the Commissioner.

Comment No. 1620.15.10: Proposed paragraph (b)(1) requires the periodic review of a PACE solicitor to include "[a]n analysis of whether the PACE solicitor has engaged in activity that would result in the denial of enrollment under paragraph (d) of Financial Code section 22680 and section 1620.13 of these rules." Renovate states that paragraph (b)(1) borrows, without authority, the enrollment requirements for PACE solicitors, set forth under section 22680(d) of the Financial Code, and applies them to the periodic review of solicitation activities mandated by section 22680(f)(3), which occurs after enrollment every two years. According to Renovate, this is problematic because the enrollment requirements set forth in Section 22680 assumed the review of "readily and publicly available" information regarding PACE solicitors. Renovate indicates that this was intentional because, at the point of enrollment, program administrators would not yet have any internally derived information regarding a PACE solicitor, based on experience with that PACE solicitor. However, Renovate suggests once a PACE solicitor clears the hurdle of enrollment, the analysis shifts to their "solicitation activities" as enrollees of that program administrator's PACE program. Paragraph (b)(1) would deviate from that statutory scheme and would effectively require program administrators to re-enroll every PACE solicitor every two years using publicly available information.

Response No. 1620.15.10: The periodic review provisions no longer include that provision because it is not a review of the solicitation activities of a PACE solicitor.

Comment No. 1620.15.11: Paragraph (b)(2) provides that the periodic review of a PACE solicitor shall include "[a] review of whether the individuals employed or retained by the PACE solicitor to solicit a property owner to enter into an assessment contract are enrolled by the program administrator as PACE solicitor agents, which may be done through sampling, complaint reviews, data gathered through oral conformation of key terms telephone calls, or other methods developed by the program administrator to measure compliance." Renovate suggests that paragraph (b)(2) is impossible to comply with, because it would require program administrators to identify every single individual employed or retained by a given PACE solicitor and then make a determination as to whether those persons have engaged in the activities that would meet the extremely broad definition of solicitation adopted by the Department. In addition, Renovate suggests that to the extent paragraph (b)(2) attempts to put forward methodologies

discussing how the review should be conducted, those methodologies are vague and uncertain.

Response No. 1620.15.11: This provision, in part, has been moved to paragraph (e)(4) of section 1620.14 of the rules and provides, “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.” The Department disagrees that it is impossible to monitor this information. A program administrator could survey its PACE solicitors or monitor the identity of the PACE solicitor agents mentioned in complaints or associated with assessment contracts, to confirm the agents have been reported. A program administrator could review its records to confirm that it has evidence of an agent’s completion of the training program. The Department believes this is a reasonable requirement.

Comment No. 1620.15.12: Renovate indicates that paragraph (b)(4) provides that the periodic review of a PACE solicitor shall include “[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.” Renovate states that this rule calls for a program administrator to assess whether a PACE solicitor’s advertising is “false or misleading.” According to Renovate, whether a statement is “false or misleading” is a legal term of art, and such statements may be unlawful depending on the circumstances (*see generally* Cal. Bus. & Prof. Code § 17500). Renovate provides that as written, program administrators would be obligated to review PACE solicitors’ advertising materials and make this determination. Renovate indicates program administrators may not possess the requisite legal skills to make such determinations, and the PACE statutes do not contemplate their doing so. Additionally, Renovate suggests paragraph (b)(4) is vague because it does not specify how much advertising a program administrator would have to review in order to have conducted an adequate sampling. According to Renovate, as currently written, it is plausible that reviewing a single advertisement by a PACE solicitor would be adequate under the Rule. Renovate suggests it is equally plausible that a program administrator would be obligated to review a statistically significant sampling. Renovate suggests that the latter would be unduly burdensome—the sheer amount of advertising, whether online, in print or other media, for each of the potentially thousands of PACE solicitors would make a review of such material effectively impossible. Renovate asks, how could a program administrator come to know of the existence of all advertising materials, within the possession, custody, and control of the PACE solicitor?

Response No. 1620.15.12: The Department intends the plain meaning of “false” and “misleading,” and a program administrator may rely on the definitions in a dictionary. Paragraph (b)(4) has been renumbered as paragraph (b)(1). The Department is not

defining an amount of advertising to be reviewed because the sample will vary based on the characteristics of the PACE solicitor. However, subdivision (d) provides that for any sampling of data in the periodic review, the program administrator must sample an amount of data sufficient to identify whether the PACE solicitor is complying with its agreement with the program administrator and the law. The Department is opting for this performance standard, rather than a prescriptive standard, to provide a program administrator flexibility. The Department does not agree that the rule is vague simply because it includes a performance standard rather than a prescriptive standard.

Comment No. 1620.15.13: Paragraph (b)(5) provides that the periodic review of a PACE solicitor shall include "[a]n 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." Renovate states that paragraph (b)(5) overestimates the structural sophistication of the operations of many PACE solicitors. Most home improvement contractors are small businesses that lack the capacity for sophisticated controls, procedures, reporting, and processes. Renovate suggests that by imposing such process-heavy administrative requirements on small businesses, this provision would discourage most home improvement contractors from becoming or continuing to be PACE solicitors. Moreover, like so many other provisions within Rule 1620.15 and throughout the proposed regulations, paragraph (b)(5) would pose an extreme burden on program administrators responsible for managing a process that would be applied to a large number of PACE solicitors.

Response No. 1620.15.13: The Department agrees with Renovate's concern about the lack of structural sophistication of the operations of many PACE solicitors. The purpose of this provision is to provide a mechanism for a program administrator to evaluate that sophistication, so the program administrator can protect property owners by identifying the PACE solicitors requiring heightened oversight. The required analysis does not need to be implemented in a resource intensive manner, and a program administrator may comply by contacting a PACE solicitor and inquiring about processes. The provision does not require the program administrator to proceed in a manner defined by rule, and therefore a program administrator may establish the method of obtaining this information. Therefore, the Department does not agree that this provision will have a chilling effect on a home improvement contractor becoming or remaining an enrolled PACE solicitor.

Comment No. 1620.15.14: According to Renovate, subparagraph (b)(6) provides that the periodic review of a PACE solicitor shall include "[a]n 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." Renovate suggests that as with paragraph (b)(4) in Comment No. 1620.15.12, this rule is vague because it does not specify how many responses a program administrator must analyze

in order to have taken an adequate sampling. Renovate suggests that to the extent program administrators would be required to analyze numerous responses, it would likely constitute a severe burden on program administrators. Renovate states that if anything, this rule is even more onerous than paragraph (b)(4). According to Renovate, rather than merely requiring the program administrator to "review" responses, it directs program administrators to "analy[ze]" those responses and look for "patterns suggesting potential misrepresentations or omissions." Renovate suggests this will likely consume a great deal of time and expense, with little concomitant benefit to the consumer.

Response No. 1620.15.14: The Department disagrees the rule is vague because it fails to identify the number of responses to analyze. Subdivision (d) provides that for any sampling of data in the periodic review, the program administrator must sample an amount of data sufficient to identify whether the PACE solicitor is complying with its agreement with the program administrator and the law. The Department is opting for this performance standard, rather than a prescriptive standard, to provide a program administrator flexibility. The Department does not agree that the rule is vague simply because it includes a performance standard rather than a prescriptive standard. The Department is not persuaded the burden of this requirement outweighs the benefit. The oral confirmation of key terms call with the property owner is the ideal opportunity for a program administrator to obtain information to assess whether a PACE solicitor's solicitation activities comply with the law.

Comment No. 1620.15.15: According to Renovate, paragraph (b)(7) provides that the periodic review of a PACE solicitor shall include "[a]n analysis of whether the PACE solicitor provides a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner, if complaints or other evidence suggest the PACE solicitor may be inflating the price of a project financed by a PACE assessment." Renovate suggests that paragraph (b)(7) relates back to section 5926 of the Streets and Highways Code, which states that "[a] contractor shall not provide a different price for a project financed by a PACE assessment than the contractor would provide if paid in cash by the property owner." According to Renovate, while a PACE solicitor cannot charge a different price for a project financed by a PACE assessment than for a project paid in cash, program administrators do not have the authority (nor does the Department) to force PACE solicitors to provide pricing data regarding home improvement projects unrelated to PACE. Renovate asserts that this rule exceeds statutory authority and mandates that program administrators access data that they do not have a right to get.

Response No. 1620.15.15: Please refer to Response No. 1620.15.06, above. A similar provision to this requirement is now in section 1620.14 of these rules and is recast to require a program administrator to monitor a PACE solicitor's compliance. The Department disagrees that the provision exceeds the Department's authority, for the reasons explained in Response No. 1620.15.06.

Comment No. 1620.15.16: According to Renovate, paragraph (b)(8) provides that the periodic review of a PACE solicitor shall include the following: “[i]f work is commenced prior to the expiration of the right to cancel period, an analysis of whether the PACE solicitor is in compliance with Streets and Highways Code section 5940.” Renovate states that paragraph (b)(8) requires a program administrator to analyze as part of its periodic review whether a PACE solicitor has commenced work under the home improvement contract prior to the expiration of the three-day cancellation period. Section 5940 of the Streets and Highways Code makes it unlawful to commence work under a home improvement contract if both of the following are true: the property owner entered into the home improvement contract based on the reasonable belief that the work would be covered by the PACE program; and (2) the property owner applies for, accepts, and cancels the PACE financing within the right to cancel period set forth in subdivision (b) of section 5898.16 or is not approved for PACE financing in the amount requested by the property owner. Renovate suggests that paragraph (b)(8) has no statutory basis, improperly calls for the program administrator to draw a legal conclusion as to whether Streets and Highways Code section 5940 has been violated and bears no reasonable relation to the CFL’s statutory purpose of consumer protection. Moreover, according to Renovate, it is unclear how a program administrator would be able to effectively apply paragraph (b)(8), because it would have to determine with some level of certainty when work actually commenced, which is unknowable without being present to observe the commencement of a home improvement project.

Response No. 1620.15.16: Paragraph (b)(8) has been recast and renumbered as paragraph (d)(2) of section 1620.14 of the rules. Paragraph (d)(2) requires a program administrator to have risk-based, commercially reasonable processes to monitor and test whether the PACE solicitor is commencing work prior to the expiration of the right to cancel period. Paragraph (b)(2) of section 1620.14 sets forth a non-exhaustive list of examples of commercially reasonable processes for monitoring and testing compliance. The requirement is supported by paragraph (a)(2) of Financial Code section 22689, which prohibits a program administrator from permitting a PACE solicitor to engage in any act in violation of, among other things, chapter 29.1 of part 3, division 7 of the Streets and Highways Code, which includes section 5940.

Comment No. 1620.15.17: Subdivision (c) provides that 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. Paragraph (c)(2) provides that the review shall confirm that the home improvement contract with the property owner covers the same work financed by the assessment contract for which the program administrator paid the PACE solicitor. The Consumer Coalition provides that the review of the home improvement contract specified in (c)(2) must not rely solely on the contract provided by the PACE solicitor; the property owner should be contacted independently and asked open-ended questions about the scope of work financed.

Response No. 1620.15.17: Subdivision (f) of section 1620.06 of these rules requires that the program administrator confirm the scope of work with the property owner during the oral confirmation of key terms call. Therefore, the Department does not think this additional confirmation is necessary.

Comment No. 1620.15.18: Subdivision (c) provides that in conducting a periodic review of the solicitation activities of the PACE solicitor, the program administrator must review a random sampling of assessment contracts to evaluate whether the PACE solicitor is in compliance with the requirements for solicitation activities. Subparagraphs (c)(1) through (4) describe what must be included in the review. Renovate suggests the rule suffers from multiple deficiencies. According to Renovate, first, paragraph (c), combined with the many other provisions of rule 1620.15, effectively deprives program administrators from establishing their own reviews using the inherent knowledge and experience gained from years of managing large networks of home improvement contractors. Renovate states that the CFL empowers program administrators to both “establish” and “maintain” their own compliance processes, including their periodic review procedures, and subdivision (c) departs from this legislative framework. Renovate states that in addition to conflicting with the CFL, subdivision (c) would be extremely burdensome to implement. Renovate states that confirming compliance with paragraphs (c)(1) through (4) would effectively require on-site inspections for all PACE assessments, which is impracticable.

Response No. 1620.15.18: Subdivision (f) provides that the processes adopted by the program administrator must be acceptable to the Commissioner. Section 1620.15 and subdivision (c) of the section define the required elements of the periodic review that are acceptable to the Commissioner. The Department disagrees with the burden articulated by Renovate. For example, a program administrator could send an electronic survey to the property owner to gather information for the reviews. Many reasonable methods for gathering the information are available that are not burdensome.

Comment No. 1620.15.19: Proposed paragraph (c)(3) provides that the review must confirm that efficiency improvements installed are of the same quality and grade as those represented to the program administrator. Renovate states that paragraph (c)(3) is vague when it refers to efficiency improvements “of the same quality and grade” as those represented to the program administrator. According to Renovate, this phrase is undefined in the PACE statutes and is susceptible to multiple interpretations, and as such, it will be impossible for program administrators to prove that they are in compliance with this provision.

Response No. 1620.15.19: The Department has revised the provision to provide that the review shall confirm that efficiency improvements installed are those represented to the program administrator.

Comment No. 1620.15.20: Proposed paragraph (c)(4) provides that the review shall evaluate whether the efficiency improvements were completed, all outstanding permits

obtained final approval by a building inspector, if necessary, and if provided in the home improvement contract, solar improvements were connected as necessary. Renovate provides that with respect to paragraph (c)(4), the primary responsibility for ensuring that all outstanding permits are approved rests with homeowners, not program administrators. Renovate states that neither the PACE statutes nor any other state law contemplates program administrators supervising the permitting process.

Response No. 1620.15.20: Proposed paragraph (c)(4), recast as subparagraphs (c)(4)(A) and (B), are intended to ensure that property owners were not misled in the PACE financing process. If the project is not complete, the PACE solicitor should not have been paid and the property owner should not be subject to a PACE assessment. Revised subparagraphs (c)(4)(A) and (B) are intended to ensure that a PACE solicitor is in compliance with the requirements for PACE solicitation activities.

Comment No. 1620.15.20: The Consumer Coalition suggests that the word “repeatedly” should be removed from subparagraph (e)(2)(B). According to the Consumer Coalition, minimum qualifications must always be met, and if a solicitor or agent fails to maintain such qualifications, their enrollment should be cancelled immediately, and that information recorded on the Department website. Also, the Consumer Coalition indicates that subdivision (f) appears to be missing from the regulations (they jump from (e) to (g)).

Response No. 1620.15.20: The Department agrees and has removed the word “repeatedly” and corrected the numbering.

Comment No. 1620.15.21: Paragraph (e)(1) states that a program administrator must prepare a report summarizing the periodic review of the solicitation activities of the PACE solicitor and retain this report in its books and records in accordance with section 1620.07 of these rules. Renovate states that paragraph 1620.15(e)(1) would effectively require program administrators to act as agents of the Department in regulating home improvement contractors. Renovate suggests that this is problematic and inappropriate for reasons discussed throughout this response, and paragraph (e)(1) is also extraordinarily burdensome.

Response No. 1620.15.21: The Department agrees that the requirement of a report is burdensome and has revised the provision to state, “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.” The Department disagrees that Renovate is acting as the Department’s agent in conducting the periodic review required under paragraph (f)(3) of Financial Code section 22680.

Comment No. 1620.15.22: Proposed subparagraph (e)(2)(B) provides that if the periodic review identifies that a PACE solicitor or PACE solicitor agent repeatedly 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. Renovate states that subparagraph (e)(2)(B) improperly usurps the program administrator's role in determining when the enrollment of a PACE solicitor or PACE solicitor's agent should be canceled. Financial Code section 22680(g) states that "[a] program administrator shall establish and implement a process, which is acceptable to the commissioner, for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by this section, or who violate any provision of this division." Thus, according to Renovate, the program administrator establishes and implements a process for canceling enrollments, subject to the commissioner's approval of that process. Renovate states that subparagraph (e)(2)(B), by contrast, proactively directs program administrators to construct their standards in a particular manner, and this is contrary to the PACE statute.

Response No. 1620.15.22: Subdivision (g) of Financial Code section 22680 provides that the process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualification required by section 22680 shall be acceptable to the Commissioner. Subparagraph (e)(2)(B) sets forth what is acceptable to the Commissioner. The Department disagrees that it lacks authority to adopt this rule.

Comment No. 1620.15.23: Subdivision (g) provides that a program administrator shall conduct a periodic review of a PACE solicitor at least once every two years. Renovate indicates that subdivision (g) is contrary to the PACE statute because the law does not authorize program administrators to conduct wide-ranging reviews of PACE solicitors. Rather, Financial Code section 22680(f) limits periodic reviews to the "solicitation activities of PACE solicitors[.]" As written, paragraph (g) exceeds the scope of the Department's regulatory authority.

Response No. 1620.15.23: In renumbered paragraph (f)(1), the Department has revised the language to address Renovate's concern. The paragraph provides, "A program administrator shall conduct a periodic review of the solicitation activities of a PACE solicitor at least once every two years."

Section 1620.16. Canceling Enrollment

Comment No. 1620.16.01: Subdivision (a) provides that a program administrator shall establish and implement a written process for canceling the enrollment of a PACE solicitor or PACE solicitor agent. The Consumer Coalition agrees that procedures for cancelling enrollment should be in writing as required by section 1620.16(a), and the Consumer Coalition would like to see the Department play a more active role in approving those procedures and/or assessing their adequacy as part of the examination process.

Response No. 1620.16.01: The Department notes the comment and the suggestion for the routine regulatory examination.

Section 1620.17. Training Program

Comment No. 1620.17.01: The Consumer Coalition indicates that the provisions stating that the program administrator must ensure that each PACE solicitor and agent has completed six hours of training must also mandate that they pass the required test before soliciting property owners.

Response No. 1620.17.01: The requirement is in subdivision (c)(2) of section 1620.12 of the rules.

Comment No. 1620.17.02: Proposed subdivision (d) provides that 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. Renew indicates that it does not have direct relationships with PACE solicitor agents, so it recommends the annual updates to training be provided to the PACE solicitors.

Response No. 1620.17.02: The Department agrees and has added a provision to subdivision (d) providing that the information may be provided through the PACE solicitor.

Comment No. 1620.17.03: The proposed regulations provide that the ethics section of the PACE solicitor agent training may include information on the prohibition on incentives, and cash vs. PACE financing in subparagraphs (a)(3)(A) and (B). FortiFi suggests the language is vague and overbroad, and requests that the regulations be specifically tied to the prohibition in Streets and Highways Code section 5926 addressing incentives and PACE pricing. FortiFi has provided suggested language.

Response No. 1620.17.03: The Department agrees and has updated the provisions with the text proposed by FortiFi.

Comment No. 1620.17.04: FortiFi states that subdivision (e)(5) of section 1620.17 provides: “Consumer protection. This module must provide information on property owner protections under section 1920.10 of these rules.” FortiFi indicates that this appears to be a typo; the rule regarding deceptive practices is set forth in section 1620.10.

Response No. 1620.17.04. The Department agrees and has made the correction.

Comment No. 1620.17.05: The Consumer Coalition indicates with regard to the content of the required six hours of education, the Consumer Coalition believes the topics outlined, especially items in subparagraphs (e)(1)(C) through (K) should be mandatory and not left as items that the program administrator “may” include. In addition, the Consumer Coalition would add the following topics: (1) if a credit report will be pulled, the implications of a hard inquiry on the property owner’s credit must be explained; and

(2) the need to verify the nature of existing mortgages and the absolute prohibition of soliciting property owners with reverse mortgages.

Response No. 1620.17.05: The Department agrees with the recommendation to make the items in proposed subparagraphs (e)(1)(C) through (K) mandatory. The amendments and renumbering are in clauses (e)(1)(A)(1) through (9). The Department has added the additional topics to (e)(5)(A) and (B).

Comment No. 1620.17.06: The Consumer Coalition suggests that with regard to subparagraphs (e)(1)(H) and (J), the Department needs to provide more clarity about the concerns and requirements to which it is referring. From the consumer advocate side, the Consumer Coalition thinks the following should be highlighted: (1) Property owners may not be able to sell their house because of the PACE liens; (2) PACE liens will affect the property owners ability to refinance; (3) PACE liens will generally not transfer to a new owner and will have to be paid off by the property owner upon sale; (4) PACE liens get priority over their existing mortgage so that, if a property owner fails to pay the increase in their property taxes, their mortgage company will likely jump in and pay the arrears and then proceed to foreclosure if the property owner cannot pay the commensurate increase in their monthly escrow payments; and (5) property owners may breach their existing mortgage obligations by taking on a PACE lien.

Response No. 1620.17.06: The Department has provided additional detail for renumbered clauses (e)(1)(A)(1) through (8) (except (e)(1)(A)(3)), in accordance with the request by the Consumer Coalition.

Comment No. 1620.17.07: The Consumer Coalition provides that with regard to proposed paragraph (e)(2), again the list of items a program administrator “may” include regarding PACE disclosures should all be mandatory topics. In addition, it must be spelled out in the training that the solicitor must disclose with clarity that the home improvements will be paid back through a special assessment that will cause the property owner’s property tax bill to rise significantly, and that the specific amount of increase for the individual property owner must be made clear.

Response No. 1620.17.07: The Department has made the requested changes. The provisions are renumbered and appear in clauses (e)(2)(B)(1) through (5). The clarification regarding paying back the financing is in clause (e)(2)(B)(2).

Comment No. 1620.17.08: With regard to paragraph (e)(7), the Consumer Coalition recommends that “elder financial abuse” be amended to read “elder and dependent adult financial abuse” in line with the California Welfare and Institutions Code, and that solicitors be trained that soliciting PACE financing from a property owner with a reverse mortgage constitutes elder abuse.

Response No. 1620.17.08: The Department has renamed the topic as “elder and dependent adult financial abuse,” and referenced the definition in Welfare and Institutions Code section 15610.30. The Department did not include training PACE

solicitors that soliciting a property owner with a reverse mortgage constitutes elder abuse because the Department was unable to confirm the legal basis for this statement. However, the Legislature has subsequently prohibited PACE financing on properties with reverse mortgages, and clause (e)(2)(B)(6) has been added to require training on the subject.

Section 1620.19. Annual Report Data

Comment No. 1620.19.01: Proposed subparagraph (a)(3)(D) requires a program administrator to report on the number of assessment contracts originated during the prior calendar year, by interest rate, with brackets of 4 percentage points up to 20 percent and over. FortiFi suggests the requirement that program administrators report the number of assessment contracts originated during the prior calendar year broken out by interest rate, in four percentage-point banks, would require the disclosure of confidential or proprietary information or trade secrets. FortiFi suggests that the there is no basis for the disclosure in statute and recommends its deletion.

Response No. 1620.19.01: Based on FortiFi's concerns, the Department has reconsidered its need for this information. Instead, the Department has amended the provision to require reporting by rates that is the same as the rates for other licensees under the CFL. This change will subject program administrators to the same reporting as other licensees.

Comment No. 1620.19.02: Subparagraph (a)(3)(A) requires a program administrator to report annually to the Department the number of tax sales or foreclosures that were reported to the program administrator during the prior calendar year, on property subject to a PACE assessment initiated by the public agency, a program administrator, or any other person as the result of the nonpayment of PACE assessments. The report must include the year of the assessment contract, the original amount of the assessment contract, the zip code, the amount owed upon the tax sale or foreclosure, the purchase price paid for the property at sale or auction, and the amount recovered by the program administrator. Renovate indicates that the PACE statutes do not authorize the Department to require the inclusion of the information set forth in subparagraph (a)(3)(A) in the annual reports of program administrators. According to Renovate, the Department is authorized to request the enumerated categories of information set forth in Section 22692 of the Financial Code, as well as "relevant information . . . concerning the business and operations" of program administrators. Renovate suggests that the information required under subparagraph (a)(3)(A) does not relate to the "business and operations" of program administrators, so this provision exceeds Department's statutory authority. Renovate indicates that this rule's intention is also misplaced because it attempts to turn program administrators into servicers. Renovate indicates that program administrators do not keep information on tax sales or foreclosures in the regular course of business. Renovate indicates that they rely on government agencies, to the extent they receive this kind of information at all.

Response No. 1620.19.02: The Department disagrees that the Department lacks authority to request the information under Financial Code section 22159.

Comment No. 1620.19.03: The Consumer Coalition states that the proposed rule only requires reporting of “[t]he number of foreclosure actions on PACE property reported to the program administrator during the prior calendar year.” This reporting requirement is inadequate to meaningfully track the potential adverse effects of PACE financing on property ownership and borrower finances. While foreclosure by a mortgage lender is one of the most dangerous risks a PACE borrower may face, the failure to maintain payments on a PACE assessment contract can also result in serious mortgage delinquencies involving thousands of dollars in delinquency-related fees and charges even if a foreclosure does not occur. In addition, the draft rule fails to capture all of the relevant foreclosures and serious delinquencies that may occur. By limiting the required data on this issue to foreclosures “reported to the program administrator during the prior calendar year," the draft rule excludes any foreclosure or serious delinquency that is not reported to a program administrator. It is unclear who would be reporting this information to program administrators and in what manner, but it is highly unlikely that all – or even most – foreclosures on relevant properties would be subject to reports received by program administrators from property owners, mortgagees or other third parties. Program administrators can easily track foreclosure and delinquency activity on properties subject to PACE assessment contracts by simply checking on free or commercially available online databases, so it is reasonable to require them to collect this information as part of their annual reporting obligation. The draft rule also contains a number of undefined and/or imprecise terms and phrases, such as “PACE property” and “amount recovered through foreclosure”. For these reasons, we recommend that the Department revise this provision as follows: *The number of Notices of Default, Notices of Trustee’s Sale and Trustee’s Deeds upon Sale, respectively, recorded on properties subject to PACE assessment contracts administered by the program administrator during the prior calendar year. For each recorded Notice of Default and Notice of Trustee’s Sale, include the year of the assessment contract, the original amount of the assessment contract, the zip code of the property, the date the Notice was recorded, and the reinstatement amount reflected in the Notice. For each Trustee’s Deed upon Sale, include the year of the assessment contract, the original amount of the assessment contract, the zip code of the property, the amount of the unpaid date at the time of the trustee’s sale, and the amount paid by the buyer (grantee) in the trustee’s sale.*

Response No. 1620.19.03: The Department is not requiring program administrators to report this data because it is not their data – the data is the county’s data. The Department declines to require program administrators to conduct research and report the results to the Department. The Department notes that program administrators already report to state and local governments data that would allow for research of county records to be conducted.

Section 1620.21. Ability to Pay Determinations

Comment No. 1620.21.01: Proposed paragraphs (a)(1) through (3) provide that a program administrator must maintain written processes to prevent the persons making the good faith determination that the property owner has a reasonable ability to pay the annual payment obligations from any pressure or influence to reach a favorable determination, by: (1) the persons making the determination on whether to approve funding; (2) PACE solicitors and PACE solicitor agents participating in the transaction; or (3) the management team members responsible for maximizing profits for owners and investors. Renovate indicates that subdivision (a) would require program administrators to limit the interactions of employees involved in making the determination that a property owner has a reasonable ability to pay the annual assessment obligations. Renovate indicates that it prescribes the creation of various "written processes" to limit the ability of these individuals to interact with other individuals and to access various types of information. According to Renovate, implicit in the language of paragraph (a) is a view by the Department that program administrators, employees, and management have inherent, uncontrolled conflicts of interest that will lead to improper approval of assessment contracts. Renovate disagrees. Renovate states that paragraph (a) is devoid of any statutory foundation. Further, Renovate indicates that individual employees of program administrators are explicitly exempt from the definitions of PACE solicitor and PACE solicitor agent, and it is inconsistent with the PACE statutes for the Department to regulate the conduct of program administrators with respect to their employees. Renovate states that the restrictions imposed by subdivision (a) on the employees of program administrators are vague, overbroad, and unrelated to the CFL's stated purpose of consumer protection. According to Renovate, the meaning of the phrase "written processes" is vague and uncertain, as is the term "pressure and influence." Renovate suggests that to the extent that subdivision (a) is intended to restrict communications between individuals as opposed to access to information or undue influence, the state-imposed establishment of "written processes" likely infringes on those individuals' rights to free association and free speech under the United States Constitution and the California Constitution. Renovate requests that the rule be withdrawn. Renew also suggests that prohibition on compensating any person involved in determining a property owner's ability to pay the PACE assessment annual obligations is overbroad and could potentially capture a large number of people who are minimally involved in the ability to pay determination and have little bearing on its objectivity. Renew suggests the prohibition be limited to individuals who have "exception authority" over the ability to pay decisions – the ability to approve an exception to a PACE program's established underwriting guidelines. The Consumer Coalition provides that it is pleased to see that the Department has retained a provision aimed at ensuring that personnel involved in making the ability to pay determination are not subject to pressure or influence from other parties involved in the transaction, including PACE solicitors or solicitor agents or from management. The Consumer Coalition recommends, however, that the Department restore from an earlier draft the

requirement that there be a firewall separating personnel making the final ability to pay determination from other departments and functions.

Response No. 1620.21.01: The Department has considered the differing views on this subdivision and determined that the subdivision was venturing beyond requirements necessary to ensuring the integrity of the ability to pay determination. The Department has redrafted subdivision (a) to focus on ability to pay determinations, and the revised subdivision now provides:

> (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.

Comment No. 1620.21.02: Subdivision (b) provides that a program administrator shall not compensate any person involved in determining a property owner's ability to pay the PACE assessment annual obligations or involved in approving the funding of an assessment contract based on the person reaching a positive outcome of any ability to pay or funding decision, or in any manner that would otherwise affect the objectivity of the ability to pay determination. The Consumer Coalition is pleased to see that the Department has retained from an earlier draft a provision aimed at ensuring that personnel involved in the ability to pay determinations and funding approvals are not incentivized to reach positive outcomes. The Consumer Coalition strongly recommends that the Department also provide that any compensation for these individuals may not be based on the terms of the assessment contract, such as the interest rate charged to the owner. The Consumer Coalition provides that the final rule should provide that program administrators shall not pay to individuals involved in underwriting, directly or indirectly, compensation (including salaries, bonuses, commissions, and any financial or similar incentive) in an amount that is based on a term of the PACE transaction, the terms of multiple transactions by such individuals, or the number (or quotas) of PACE assessment contracts that are approved for funding and recordation.

Response No. 1620.21.02: While the Department has not added the specific language suggested by the Consumer Coalition, the Department has revised the subdivision to have the equivalent meaning. The Department has rephrased paragraph (b)(1) to

provide that 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.

Section 1620.22. Property Owner Income

Comment No. 1620.22.01: The Consumer Coalition appreciates the Department's inclusion of a statement of principles to guide the determination of a property owner's income; however, the Consumer Coalition is concerned that the significant changes made to the earlier draft will open the door to inaccurate income determinations that put property owners at risk of default and foreclosure. The Consumer Coalition urges the Department to restore the previous list of principles from the 2018 draft regulations, including former subparagraphs (c)(2) ("stable and reliable flow of income"); (c)(3) (two-year lookback period to be used in the ordinary course); and (c)(5) (clarifying the type of rental income that may be included), keeping in mind the following considerations. With respect to a stable and reliable flow of income, requiring program administrators to limit income used in the ability to pay determination to income that is "stable and reliable" is not, as at least one program administrator has asserted, imposing an unworkable standard. The "stable and reasonable" standard is utilized for VA loans pursuant to 38 C.F.R. § 4340(f). If the Department believes that further guidance on this standard is required, it can borrow from the VA's guidance, which states that "[i]ncome can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future." In order to address industry concerns, the Department could modify this guidance to read: "Income can be considered stable and reliable if it can reasonably be concluded that it will continue during the foreseeable future."

Response No. 1620.22.01: The Department is hesitant to impose additional standards on the ability to pay determinations without more evidence of their impact. Therefore, the Department will not be imposing a stable and reliable income standard or a two-year lookback standard in this rulemaking action.

Comment No. 1620.22.02: The Consumer Coalition indicates that in order to avoid having gross rent receipts counted toward a property owner's income when the property owner may have significant expenses that offset such income, the Consumer Coalition recommends that the Department clarify how rental income is to be handled. For rent on properties other than the property owner's primary residence, rental income should be limited to net rental income after deducting standard mortgage, property tax, insurance, and association (PITIA) costs. For rent received from the property that will be subject to the PACE assessment, rental income should be limited to rents received from tenants living in a separate unit, i.e., rent from boarders or roommates sharing the property owner's living space should not be included.

Response No. 1620.22.02: The Department agrees that for rental income other than the owner's residence, the income should be net after deducting housing related costs, and the rules have been amended to incorporate this provision. For rent received from the

owner’s residence, the Department is allowing the consideration of room and board as income provided that six months of income is verified through third-party records. The Department has considered the concerns of all parties and believes this is a reasonable result.

Comment No. 1620.22.03: The Consumer Coalition is concerned that section 1620.22(c)(7) does not fully implement the requirement in Financial Code section 22687(b)(1). Section 22687(b)(1) permits the use of automated income verification, but only if the source of the verification is “specific to the income of the property owner and not based on predictive or estimation methodologies and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator.” In contrast, section 1620.22(c)(7) simply provides that a program administrator shall not determine income “based on records or data that is not specific to the property owner.” The Consumer Coalition remains concerned that without express guidance as to what is “specific” to a property owner, some program administrators may attempt to use automated income verification systems or other forms of verification that are not consistent with the minimum statutory requirements. The rule should therefore provide examples of what is not acceptable. For example, the final rule should state that records and data regarding average incomes in the property owner's geographic location or average wages paid by the property owner's employer are not sufficient for income verification. In addition, the final rule should require that program administrators obtain approval from the Department before using any automated verification system to validate property owner income, employment, and asset data, after providing proof that the system is not based on predictive or estimation methodologies, and that it has been approved by a federal mortgage lending authority or regulator. The Department should also require an annual certification by program administrators that such automated system remains compliant. The automated income verification systems that currently exist operate to verify only salary and wage income, by accessing third-party payroll service records or IRS tax transcripts. The Department should prohibit the use of automated systems for other purposes until they become reasonably reliable. The final rule should provide that until such time as a program administrator can demonstrate to the satisfaction of the Department that an income verification system is reasonably reliable, program administrators shall not use automated systems for verification of self-employment income, military or reserve duty income, bonus pay, tips, commissions, interest payments, dividends, retirement benefits or entitlements, rental income, royalty payments, trust income, public assistance payments, and alimony, child support, and separate maintenance payments.

Response No. 1620.22.03. The Department has amended the rule to provide that 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. However, the Department is not requiring

program administrators receive approval from the Department to use automated income verification systems that are otherwise authorized by statute. Therefore, the Department declines to place additional requirements on the automated income verification systems. The Department can confirm during routine regulatory examinations that any income verification systems used by the program administrator has been determined sufficient by a federal mortgage lending authority or regulator.

Comment No. 1620.22.04: The Consumer Coalition indicates that Financial Code section 22687(b)(2) states that "[i]ncome may not be derived from … illiquid assets …." Section 1620.22(c) should expressly provide that illiquid assets must not be considered in determining ability to pay and should specify that illiquid assets include assets, such as funds in retirement accounts, that would result in a financial penalty for a property owner if withdrawn or liquidated at any time during the term of the PACE assessment contract.

Response No. 1620.22.04: The Department agrees and has added paragraph (b)(6).

Comment No. 1620.22.05: Ygrene requests that the Department allow a credit bureau model or other third-party source for determining income, spending, debt, and payment data. Ygrene objects to section 1620.22(b)(3), to the extent it prohibits methodologies that estimate income and preclude the use of statistically valid models to determine "reasonably expected" income. FortiFi suggests that the prohibition on using records that provide an estimate of income is inconsistent with the examples of documents in statute, because all documents only estimate future income. FortiFi further suggests that the rule could prohibit automated verification that has been expressly authorized by Financial Code section 22687(b)(1).

Response No. 1620.22.05: The Department agrees with FortiFi and Ygrene's concerns regarding paragraph (b)(3), and the provision has been amended to follow the statute more closely. Paragraph (b)(1) of Financial Code section 22687 provides that a program administrator may use automated verification provided the source of that verification is specific to the income of the property owner and not based on predictive or estimation methodologies and has been determined sufficient for those verification purposes by a federal mortgage lending authority or regulator. Thus, by statute the source of the verification must be specific to the income of the property owner, and not based on predictive or estimation methodologies. Proposed paragraph (b)(3) is renumbered as paragraph (b)(5) and amended to provide that 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.

Section 1620.25. Emergency

Comment No. 1620.25.01: Section 1620.25 of the rules provides that the installation of the following products does not constitute an emergency or immediate necessity: cool coat paint, window replacements, or a cool roof. FortiFi suggests that window replacement may constitute an emergency during colder or hotter months in certain locations, and therefore requests it be removed from the list of improvements that do not qualify for the emergency exemption from the requirement that the program administrator determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies on in order to determine a property owner's ability to pay the PACE assessment annual payment obligations using reasonably reliable third-party records of the property owner's income or assets.

Response No. 1620.25.01: The Department does not believe that the replacement of a window is an emergency that would require invoking the emergency exemption from the requirement that the program administrator determine and consider the current or reasonably expected income or assets of the property owner that the program administrator relies on in order to determine a property owner's ability to pay the PACE assessment annual payment obligations.

Comment No. 1620.25.02: The Consumer Coalition appreciates the Department's decision to provide specific examples of improvements that do not qualify for the emergency exception. After further consideration, however, the Consumer Coalition believes the only genuine PACE-eligible home improvement emergency in California would be the need to install air conditioning when temperatures have reached 80° F or higher. The Consumer Coalition recommends that the rule be amended accordingly. At a minimum, however, the Department should expand the list of non-qualifying improvements and situations in order to address some of the common abuses of the emergency exception advocates have encountered. These include air conditioning equipment installation when temperatures have not reached 80° F or more; heater installation when temperatures have not reached 50° F [or another threshold determined by the Department] or below; and installation of insulation. The Consumer Coalition recommends that the Department restore the requirement that any waiver of the right to cancel shall be in the same language as the confirmation call under Streets and Highway Code section 5913. In order to safeguard against abuse of what should be a very narrow exception, the final rule should also require that the waiver be handwritten and personally signed by the owner. DocuSign and e-sign should be prohibited for the waiver.

Response No. 1620.25.02: In 2019, program administrators cumulatively reported that 55 PACE assessments were funded and recorded under the emergency procedures in Financial Code section 22687, subdivision (e). The numbers do not appear to reflect that the emergency procedure is being abused, and the Department can sample files and verify during a routine regulatory examination that the provision is not being

abused. Therefore, the Department declines to narrow the permissible emergency improvements in the manner proposed. With regard to requiring the language of the waiver be in the same language as the confirmation call, the property owner drafts the waiver, not the program administrator. Paragraph (d)(3) of Streets and Highways Code section 5940 provides that a property owner must provide a statement that is handwritten in ink by the property owner and dated and signed by each property owner, describing the situation that requires immediate remedy, and expressly acknowledging that the contractor has informed the property owner of the property owner's right to cancel and that the property owner waives the right. Because the waiver is written by the property owner, the Department declines to require the waiver be in a specific language. The Department is not requiring by rule that the waiver be handwritten and signed by the property owner because that is already the law. Finally, since the waiver must be handwritten, the Department sees no purpose to prohibiting an electronic signature (and makes no representation whether such a prohibition is permissible).

Section 1620.27. Automated Valuation Model

Comment No. 1620.27.01: The Consumer Coalition provides as follows. Financial Code section 22684 provides that a property owner's total loan-to-value ratio for all mortgage related debt including all PACE assessments shall not exceed 97 percent of the market value of the property. With such a high loan-to-value ratio, even modest errors in valuation could result in a property owner owing more than the home is worth. Research has shown that there is wide variation in the accuracy of automated valuation models (AVMs), which program administrators are permitted to use, subject to certain limitations, pursuant to Financial Code section 22685. AVMs generally are used in combination with other analytics, data reviews, property inspections or appraisals. AVMs are most often used to support bulk decisions such as portfolio valuations or for appraisal reviews. Their accuracy is weaker when used for valuation for any individual property. For example, in one study of 666 U.S. counties, on average the percentage of automated valuations across all counties falling within +/- 10 percent of the sales price was only 70 percent, with variation between 20 percent and 92 percent, depending on the county. Thus, 30 percent of valuations on average were more than 10 percent different from sales price (which can itself be different from appraised value). On average, almost half of all valuations across all of the counties were more than 5 percent higher or lower than the sale price. On an individual level, such widespread potential for error undermines the lending process and a property owner's security. The proposed regulations do not include any substantive provisions addressing the significant consumer protection concerns raised by the use of AVMs. The Consumer Coalition is particularly concerned that an assumption made by all AVM models is that the property is in a marketable condition and is not in need of any significant repairs and that such an assumption may not be correct for a given property. The Consumer Coalition strongly recommends that the final rule require program administrators to include requirements for their enrolled PACE solicitors and solicitor agents that if a solicitor or solicitor agent has knowledge that these assumptions about the condition of

a property are not correct, they must communicate that information to the program administrator before a valuation is completed. Upon receipt of such information, the program administrator should be required to obtain a full appraisal (or a broker's price opinion (BPO) that meets designated rigorous standards).

Response No. 1620.27.01: The Department understands the concern, but the reporting requirement would be unworkable, and likely result in a regulatory trap rather than offering real protection to property owners. Further, an argument could be made that the process is not consistent with Financial Code section 22685, which requires the program administrator to utilize the estimated value with the highest confidence score for the property. Therefore, the Department declines to adopt the recommendation.

Comment No. 1620.27.02: The Consumer Coalition indicates that Financial Code section 22685(b) requires that "[t]he market value determination by the program administrator shall be disclosed to the property owner prior to signing the assessment contract." The Consumer Coalition recommends that the Department clarify that this disclosure must be in writing in order to ensure that property owners are able to review and refer back to the information as needed.

Response No. 1620.27.02: The Department agrees and has made the recommended change.

Section 1620.28. Useful Life of Improvement

Comment No. 1620.28.01: Rule 1620.28 states that a program administrator shall base the useful life of the efficiency improvement on the equipment manufacturer or installer's specifications 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. Renovate indicates that the requirement that the useful life of the efficiency improvement be based "on the equipment manufacturer or installer's specifications" is contrary to section 22684(j) of the Financial Code, which directs the program administrator to determine useful life based upon (1) credible third-party standards or certification criteria that have been established by appropriate government agencies; or (2) nationally recognized standards and testing organizations. In addition, Renovate does not object to the requirement that program administrators maintain documentation regarding the useful life of efficiency improvements. However, under rule 1620.07, this documentation would be subject to a retention period of up to thirty-three years (three years after the extinguishment of an assessment), and there is no basis to require useful life documentation for such an extensive period, as discussed in Renovate's response to rule 1620.07. Renovate requests this rule be amended to make clear that documentation of useful life is only required as of the date of execution of the assessment contract, and not actual useful life information at a later date. FortiFi suggests this requirement is inconsistent with the statute and maintaining the information in its books and records is unduly burdensome. Ygrene represents that the "useful life" determination in section 1620.28 is inconsistent with Financial Code section

22684(j). Ygrene suggests that it is infeasible to track every manufacturer's product and indicates that manufacturers do not always provide a useful life. Renew provides that the proposed language is unnecessarily prescriptive and allows fewer reasonable options in making estimates than permitted by statute. Renew suggests the proposed approach does not benefit consumers and creates significant burdens for program administrators. According to Renew, a manufacturer or installer's specifications are not more accurate estimates than the U.S. Department of Energy, the EPA, or other reputable third-party sources. PACE Funding requests that proposed section 1620.28 be aligned with the statute, and permit program administrators to base "useful life" on credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations.

Response No. 1620.28.01: The Department agrees that the provision is inconsistent with the statute and has revised the rule accordingly. The Department has also amended the rule to clarify that the useful life of the efficiency improvement is as of the execution of the assessment contract. The Department has retained the requirement that the program administrator maintain documentation of the useful life in its books and records. Under section 1620.07, this data must be retained for five years after consummation of the assessment contract.

Section 1620.29. Commercially Reasonable

Comment No. 1620.29.01: The Consumer Coalition appreciates the Department's addition of a provision to this rule clarifying that property tax payment information is reasonably available and that program administrators may not rely upon attestations of property owners in regard to their property tax payment history. The Consumer Coalition remains concerned, however, that this rule does not address arguments made by program administrators in comments submitted to the Department in 2018 indicating that they believe that it is not commercially reasonable to require program administrators to independently verify that (1) the property owner has not sought, authorized, or obtained other PACE assessments, or (2) the measures financed by an assessment contract are eligible. As to both examples, the Consumer Coalition does not believe that program administrators should rely solely upon attestations of property owners. Until such time as a registry for PACE assessments is in operation, program administrators should be required to obtain information about other assessment contracts from the PACE solicitor or solicitor agent on the project, who would be in a position to have knowledge about whether other energy-related improvements are planned or have been installed at the property. Program administrators should be required to obtain attestations from PACE solicitors that that they have no knowledge the property owner has sought, authorized, or obtained other PACE assessments on the property. If the PACE solicitor has knowledge of other improvements, this should trigger an inquiry by the program administrator to other PACE programs and tax collection offices, and a search of land records on the property. A similar process should

occur regarding whether the assessment contract is financing PACE- eligible measures. Rather than rely solely upon attestations of property owners, who will not necessarily have any experience with or training regarding measures that are PACE-eligible, program administrators should be required to obtain attestations from PACE solicitors that that they have no knowledge that the measures financed by a PACE assessment are ineligible.

Response No. 1620.29.01: The Department has considered the comments but is not persuaded that adding an attestation from a PACE solicitor is necessary. Subdivision (k) of Financial Code section 22684 already provides that a program administrator must verify the existence of recorded PACE assessments and must ask if the property owner has authorized additional PACE assessments on the same subject property that have not yet been recorded. Further, program administrators have developed the equivalent of a lien registry among themselves, and it is in their interest to uncover the existence of other PACE assessments, through the PACE solicitor or otherwise. The same is true for eligible measures – the Department is not persuaded that adding an attestation requirement is going to change whether a property owner or PACE solicitor attempts to use PACE financing for an ineligible measure.

Comment No. 1620.29.02: Subdivision (b) states that where information is not reasonably available through an independent source including those identified in subdivision (a), a program administrator may rely on the representation of the property owner to verify the criteria in Financial Code section 22684, provided the program administrator documents the reason the information is not available through an independent source in the records related to the assessment contract maintained under section 1620.08 of these rules. According to Renovate, Financial Code section 22684(l) allows companies to use “commercially reasonable and available methods” to assess certain underwriting requirements. Renovate states that this rule purports to require “independent source” corroboration of those underwriting requirements unless the information is not reasonably available, and in that event, requires program administrators “document” the reason why such information is not available. Renovate suggests this rule lacks statutory support and at times specifically contradicts PACE statutes. For example, Financial Code section 22684(a) allows a program administrator to verify status of current property taxes by relying on the attestation of a property owner to verify timely payment for the past three years. Renovate provides that this rule would not allow program administrators to rely on the attestation of the property owner without documenting why three years of property tax payment information was not otherwise available. Moreover, Renovate indicates the “commercially reasonable and available” information will sometimes not be “independent sources,” and the PACE statutes do not require program administrators to rely on independent sources as a default assumption. Additionally, according to Renovate this rule is vague and requires clarification. Renovate states that it is not clear what documentation the Department requires program administrators create when independent sources are not available. For

example, Renovate asks whether a written statement that “no independent source information was available,” be sufficient? Renovate requests this rule be withdrawn.

Response No. 1620.29.02: The Department has considered these concerns and agrees that the proposed language was not aligned with the statute. The Department has amended subdivision (b) to align with the statute while preserving the intent of ensuring that the eligibility requirements in Financial Code section 22684 are verified. Subdivision (b) is amended to provide that 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. It further provides that this paragraph shall not be applicable to any criteria where Financial Code section 22684 requires or authorizes the verification directly with the property owner.

Comment No. 1620.29.03: Ygrene is concerned is about the mandate to use the payment of property tax histories in subdivision (c) as a method to verify some of the information in Financial Code section 22684 because the tax histories are not always available. Renovate suggests the rule purports to create a bright line rule that “property tax payment histories” are a commercially reasonable and “available” method to verify some criteria in Financial Code section 22684. While Renovate agrees that property tax payment histories are commercially reasonable to assess some underwriting requirements, a bright line rule that such information is “available” is erroneous. According to Renovate, program administrators may rely on available data to confirm current tax payment status, but program administrators often do not have the means to determine, with third-party information, whether and how often property tax delinquencies have occurred over the past three years. Renovates states that to make a determination of property tax payment history, program administrators often must rely on a property owner attestation, which is specifically permitted under Financial Code section 22684(a).

Response No. 1620.29.03: The Department agrees and has addressed these concerns by adding to subdivision (c), “[…] unless the payment tax history is unavailable at the time or Financial Code section 22684 authorizes verification directly from the property owner.”

Comments Received During the First Notice of Modifications from May 27, 2020 through June 12, 2020

The following persons submitted comments to the Department during the 15-day comment period from May 27, 2020 through June 12, 2020:

1. Legacy Finance Group, Brian Schwindt – by email sent June 9, 2020 (“LFG”).
2. Keesal, Young & Logan, Sandor X. Mayuga – by letter dated June 11, 2020, received via email.

3. California Association of Realtors, Anna Buck, Legislative Advocate - by letter dated June 11, 2020, received via email.
4. PACE Funding Group, Robert Giles, Chief Executive Officer – by letter dated June 12, 2020, received via email.
5. FortiFi Financial, Inc., Christopher Nard, Chief Executive Officer – by letter dated June 12, 2020, received via email.
6. California Low-Income Consumer Coalition, Bet Tzedek, Community Legal Services in East Palo Alto, East Bay Community Law Center, Elder Law & Advocacy, National Housing Law Project, Legal Aid of Marin, Legal Aid Society of San Diego, Inc., Public Counsel, Riverside Legal Aid, and UCI Law Consumer Law Clinic, on behalf of their clients – by letter dated June 12, 2020, received via email.[1]
7. Ygrene Energy Fund, Farschad Farzan, General Counsel – by letter dated June 12, 2020, received via email.

Commentor No. 1: Brian Schwindt, Legacy Finance Group

Comment No. 1.1.01: LFG is an Oregon based company that specifically does commercial equipment financing (in all 50 states) and has been doing that for nearly 20 years. Prior to starting this company, the principals were involved with other companies that do the same thing going back over 30 years. Nothing LFG does involves personal loans or real estate. LFG only lends to businesses for commercial equipment used for essential business use. LGF only has a California Secretary of State filing because California is the only state that requires LFG to, outside of Oregon (the state LFG is based in). In fact, California is the only state that requires LGF to have any sort of license at all, and now California is considering making LFG get a license to cover the other 49 states in which LFG is not even required to have a license in any of those other 49 states. It just seems like overkill...LGF would completely agree if anything it did involved real estate, or any of the other things that are tied to this NMLS topic.

Response No. 1.1.01: Please see Responses No. 1.01 and No. 2.01, above. The commentors had similar concerns.

Commentor No. 2: KYL

Comment No. 1.2.01: KYL requests the use of a short form application for affiliates.

Response No. 1.2.01: Please see Response No. 4.04, above. While a short form application will be obsolete as licensees transition to NMLS, the Department welcomes other recommendations about ways to streamline the application process.

[1] Although the signatories of the letter from consumer advocates have changed from the prior comment period, the Department will continue to refer to the comments as those of the "Consumer Coalition."

Commentor No. 3: C.A.R.

Comment No. 1.3.01: C.A.R. indicates that the last set of revisions included a requirement for all CFL licensees, including program administrators, to register with the NMLS. C.A.R. supports this change. C.A.R. notes that it has always been troubling that despite all the nomenclature surrounding the PACE product, i.e., “it’s not a loan” (despite someone borrowing money they have to pay back which is secured by the property) that a complicated financing product can be sold by persons who do not have NMLS registration. Requiring all CFL licensees to register with NMLS will help to ensure that the persons selling this product are properly trained and aid in regulation.

Response No. 1.3.01: Your support of this requirement is noted.

Commentor No. 4: PACE Funding

Comment No. 1.4.01: PACE Funding renews its request to require all residential PACE program administrators to participate in a real-time Lien Registry to address the problem of “assessment stacking,” and also renews its request for an explicit prohibition on the placement of a residential PACE assessment on property encumbered by a reverse mortgage.

Response No. 1.4.01: Please see Response No. 8.02, above.

Commentor No. 5: FortiFi

Comment No. 1.5.01: With regard to the changes to subdivision (h) and paragraph (m)(2) of section 1404 of these rules, FortiFi supports the clarifications in the modified proposed rules regarding which persons or entities are “control persons” of the licensee that must file an MU2 form through the NMLS. FortiFi believes that the proposal to define “outstanding equity securities” as including only those equity interests that provide the holder with voting or control rights is appropriate.

Response No. 1.5.01: Your support is noted.

Comment No. 1.5.02: FortiFi states that section 1422(c) of the modified proposed rules would direct the Department to waive the requirement that each officer, director, general partner, or managing member of any entity owning 10 percent or more of the outstanding interests of an applicant or licensee submit fingerprints and complete a Statement of Identity and Questionnaire if the entity is a reporting company registered under section 12 or section 15(d) of the Securities Exchange Act of 1934 – that is, if the entity is a public company. FortiFi recognizes that Exhibit C, which appears in section 1422(c), strictly applies only to finance lenders and brokers who do not complete their license applications through NMLS. In FortiFi’s experience, however, the Department uses the guidance in Exhibit C to determine who must submit fingerprints and complete an MU2 for owners and control persons of entities owning 10 percent or more of program administrator applicants and licensees. FortiFi therefore seeks clarification that the Department will waive the MU2 and fingerprinting requirements for owners of any

entity that owns 10 percent or more of the outstanding equity interests of a program administrator if such entity is a public company and is current in all of its material reporting requirements. Accordingly, FortiFi recommends that the Department include similar language regarding waiving the fingerprinting and Statement of Identity and Questionnaire requirement in 1422.5(a)(3) so that this waiver applies to all applicants and licensees that use NMLS. Specifically, FortiFi recommends the following language be added to the end of 1422.5(a)(3) (before 1422.5(a)(3)(A)): "*The Commissioner shall waive this requirement for the owners and control persons of any entity that owns 10 percent or more of the outstanding equity interests or outstanding equity securities of the applicant if the entity is a reporting company registered under section 12 or section 15(d) of the Securities Exchange Act of 1934, if that registered reporting company is current in all of its material reporting requirements under said law and the regulations of the Securities Exchange Commission thereunder*."

Response No. 1.5.02: The Department has renumbered and amended subparagraphs (a)(3)(A) and (B) to not require a form MU2 or fingerprints of each officer, director, general partner, or managing member of an owner of 10 percent or more of the interests or equity securities in an applicant, unless that individual has the power to direct the management or policies of the applicant's lending activities or PACE program administration activities in this state. The Department believes this change is consistent with Financial Code sections 22101 and 22105 and is necessary to ensure that background investigations are focused on the individuals who are actively engaged in the licensed activities of the applicant. The change is further necessary to align more closely with the background investigations under other financial services laws administered by the Department, such as the California Deferred Deposit Transaction Law and the Student Loan Servicing Act. A form MU2 and fingerprints are still required of individuals owning 10 percent or more of the applicant, as defined. These changes make FortiFi's request unnecessary.

Commentor No. 6: Consumer Coalition

Comment No. 1.6.01: The Consumer Coalition appreciates the Department's addition of a requirement in subdivision (a)(3) of section 1422.5.1 that applicants provide the Department with all versions of their respective standard templates for assessment agreements with property owners.

Response No. 1.6.01: The comments are noted.

Comment No. 1.6.02: The Consumer Coalition indicates that a previous version of the PACE regulations included a section requiring that property owners be given a mandatory brochure prior to entering into a PACE assessment contract. This section has been removed from the current proposed regulations and replaced with a more general rule regarding written disclosures. The Consumer Coalition urges the Department to require delivery of a mandatory brochure created by the Department at least 48 hours before the property owner enters into a PACE assessment contract. The

mandatory brochure should include, at a minimum: (1) A warning that most mortgage lenders will not lend on a home encumbered by a PACE assessment and the PACE assessment will likely have to be paid in full as part of any sale or refinance. (2) A warning about the risk of losing the home in a tax sale for failing to pay the assessment contract, or in a foreclosure for defaulting on a mortgage that includes an increased escrow impound for property taxes. (3) An explanation of the potential impact of the PACE assessment on the property owner's monthly payment obligation to her mortgage lender, including an explanation that (i) an increased property tax bill will result in increases to any required escrow payment to the mortgage lender; and (ii) for property owners who currently pay their property tax bills directly, failure to pay the assessment contract as part of the property tax bill could result in the mortgage lender requiring the property owner to make monthly escrow payments for property taxes going forward. (4) Notification to property owners of their right to submit a complaint to the program administrator or the PACE solicitor and describe the applicable complaint procedures. In addition, any written disclosures should be provided in the same language used in the solicitation of the PACE assessment. Any reference to the effect of a PACE assessment on a property owner's tax obligations should not refer to "tax benefits" since that phrase implies that any tax impacts would be beneficial for the property owner. The brochure should instead employ the more neutral phrase "tax impacts" or "tax implications" and should also advise property owners to consult a tax professional.

Response No. 1.6.02: Please see Response No.1620.06.08, above.

Comment No. 1.6.03: The Consumer Coalition recommends that the Department require program administrators, as a condition of disbursing funds, to obtain a copy of the underlying home improvement contract, signed by the property owner, and confirm that the work listed in the contract matches what the program administrator is funding under the assessment contract. The Consumer Coalition also recommends that the Department require program administrators to verify that home improvement contracts comply with the requirements of Business & Professions Code section 7159. The Consumer Coalition further recommends that the Department require that program administrators provide property owners with documents that are legible and written so as to be reasonably understood by the legible and written at no higher than an eight-grade reading level.

Response No. 1.6.03: Please see Response No. 1620.03.07:

Comment No. 7: Ygrene

Comment No. 7.1.01: Many of the modifications to the PACE solicitor and PACE solicitor agent proposed regulations appear on their face to be contrary to other positions program administrators are required to take by the same proposed regulations. For example, on the one hand, program administrators are required in every written advertisement to disclose that a program administrator is not a government agency, while on the other hand, program administrators are being required

to make determinations about contractors conduct outside of a PACE program that may have impacts on such contractors business prospects, particularly without the benefit of due process (i.e., program administrators are being tasked with regulatory agency-like obligations). See, e.g., proposed section 1620.05(c) and proposed section 1620.11(b)(3)(F) (requiring PACE solicitors to notify the program administrator about inquiries or complaints under the home improvement contract even if portions of the home improvement contract are not being financed under PACE); proposed section 1620.11(c)(2)(B) (requiring program administrators to review past licenses and registrations when program administrators do not readily have access to or a right to access such items); proposed section 1620.11(d)(1)(D) (requiring program administrators to make determinations about why PACE solicitors are not subject to or exempt from licensure by the Contractors State License Board); proposed section 1620.13(c)(1)(D) (denying enrollment for a PACE solicitor based on a pending complaint with the Contractors State License Board before such complaint is resolved by the appropriate regulatory agency).

Response No. 7.1.01: Subdivision (d) of Financial Code section 22680 prohibits a program administrator from enrolling a PACE solicitor or PACE solicitor agent that does not satisfy at least one of the criteria in paragraphs (d)(1) thorough (d)(3). Subdivision (g) requires a program administrator to establish and implement a process, which is acceptable to the Commissioner, for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by the section. The Department disagrees with Ygrene's contention that the regulations deny a PACE solicitor or PACE solicitor agent due process. The Department does not agree that denial of enrollment or cancellation of enrollment as a PACE solicitor or PACE solicitor agent is a property interest entitling a PACE solicitor or a PACE solicitor agent to notice and an evidentiary hearing prior to the denial of, or cancellation of, enrollment.

1620.02. Definitions

Comment No. 1.1620.2.01: The Consumer Coalition indicates it is in agreement with the Department's decision to address and clarify the ability to pay issue in sections 1620.21 and 1620.22 rather than in the definitions section of the regulations and has included its comments on this topic in the discussion of those sections below. The Consumer Coalition appreciates the modifications the Department has made to the definitions in subsections (a), (b) and (e). The Consumer Coalition recommends, however, that the Department revise subsection (b) further as follows: "Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of an assessment contract, or an application for an assessment contract, under a PACE program, and includes communication with a property owner to obtain information necessary for the processing of an application for an assessment contract, or for an assessment contract, when conducted by an employee of the program administrator. "Administrative or clerical tasks" also means customer and back-end technical support on the electronic, we*b*-based or database elements of PACE applications*, when*

conducted by an employee of the program administrator. "Administrative or clerical tasks" do not include the activities described in paragraph (a)(1) of this rule. FortiFi indicates that the revisions to the definition of "administrative or clerical tasks" are helpful in that it now includes customer technical support functions. Please see FortiFi's comments on the proposed rules filed December 9, 2019 for further support for this change. FortiFi also proposes one very minor clerical amendment to fix a typographical error in the modified proposed rules: "we-based" should be revised to "web-based."

Response No. 1.1620.2.01: The Department has accepted the typographical correction. The final regulations do not include the suggested language "when conducted by an employee of the program administrator" because subdivision (c)(1) already exempts persons employed by a program administrator from the definitions of a PACE solicitor and a PACE solicitor agent. Therefore, the proposed text would make the exclusion for a person who performs purely administrative or clerical tasks meaningless. However, the Department has added "when performed by an individual under the supervision and direction of the enrolled PACE solicitor, an enrolled PACE solicitor agent, or a program administrator."

Comment No. 1.1620.2.02: FortiFi strongly supports the revision to clarify that the "status of a license or registration on the CSLB website that a license or registration is active, without any notice that the license or registration is expired, suspended, revoked, surrendered, conditioned, or restricted, constitutes the maintenance of a license or registration in good standing." Program administrators should be able to rely on the CSLB website to determine whether a contractor's license or Home Improvement Salesperson's registration is in good standing.

Response No. 1.1620.2.02: The support is noted.

Section 1620.03. Exclusions

Comment No. 1.1620.2.03: Ygrene recommends that the Department revise (i) proposed section 1620.03(b)(1) to delete the word "efficiency." Under California PACE law, improvements are not limited to efficiency improvements and, for example, can include renewable energy, seismic strengthening, and wildfire mitigation improvements. See e.g., Cal. Sts. & High. Code §§ 5898.20, 5899, 5899.3 & 5899.4. The current proposed rules, without the recommended modifications, could restrict a PACE program from financing such improvements by suggesting such improvements are ineligible for financing through PACE (even though such improvements are permitted expressly by law).

Response No. 1.1620.2.03: The Department has made the requested change.

Section 1620.05. Advertising Standards

Comment No. 1.1620.05.01: FortiFi indicates the modified proposed rules add several important clarifications regarding advertising prohibitions: (1) Paragraph (a)(1) – now

makes the regulations consistent with statute by permitting truthful statements about tax deductibility of PACE assessments which are consistent with statements of the IRS or state taxing authorities. (2) Paragraph (a)(5) – similarly revised to permit truthful statements about energy savings associated with PACE-financed improvements if the statement is supported by evidence and consistent with CPUC inputs and assumptions. (3) Subdivision (b) - FortiFi supports the deletion of this subsection, which previously contained confusing, difficult to enforce, difficult to monitor and unnecessary requirements.

Response No. 1.1620.05.01: The comments are noted.

Comment No. 1.1620.05.02: Consumer Coalition appreciates the Department's recharacterizing of the advertising standards to provide greater clarity; however, Consumer Coalition believes that in order to emphasize the seriousness of misleading or false advertising by a program administrator that their ability to remain licensed should be contingent upon their compliance. It is a concern that the exemption for written advertisements of 500 or fewer is too broad in scope. Advertisers are trained to use concise ads as they are more effective and can be circumvented by the use of pictograms (using pictures of objects instead of words) and other methods that would end up well under the word limit.

Response No. 1.1620.05.02: The Department agrees that 500 or fewer characters may be too many and has reduced the number characters and clarified that the platform must be electronic.

Section 1620.06. Written Disclosures

Comment No. 1.1620.06.01: Consumer Coalition appreciates the Department's consolidation of aspects of the former section 1620.03 with section 1620.06, as this provides more clarity in the regulations. The Consumer Coalition strongly supports the provision making printed documents the default option for PACE borrowers, although it has some concerns with the practice of obtaining confirmation by phone, absent additional safeguards to ensure the program administrator is speaking to the property owner outside of the presence of the contractor. The Consumer Coalition agrees with the wisdom of asking for details about a property owner's email address in the confirmation of key terms calls and making clear that all property owners are entitled to receive printed copies of documents even after agreeing to contract electronically. The Consumer Coalition recognizes and applauds the Department's efforts in these regards, but the rules as written are still insufficient to ensure that property owners are adequately informed about PACE transactions and to prevent fraud by unscrupulous contractors. In addition to the changes suggested below, the Consumer Coalition therefore recommends that the Department: (1) Prohibit program administrators from including consent to transact electronically provisions in financing applications or other form documents, and instead require that property owners agree to transact electronically as a separate and independent agreement; (2) Prohibit PACE solicitors

from participating in confirmation of key terms calls; (3) Add appropriate time limits to section 1620.06(b)(6) to ensure that the printed documents are dispatched and received timely by the property owner; (4) Require that program administrators conduct all calls in which information is sought or confirmed in a manner intended to determine and ensure that the property owner understands the information; (5) Require that property owners receive a PACE information brochure created by the Department at least 48 hours before entering into any PACE transaction; (6) Require that program administrators obtain underlying home improvement contracts and verify the work contained therein matches that financed; and (7) Ensure that the information in PACE program documents is written at no higher than an eighth-grade reading level.

Response No. 1.1620.06.01: To address the first recommendation, the Department has amended paragraph (a)(4) to 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 property owner can access the information in the electronic form. With respect to the second recommendation, please see Response No. 1620.03.04 regarding the participation of the PACE solicitor or PACE solicitor agent in the confirmation of key terms call. With respect to the third recommendation, subparagraph (a)(1)(A) of Streets and Highway Code section 5913 requires a program administrator to confirm that at least one owner has a copy of the contract assessment documents before a property owner executes an assessment contract, and subdivision (b) of section 1620.06 sets forth a series of requirements to ensure a property owner can access an electronic document, and therefore the Department does not think time periods for the paper contract are necessary. With respect to requiring the program administrators conduct all calls in a manner intended to ensure the property owner understands the information, the Department has added subdivision (e), which requires the oral confirmation of key terms under Streets and Highways Code section 5913 be conducted in a manner intended to confirm the property owner understands the information. This requirement is consistent with making the oral confirmation in plain language as required under subparagraph (a)(1)(B) of Streets and Highways Code section 5913 and obtaining the acknowledgement of the property owner. However, for all calls, the Department is concerned the standard is ambiguous and difficult to enforce, and therefore the Department declines to add this requirement. With regard to receiving a brochure, please see Response No. 1620.06.08. With regard to obtaining the underlying home improvement contract, the Department has added subdivision (f) to section 1620.06 of these rules to require that a program administrator confirm the scope of work with the property owner during the oral confirmation of key terms call. Therefore, the Department does not think this additional confirmation is necessary. With regard to obtaining a copy of the home improvement contract, please see Response No. 1620.03.07. With regard to ensuring that the information in PACE program documents

is written at no higher than an eighth grade reading level, the Department defers to local agencies for requirements regarding the assessment contracts.

Comment No. 1.1620.06.02: PACE Funding appreciates the clarification that documents can be provided either electronically or in paper form, however there are some requirements for electronic documents that would be both impractical to implement and significantly impact how business is typically done, excluding some property owners from participating in the program. If a property owner asks to receive documents electronically, they should be able to and it should be assumed that they have the ability to do so. It is not practical to put a solicitor or program administrator in the position of having to confirm such a thing as access to the internet. As for confirming when the email address was created, PACE Funding has technology to detect newly created email addresses and it is assumed other providers use similar technology. Requiring the confirmation from the property owner of when an address was created is just not practical and not as effective as other technology utilized by the program administrators. Additionally, the property owner should be free to store their documents in whatever manner they choose. Telling them to print out all documents is counterproductive to the conservation efforts that drives many to use PACE in the first place.

Response No. 1.1620.06.02: The Department agrees that if a property owner asks to receive documents electronically, they should be able to, and it should be assumed that they have the ability to do so. However, in practice property owners do not ask to receive documents electronically – they “consent” to receiving documents electronically because this consent is included in the agreement. The requirements in this rule implement safeguards to prevent scenarios encountered in the past where property owners have failed to receive the documents that establish a lien on their property. Some PACE programs are administered entirely electronically, but property owners who do not have access to the internet or email have nevertheless been solicited to enter into the assessment contracts and have never received the documents. Every program administrator must speak with a property owner during the confirmation of key terms call, so the Department does not see the burden of confirming with a property owner that the property owner has access to the internet and agrees to accept the documents at the property owner’s email address. This confirmation is only necessary when documents are not otherwise provided to property owners in a printed form, and it will help ameliorate the instances of property owners failing to access the documents. Further, the requirement to advise a property owner to print, read, and save a physical and electronic copy of the documents is not burdensome. A program administrator will comply with this requirement by including the advice in boilerplate language in the transmittal email to the property owner. Finally, with respect to concerns regarding the burden of confirming when the property owner’s email address was created, the Department agrees that technology to detect newly created email addresses achieves the same goal. The Department has added a provision providing that a program administrator that uses technology to detect newly created email addresses may rely on this technology in lieu of confirming the date of email creation with the property owner.

Comment No. 1.1620.06.03: C.A.R indicates that the proposed regulations require a program administrator to advise a homeowner who opts to receive their disclosures electronically to print, read, and save a physical copy of the documents and to save an electronic copy of the documents. The proposed regulations also require an administrator to provide physical documents upon the request of a homeowner. However, based on the experience of C.A.R. ‘s members C.A.R. strongly urges that the disclosures should be provided in paper form to the homeowner in every instance. Given that the result of PACE financing is a super priority lien on a property, the terms and disclosures should not have the potential of being hidden away and potentially lost in a homeowners’ email. Furthermore, a consumer’s ability to have other trusted persons review documents during the rescission period is vital. Many consumers do not have printers to print documents and taking a physical document to, for example, a senior center or legal aid for advice is much easier than trying to pull up an email on a phone or other device to have it reviewed. Seniors and non-English speakers who are often targeted by unscrupulous contractors have the most to benefit from being able to have someone review what they signed be it a non-profit, friend or relative look at what they signed. Because C.A.R. believes so strongly that hard copy disclosures should be provided to every consumer considering this transaction, since C.A.R.’s last comments, C.A.R. has sponsored AB 1551 (Arambula), in the Legislature. AB 1551 requires a hard copy of the financing estimate and disclosure required by Streets and Highways Code section 5898.17 to be given to the consumer.

Response No. 1.1620.06.03: The Department recognizes the problems from property owners not having access to the records related to PACE transactions. However, in light of the legal protections regarding electronic transactions, the Department defers to the Legislature with regard to requiring physical copies of documents, such as have been established under AB 1551. See Response No. 1620.03.01.

Comment No. 1.1620.06.04: Consumer Coalition indicates that subdivision (a) now correctly establishes printed copies of PACE documents as the default unless the property owner agrees to accept electronic copies. However, as the Consumer Coalition noted in its December 9, 2019 comment letter, program administrators often require property owners to agree to transact electronically as a provision buried several pages deep in the financing applications (which are also usually signed electronically under questionable circumstances). As property owners must agree to transact electronically in order to submit an application, that agreement is not free and knowing. The Consumer Coalition therefore recommends that the Department require any agreement to transact or receive documents and disclosures electronically be obtained in a separate and independent agreement solely for that purpose. Only by having property owners agree to transact electronically independent from any other agreement can the Department ensure that property owners truly desire to transact electronically. Agreement to transact electronically should not be a program requirement.

Response No. 1.1620.06.04: The Department has added paragraph (a)(4) providing 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 property owner can access the information in the electronic form.

Comment No. 1.1620.06.05: The Consumer Coalition applauds the Department's inclusion of subdivisions (b) and (c), which will improve property owner access to documents and information and hopefully will reduce fraud by unscrupulous contractors.

Response No. 1.1620.06.05: The support for these provisions is noted.

Comment No. 1.1620.06.06: The Consumer Coalition appreciates the Department's effort in proposed subdivision (e) to ensure that program administrators verify the legitimacy of electronic signatures. Given the prevalence of electronic signature fraud in the PACE program, which the Consumer Coalition sees firsthand with its clients, this is an important and necessary goal. However, as written, this provision lacks sufficient specificity to be meaningfully enforced. Requiring only that administrators "implement methods" to ensure the veracity of signatures and including suggested methods without a requirement that any of them be implemented, leaves property owners vulnerable. In addition, this provision as written applies only to signatures obtained "through a PACE solicitor agent." However, it is sometimes difficult to determine the involvement of a PACE solicitor agent in any electronic signatures. The Consumer Coalition recommends revising this subsection to read: *Program administrators shall take reasonable steps to ensure that signatures belong to the property owner(s), including but not limited to the following. (1) Confirming the identity of the property owner(s) through photo or other unique identification presented by the property owner(s) or a two-step authentication process. (2) Tracking IP geolocation information. (3) Sending a confirmation letter by postal mail. (4) Confirming the identity of the property owner(s) and that the property owner(s) will be the person(s) signing the assessment contract during the oral confirmation of key terms.*

Response No. 1.1620.06.06: After several iterations, the revised rule provides if a signature is not notarized, the program administrator must confirm the signature of the property owner through confirming the identity of the property owner through photo or other unique identification presented by the property owner or a two-step authentication process, plus one of the following: (1) tracking IP geolocation information, (2) sending a confirming letter by postal mail, or (3) confirming the identity of the property owner and that the property owner will be the person signing the assessment contract during the oral confirmation of key terms. This result is intended to ensure the authenticity of the property owner's signature.

Comment No. 1.1620.06.07: Ygrene requests revising Proposed Section 1620.06(e)(1) to allow property owners to receive contract assessment documents on their own

devices when provided only in electronic format. Proposed Section 1620.06(e)(1) requires program administrators to confirm on the confirmation of key terms call required by Streets and Highways Code section 5913 that a property owner has a copy of the applicable contract assessment documents. Ygrene recommends that two updates be made to this proposed rule. First, if the contract assessment documents are sent both in physical form (i.e., paper copies) and in electronic form, then the second part of this rule regarding accessing electronic documents on a device other than a PACE solicitor's device should not be applicable. To this end, Ygrene recommends revising the word "electronically" to read "solely in electronic format". By making this modification, property owners would no longer be required to access the electronic documents before the call if they have the physical copies. Second, Ygrene recommends revising the requirement surrounding accessing electronic documents prior to the key terms call to permit property owners the option to confirm they have received such documents on their own device(s). Providing property owners the ability to view electronic documents on the PACE solicitor's device while confirming they have received the documents separately on their own device should achieve the same protections but afford property owners more flexibility in how they view the documents prior to the confirmation of key terms call (which call occurs prior to execution of the documents). Therefore, Ygrene recommends inserting "or the property owner has received the documents on their own device(s)" immediately after "PACE solicitor agent's electronic device".

Response No. 1.1620.06.07: The Department agrees with Ygrene's recommendations and has made the changes.

Comment No. 1.1620.06.08: FortiFi indicates that the proposed rules and modified proposed rules correctly permit electronic transactions and the delivery of assessment contracts and associated disclosure documents electronically. The modified proposed rules add a number of new requirements to ensure customers consent to electronic disclosures. FortiFi is concerned that the requirement that the property owner access the assessment contract, financing estimate & disclosure and right to cancel form as required by Streets and Highways Code section 5913(a)(1)(A) through a device other than the PACE solicitor agent's device will exclude many homeowners from access to this form of home resiliency financing. In some cases, property owners view such disclosures on the device of the PACE solicitor agent. While property owners would be required to have their own email address created prior to the solicitation for PACE financing, it is still possible that a property owner may wish to review the documents and disclosures at the kitchen table, with their contractor, rather than needing to leave to access documents on a separate device.

Response No. 1.1620.06.08: The Department has clarified the language to provide that if the assessment contract is only provided electronically, the program administrator must confirm that property owner can access the document from the property owner's

own electronic device. However, nothing in the revised rules prevents property owners from reviewing the documents with the PACE solicitor agent on the agent's device.

Comment No. 1.1620.06.09: According to FortiFi, a property owner should be permitted to receive the required disclosures and contract documents in a paper format or on their own electronic device, but also have the ability to review and accept terms, including providing electronic signatures and initials, on the PACE solicitor agent's electronic device. This helps to alleviate logistical problems, especially where property owners lack scanners. Accordingly, FortiFi suggests the following deletion (and one clerical revision): "(1) For purposes of confirming that at least one owner of the property has a copy of the *assessment* contract ~~assessment~~ documents required in subparagraph (a)(1)(A) of Streets and Highways Code section 5913, the program administrator shall confirm that the physical or electronic documents have been delivered to the property owner, and if the documents are delivered *solely* electronically, that the property owner has accessed the documents through a device other than through the PACE solicitor agent's electronic device *or received the documents on the property owner's own device*, before proceeding with the remainder of the oral confirmation."

Response No. 1.1620.06.09: The Department believes most of FortiFi's request is included in the revised language. However, the Department has retained the requirement that property owners can successfully access the electronic documents, in addition to having received the documents. The purpose is to ensure the property owner can open the electronic documents.

Comment No. 1.1620.06.10: The Consumer Coalition appreciates the Department's efforts to ensure that property owners consent to a PACE solicitor agent's presence on the oral confirmation of key terms calls before proceeding. However, practically speaking, very few if any property owners will ever object to the presence of PACE solicitor agents on the calls. In many cases the PACE solicitor or their agent is already in the room with the property owner and asking them to leave would create an uncomfortable situation. In the Consumer Coalition's experience, PACE solicitors often ingratiate themselves as the property owner's friend and someone just trying to help, rather than disclosing that they are a beneficiary and counterparty to a serious financial transaction. PACE solicitors tell the property owners to trust them, and not to worry too much about what is said on the call. Most property owners initially have no reason to be skeptical of what PACE solicitors or their agents are telling them about PACE, and the Consumer Coalition has heard dozens of stories of property owners being coached through these calls by PACE solicitor agents to "just say yes" so they can qualify for what often turns out to be a misrepresented "free" product. It is therefore unlikely that a property owner would object to the PACE solicitor agent's presence, even though it is almost always in their best interest to do so. In the Consumer Coalition's view, the most practical solution to this problem is to forbid PACE solicitors and PACE solicitor agents from participating in the oral confirmation of key terms calls altogether. Property owners may authorize the inclusion of others, such as family members, in these calls, but

allowing PACE solicitors or their agents to participate enables the perception that they are acting in the property owners' interests regarding PACE financing. The perception created for property owners is that the PACE solicitors and PACE solicitor agents are on their team, helping them understand and evaluate the terms of the program without self-interest. This is a harmful and incorrect perception. To ensure the best chance for property owners to receive and comprehend the important information disclosed on the oral confirmation of key terms calls, PACE solicitors and PACE solicitor agents must be prohibited from participating. For these reasons, the Consumer Coalition recommends section 1620(e)(3) and (e)(4) be combined and revised to read as follows: *(3) A program administrator may not proceed with the oral confirmation of key terms if the PACE solicitor or PACE solicitor agent is present.*

Response No. 1.1620.06.10: The Department understands the reason for the request but defers to the Legislature since the plain language of subparagraph (a)(2)(A) of Streets and Highways Code section 5913 provides the property owner the right to have other persons present for the call.

Section 1620.07. Books and Records

Comment No. 1.1620.07.01: PACE Funding indicates paragraph (b)(3) requires program administrators to maintain in their records copies of all advertising "used" or approved for use by a PACE solicitor. PACE Funding indicates that though it may be reasonable to require a program administrator to maintain in their records copies of advertising that they specifically approved, using the language "used or approved" creates a potential liability for a program administrator for advertising used by a solicitor that the program administrator may not even be aware of and may not even relate specifically to their program. PACE Funding indicates that this would be unreasonable and should be clarified by removal of the word "used" so that this section only applies to advertising expressly approved by the program administrator. FortiFi suggests the modified proposed rules would require program administrators to maintain in their books & records "[a]ny advertising used or approved for use by a PACE solicitor." FortiFi indicates this is unreasonable and unenforceable by program administrators. According to FortiFi, program administrators do not have access to all advertising copy used by independent, third-party home improvement contractors and salespersons. FotiFi indicates that while program administrators can retain in their records advertising copy approved for use by PACE solicitors within their program, there is no way for program administrators to ensure that they have received all copy used by PACE solicitors. Ygrene recommends that the Department eliminate the newly added "used or" language in proposed section 1620.07(b)(3). Ygrene indicates the previous proposed rule required that program administrators maintain in their records copies of certain advertising, including advertising "approved for use by a PACE solicitor." Ygrene indicates the new proposed rule arguably would require a program administrator to maintain copies of all unapproved advertising used by a PACE solicitor, regardless of whether such program administrator knew about the existence of such advertising or

whether the advertising related to PACE financing. Ygrene suggests that if construed in this way, the proposed language could require program administrators to scour the marketplace to monitor all advertisements made by PACE solicitors, including non-PACE related advertising or advertising not relating to the program which such program administrator administers. Ygrene states this arguably creates an unfair legal risk for failure to maintain records relating to advertisements that program administrators were not provided, did not approve, and had no knowledge of. Ygrene believes the rules already provide sufficient protections with respect to advertising in other sections of the proposed rules, including proposed sections 1620.05(a), 1620.11(b)(3)(H) and 1620.15(b)(1).

Response No. 1.1620.07.01: The Department agrees and has changed “used” to “submitted by.”

Comment No. 1.1620.07.02: The Consumer Coalition indicates the records maintained pursuant to section 1620.07, subparagraphs (b)(1)(B) and (C) should be made publicly available on the Department website. In order to help identify potential bad actors, the Department should include in the online PACE solicitor and solicitor agent search as part of the status designation if any PACE solicitors or solicitor agents that have been suspended, terminated, or placed on probation.

Response No. 1.1620.07.02: Please see Response No. 1620.07.02.

Comment No. 1.1620.07.03, regarding paragraph (b)(2): The Consumer Coalition appreciates the Department’s inclusion of verification the property owner received the assessment contract if electronically signed. The Consumer Coalition believes this needs to also include verification of the electronic signature of the property owner through such documentation as the DocuSign envelope history. The Consumer Coalition continues to encourage the Department to expand the records that are collected for each assessment contract to include the following: (1) Home improvement contract, invoices, and descriptions of the scope of work associated with each assessment. (2) Documentation of mortgage related debt used in determining the amount of financing and program eligibility. (3) Verification that the property does not have a reverse mortgage/home equity conversion mortgage recorded against the property. (4) All permits and inspection reports. (5) Any credit reports used in determining eligibility should be maintained. (6) Any notices sent to a mortgage lender and any responses received. Any records maintained pursuant to section 1620.07(b)(2) should be made available to the property owner subject to the assessment within 14 days of the property owner requesting the information. How to request the information should be made publicly available on each program administrator’s website along with a designated address for requesting the information.

Response No. 1.1620.07.03: Please see Response No. 1620.07.11.

Comment No. 1.1620.07.04: The Consumer Coalition suggests requiring that program administrators keep all records for 5 years. This requirement stems from the overall

purpose of regulations, consistency and clarity within the regulations, consistency and clarity with other statutory requirements, and realities of the needs of borrowers. PACE regulations should seek to provide more protection and resources for homeowners. The provisions in section 1620.07 have varying time requirements, from 2 years up to 3 years. Pursuant to Streets and Highway Code section 5913(b)(3), program administrators must keep the recording of the oral confirmation of the "key terms call" for 5 years. The other benefit to using a 5-year term for all sections is that the program administrator would be maintaining these records for at least the statute of limitations of any cause of action (e.g., 4 years for breach of contract). In the Consumer Coalition's experience it takes time, often 18 to 20 months from the time of the assessment recording, for defrauded property owners to realize the ramifications of a PACE assessment. This is due to the timing of the PACE assessment and the process of the escrow impound account. If, for instance, a homeowner begins their PACE assessment in June 2020 the PACE assessment will not appear on their property tax bill for over a year and even then, the mortgage company will pay the difference. This difference will cause a significant escrow shortage which a property owner may not be notified of by the mortgage lender until their next escrow account analysis. Only requiring 2 to 3 years is not sufficient considering the time it takes for a homeowner to learn of a PACE assessment, seek assistance, and then initiate proper action.

Response No. 1.1620.07.04: Please see Response No. 1620.07.14, above. The Department has increased the retention period for records under subparagraph (c)(3)(B) from three years to five years.

Section 1620.08 Complaint Processes and Procedures

Comment No. 1.1620.08.01: PACE Funding indicates the section establishes some time frames that apply to handling of complaints. On most complaints, the program administrator will need to at a minimum speak with the property owner and the contractor. This can take several days to coordinate with just those parties. When there are subcontractors, inspectors, and other parties, this process takes even longer. Rather than having a 24 hour or one working day timeframe to provide a written response, a 48 hour or 2 working day timeline would actually enable some of the quicker complaints to be resolved on that first response.

Response No. 1.1620.08.01: The 24 hours or one business day requirements in section 1620.08 are to be consistent with Streets and Highways Code section 5898.17, which requires a program administrator to provide a toll-free number and email address for complaints and provides for a response within 24 hours or one business day.

Comment No. 1.1620.08.02: FortiFi indicates that the modified proposed rules provide that a "response" to a complaint should ordinarily not take longer than one working day. FortiFi indicates that while this rule provides flexibility where the program administrator needs to conduct research or coordinate with other parties, the one working day base assumption is unrealistic. Program administrators need time to, at a bare minimum, look

up the details of the assessment contract and contact the contractor or solicitor (if applicable). It is not realistic to expect contact to occur and be responded to within the same day the complaint was received. In some cases, program administrators must go out to the real property to investigate a complaint. If there is to be any distinction between the “response” in section 1620.08(a)(3)(C) and the mere “acknowledgment” of receipt of a complaint detailed in section 1620.08(b)(2), then more time should be expected for any form of substantive “response.”

Response No. 1.1620.08.02: FortiFi’s statement that the modified proposed rules provide that a “response” to a complaint should ordinarily not take longer than one working day is not accurate. For inquiries, questions, requests, criticisms, and correspondence not constituting a complaint, the program administrator does not need to follow the complaint procedures, but ordinarily must respond no later than one working day under subparagraph (a)(C)(3). However, for complaints, under subparagraph (d)(2)(B) of section 1620.08 a program administrator has 30 days for investigating and responding to complaints. While program administrators have 30 days to respond to complaints, complaints need to be acknowledged within the time periods set forth in Streets and Highways Code section 5858.17 and paragraph (b)(2) of the rule, which ranges from 24 hours to three days.

Comment No. 1.1620.08.03: The Consumer Coalition indicates that the PACE regulations should promote accountability and make it possible for property owners to obtain redress for problems quickly and easily. To date, when property owners have problems with PACE-financed improvements and/or PACE assessment contracts, they frequently have trouble finding someone to complain to and getting that party to take action to address the problem(s). The Consumer Coalition is concerned that the proposed rules still do not adequately delineate the scope of program administrators’ responsibilities, particularly as they relate to the actions of PACE solicitors and solicitor agents, and do not provide a sufficiently clear and enforceable set of procedures for how complaints should be handled. Although the Department has made clear that use of the complaint process does not restrict property owners’ other legal avenues, the new draft rules continue to place too much discretion with the program administrators to determine the timeline for addressing complaints, and how those complaints are resolved. In addition, the Consumer Coalition is concerned about the absence of any independent oversight of the complaint process.

Response No. 1.1620.08.03: Please see Response No. 1620.08.01.

Comment No. 1.1620.08.04: The Consumer Coalition indicates that the previous version of the proposed rules provided for “resolution” of property owner complaints. In the Consumer Coalition’s comments, the undersigned emphasized that any “resolution” must involve agreement from property owners that their issue has been resolved or must include an automatic escalation to the Department for circumstances in which the property owner remains unsatisfied with the program administrator’s decision. The Consumer Coalition is dismayed that, rather than providing for meaningful requirements

and processes for the resolution of complaints, the current draft rules place even more discretion at the hands of program administrators and further burdens on property owners. The current rules no longer require “resolution” of complaints, but only a “final decision” from program administrators. There are no enforceable requirements as to when a substantiated complaint must result in cancellation of the contract, nor is there automatic elevation for property owners who remain unsatisfied. Rather, the burden is placed on property owners to restate their complaint to the Department if they receive a final decision that does not resolve their issue. The Consumer Coalition is also concerned that there are no firm timelines associated with the development or implementation of these procedures except what is “reasonably practicable.” Program administrators have been on notice for well over a year that they would be expected to develop and implement complaint procedures (and some already have). It is in the best interest of program administrators and property owners alike for all program administrators to be required to meet new standards on the same timetable. To that end, the Consumer Coalition recommends that the Department set a thirty-day timeframe by which program administrators must develop and implement their procedures or else show the Department cause why it was unable to do so. The Consumer Coalition further recommends that the Department require program administrators to report all final decisions to the Department within thirty days of the decision, and to include a statement obtained from the property owner regarding whether they are satisfied with the decision and why or why not.

Response No. 1.1620.08.04: Please see Response No. 1620.08.02. The Department declines to, by regulation, declare a contract void. In addition, the “reasonably practicable” standard in subdivision (a) is a repetition of the standard set forth in Financial Code section 22683 and is intended to introduce the remainder of the section. The remainder of the rule sets forth various time frames. The Department declines to provide program administrators with 30 days for the development of procedures since program administrators already must have implemented complaint procedures under section 22683 of the Financial Code. The Department declines to have program administrators report all final decisions to the Department within 30 days of the decision. The Department’s Consumer Services Office receives complaints from members of the public who seek the Department’s assistance, and the Department reviews complaints during routine regulatory examinations. Further, the Department may request a special report on complaints any time.

Comment No. 1.1620.08.05: The Consumer Coalition recognizes and appreciates the Department’s inclusion of rules to make clear that property owners may be assisted by third party representatives throughout the complaint process. However, the Consumer Coalition believes that this section remains overly broad and leaves key interpretive questions at the discretion of the program administrators. Vulnerable or less sophisticated property owners, especially those unfamiliar with formal complaint processes, may struggle to frame their complaints in a way that makes clear they are complaints rather than “inquiries, questions, requests, [or] criticisms . . . .” Providing a

quick response to inquiries, questions, requests, and criticisms will not adequately ensure that property owners understand they have failed to submit a complaint. Rather, all communications from property owners that suggest or imply a criticism, problem, or question should be treated as complaints. The Consumer Coalition recommends adopting a positive definition of "complaint" to make clear that all communications from dissatisfied property owners must be handled through the complaint resolution process. The Consumer Coalition recommends that the Department follow the definition of "consumer complaint" used by the federal Consumer Financial Protection Bureau, and alter the proposed section 1620.08(a)(3) to read: Inquiries, questions, requests, criticisms, and correspondence not constituting a complaint requiring resolution need not be included within the complaint process. Complaints include all submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a property owner's personal experience with a PACE program or PACE assessment, including program administrators, solicitors, solicitor agents, advertisers, and all related entities.

Response No. 1.1620.08.05: Please see Response No. 1620.08.06.

Comment No. 1.1620.08.06: FortiFi recommends the following revision: "A response to an inquiry, question, request, or criticism received by telephone or email should ordinarily not take longer than one ~~working day~~ *week* for information readily available to the program administrator but may require additiona*l* time for research or coordination with other parties. If the response will take longer than one ~~day~~ *week*, the program administrator shall notify the property owner within ~~24 hours or~~ one ~~working day~~ *week*."

Response No. 1.1620.08.06: Financial Code section 5898.17 requires a 24 hour or one working day response. Inquiries, questions, requests, and criticisms are carved out of the complaint process based on the premise that they were not complaints and a program administrator could expeditiously respond to the property owner. Therefore, the Department declines to make the requested change.

Comment No. 1.1620.08.07: FortiFi indicates the modified proposed rules are somewhat confusing with respect to whether an acknowledgment of a complaint may be provided via email. Moreover, if acknowledgment of a complaint must be provided in writing via regular mail, the regulations should not require this to be provided within one working day. Particularly in light of the COVID-19 crisis and mandatory shelter-in-place orders, in some cases program administrator staff may be unable to send out snail mail within a 24-hour period.

Response No. 1.1620.08.07: The Department agrees and has amended paragraph (b)(2) to clarify that telephone and email complaints must be acknowledged within one day, whereas postal mail complaints must be acknowledged within three business days.

Comment No. 1.1620.08.08: The Consumer Coalition recognizes and appreciates the Department's effort in section1620.08(b) to ensure that property owners have adequate

access to information about submitting a complaint. However, section 1620.08(b)(3) may still fail to ensure language access for all property owners. This provision requires program administrators to make the complaint process available to complainants "in the language of the assessment contract." However, the undersigned organizations have spoken to many clients whose assessment contracts are not in their primary language. Most notably, the Consumer Coalition has several clients who are non-English speakers, but whose assessment contracts are exclusively in English. In these cases, the language of the assessment contract itself would be a factor in the complaint and linking the complaint process language to the assessment contract language would prevent these individuals from using the process.

Response No. 1.1620.08.08: See Response No. 1620.08.13.

Comment No. 1.1620.08.09: FortiFi endorses the concept of a clear time frame for property owner status updates with respect to complaints but cautions that a 24-hour period is not operationally reasonable. Instead, this should be lengthened to three business days, as follows: "If a complainant contacts the program administrator, including through the toll- free telephone number or customer service email address, for a status update, the program administrator shall ordinarily respond to the complainant within ~~24 hours or one~~ *three* business day*s*."

Response No. 1.1620.08.09: The Department has made the change.

Comment No. 1.1620.08.10: The Consumer Coalition suggests the Department made an important change in restructuring the provision for expedited complaints to clarify that it applies to all property owners who are at risk of imminent harm, and the Department is correct in explicitly referencing the risk of third-party lenders advancing PACE payments. However, this provision should be still more clear about the circumstances in which a complaint can be expedited. As written, complaints would be eligible for expedited review when they involve "delinquent mortgage payments resulting from a third-party lender or servicer advancing the payment of the PACE assessment." While true that delinquent mortgage payments are a pressing harm, it is not the only appropriate trigger for expedited complaint review – and in some cases may even be too late. Every property owner with a PACE assessment and a mortgage (including reverse mortgages) are at risk of time-sensitive complications once the third-party lender or servicer has advanced payment of the PACE assessment. Ideally, expedient review would be available *before* the third- party lender has exercised its rights as a lienholder to advance and impound tax payments. Expedient review should also be available *before* the property owner has become delinquent on any mortgage obligation by which point reversing the damage done to the property owner's good standing with their third-party lender or servicer is much more difficult. The Consumer Coalition recommends revising this provision to read:*(4) The complaint process shall include a procedure for the expedited review of all 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.

Response No. 1.1620.08.10: The Department has made the requested change, in part. The Department has not included the language “or has rights as a lienholder to advance [payments for property taxes],” because the program administrators indicated that this would result in nearly every complaint being subject to expedited review since ordinarily third-party lenders or servicers have this right.

Comment No. 1.1620.08.11: The Consumer Coalition supports program administrators being required to correct “errors” identified in the complaint process. However, not all “errors” between parties to a contract can be unilaterally corrected and these regulations should also specify errors which, if substantiated, require program administrators to cancel or otherwise release property owners from their obligations. For example, if a property owner is complaining that their PACE solicitor agent did not disclose the true terms of their PACE assessment, sending the property owner a packet of disclosures to “correct” that error does not address the underlying defect in the transaction. As another example, as PACE assessments require voluntary agreement by property owners, errors due to fraud or forgery of signatures or other aspects of the agreement cannot be “corrected” other than by voiding the assessment contract.

Response No. 1.1620.08.11: If an error is made in the making of the assessment contract or the administering of the PACE assessment then the program administrator must correct the error and notify the complainant of the correction. An error is defined to mean a mistake; the state of being wrong in conduct or judgment. The manner of fixing an error may be dependent on the facts of the situation, but paragraph (e)(1) states that a program administrator must correct errors identified during the review of the complaint that occurred in the making of the assessment contract the administering of the assessment contract. For purposes of the Department’s regulatory oversight, this is the standard.

Section 1620.10. Dishonest Dealings and Misleading Statements

Comment No. 1.1620.10.01: PACE Funding indicates that paragraph (a)(3) discusses making the final payment to a PACE solicitor when the program administrator knows or “should have known” that the work is not complete. “Should have known” is a subjective standard that adds unnecessary ambiguity to this requirement. Removing that phrase makes this requirement more clear and not subject program administrator to potential liability in instances where the property owner and solicitor conspired to misrepresent completion. Property owner verification of completion should be sufficient. The Consumer Coalition indicates that as to section 1620.10(a), it appreciates the use of a “knows or should have known” standard in paragraph (a)(2) and (3). The Consumer Coalition requests that this standard also be inserted into paragraph (a)(4). The Consumer Coalition recommends that paragraph (a)(4) have the “knows or should have known” standard, while noting that this is the minimum recommended standard. The

Consumer Coalition provides that a better standard for paragraphs (a)(2), (3), and (4) would make these provisions count as dishonest dealings regardless of whether the program administrator knew or even should have known. Such a standard affirms that program administrators should exercise the utmost care in an area such as this, fraught with fraud and deception. Ygrene indicates the rules in proposed sections 1620.10(a)(2) and 1620.10(a)(3) have been revised to add a “should have known” standard in connection with unperformed work or uninstalled products without providing a clear path for program administrators to confirm compliance. Ygrene recommends adding a few examples to proposed sections 1620.10(a)(2) and 1620.10(a)(3) that can be relied upon for purposes of satisfying the “knows” or “should have known” requirement. Specifically, Ygrene recommends adding the following sentence to the end of proposed section 1620.10(a)(2): “Such work shall be deemed performed if the program administrator does any one of the following: (i) receives a document signed by the property owner and contractor confirming that the applicable work has been completed; (ii) completes a recorded call with the property owner confirming that work has been completed; (iii) receives confirmation from a third-party inspection that the applicable work has been completed; or (iv) reviews or receives a “Final” inspection permit issued by a government inspector.” Further, Ygrene recommends adding the following sentence to the end of proposed section 1620.10(a)(3): “Such product shall be deemed installed if the program administrator does any one of the following: (i) receives a document signed by the property owner and contractor confirming that the applicable work has been completed; (ii) completes a recorded call with the property owner confirming that such product has been installed; (iii) receives confirmation from a third-party inspection that the applicable work has been completed; (iv) receives a geo-located photo showing that such product has been installed; or (v) reviews or receives a “Final” inspection permit issued by a government inspector.” FortiFi understands and acknowledges the historical problem with contractors that have been paid for uninstalled work and supports efforts by the Department to address this issue by creating liability where program administrators have actual knowledge that work was not performed and still paid contractors. The revisions in the modified proposed rules to create liability for program administrators for paying a PACE solicitor for unperformed work that a program administrator “should have known” is unperformed is troubling, because of the lack of specificity. Under what circumstances will it be determined that program administrators “should have known” that work was unperformed? Program administrators need clear, unambiguous rules so that they can adequately protect customers while implementing state and local government-authorized PACE programs in a logistically workable manner. To ensure that work was actually performed, FortiFi obtains a signed “completion certificate” from the property owner(s), in which the property owner certifies that the improvements to be financed through the contractual assessment are complete to the satisfaction of the property owner. The property owner further certifies that he or she has obtained all necessary final permits and inspections required for the improvements made. To ensure that the actual property owner signs this completion certificate, FortiFi requires that they use DocuSign’s ID verification process. In addition,

to further verify full completion of the improvements, FortiFi conducts a live, recorded phone call with the property owner(s) during which it asks whether all of the work to be funded through the contractual assessment was finalized and to confirm that the property owner signed the certificate of completion. The call also reminds the property owner of the first assessment installment payment date and amount. During this call, FortiFi also reminds the property owner to inform their lender to adjust the monthly escrow amount if the lender (or its servicer) escrows property taxes on a monthly basis along with the property owner's mortgage payment. To ensure that the actual property owner is on the phone call and answering questions, FortiFi asks the property owner to confirm their social security number and date of birth. One issue that FortiFi has experienced is property owners that sign certificates stating that work was completed, or that say (on a recorded line) that work was completed, but then later state that work was not completed. In such circumstances, where program administrators have obtained such evidence that work was completed from property owners, but it turns out that such property owners have mis-stated the facts as to whether work was completed (and in some cases blatantly so), program administrators should not be subject to liability for dishonest dealings. Accordingly, FortiFi recommends the addition of a safe harbor for such circumstance at the end of what is now section 1620.10(a)(2), as follows: "Paying a PACE solicitor for unperformed work that is financed through an assessment contract that a program administrator knows or should have known is unperformed. Making the final payment on an assessment contract to a PACE solicitor when the program administrator knows or should have known that a product financed through an assessment contract is uninstalled. For purposes of this paragraph, a warranty shall not constitute an uninstalled product. For purposes of this paragraph, contract terms and services including, but not limited to, a warranty, operations, maintenance, repairs, and customer service shall not constitute an uninstalled product. *For purposes of this paragraph, if a property owner has provided to the program administrator both a signed attestation and an oral, recorded statement that the work expected under the assessment contract has been completed to the property owner's satisfaction, the work shall not constitute an uninstalled product unless the program administrator has actual knowledge that the product was uninstalled.*"

Response No. 1.1620.10.01: After several iterations and considering the comments, the Department has determined that "should have known" is the appropriate standard for regulatory oversight. The Department declines to include the safe harbors proposed by Ygrene because the proposed safe harbors may not be all of the relevant facts and may result in a program administrator not exercising ordinary care. For example, obtaining a signed completion certificate is listed as one of the safe harbors. As described by the consumer advocates, this process has been plagued by fraud. On the other hand, with FortiFi's confirming processes, it is difficult to think of examples of how these activities would fail to meet the ordinary care standard. But the Department declines to adopt these processes for everyone because a program administrator may exercise ordinary care through other means. If a program administrator seeks confirmation on whether a

particular process meets the standard, for purposes of the Department's oversight, the program administrator may write the Department and describe the processes. With respect to FortiFi's scenario of a property owner changing the property owner's response, the Department notes that it cannot adopt rules for every fact pattern, and a program administrator must make its own determination of whether it meets the "known or should have known" standard when it paid the PACE solicitor based on the facts known to the program administrator. For example, what if the program administrator has been notified that the PACE solicitor has defrauded a dozen other property owners by forging the completion certificate signature and phone call, the consumers lived on the same block, all the fraudulent activity occurred in the last month, and the program administrator knew these facts before it paid the PACE solicitor? This one factual scenario may make the adoption of a safe harbor that includes a phone call and signed certificate proposed by FortiFi unwise. Consequently, the Department is not adopting safe harbor language.

Comment No. 1.1620.10.02: FortiFi notes that the modified proposed rules deleted language in the proposed rules that clarified that if a solar system or battery were fully installed, but just awaiting interconnection approval and permission to operate by the distribution utility, making payment to a contractor would not constitute payment for an uninstalled product. The absence of this clarification is logistically problematic in the solar and battery installation and finance industry. Once a contractor has fully completed an installation, it is up to the property owner to schedule an inspection and up to the applicable distribution utility to process the interconnection application. Utilities are known to get backed up on this process, sometimes even for months. The reasons for this delay are by and large completely unrelated to the characteristics of the installation, but rather the interconnection queue and other priorities of the utility company.

Response No. 1.1620.10.02: The Department deleted the language in recognition that the determination of when a home improvement contract is complete and a contractor is entitled to payment is a matter for the CSLB, and to avoid conflicting with the CLSB, a contractor's regulator, the Department declines to make such determination in its rules.

Comment No. 1.1620.10.03: FortiFi indicates that the modified proposed rules make numerous improvements in this subsection, including replacing the word "misrepresenting" with "representing" with respect to statements specified that can be made truthfully. FortiFi strongly supports the deletion of the prior section 1620.10(b)(14). As discussed in FortiFi's comments on the proposed rules filed December 9, 2019, the Department's regulations should not tie PACE pricing to the "market price range." As FortiFi discussed, the prior language was inconsistent with the California Financing Law and would have interfered with the rights of home improvement contractors to negotiate pricing for their products with their customers without a legal basis.

Response No. 1.1620.10.03: The comments are noted.

Comment No. 1.1620.10.04: The Consumer Coalition indicates the safest rule for property owners is one that prohibits any representations regarding a PACE assessment's tax impacts and limits discussions of tax impacts to the recommendation that the property owner consult with a tax professional or with the relevant tax authority. At minimum, though, the Consumer Coalition recommends that any exception for representations that are "consistent with written representations, statements, or opinions" of a tax agency be actually retained by the party relying on them.

Response No. 1.1620.10.04. See Response No. 1620.10.13.

Comment No. 1.1620.10.05: The Consumer Coalition recommends deleting the language "unless completion of work in the home improvement contract is not a requirement of the assessment contract" in paragraph (b)(7). This phrase is confusing and potentially problematic. Completion of the home improvement work is a prerequisite to payment in any assessment contract. No payments are authorized until all the work is completed and a completion certificate is signed. This phrase seems to carve out an unintentional exemption to this completion requirement in every assessment contract. Many homeowners have already been duped by contractors who complete one portion of a home improvement contract and falsely represent to the homeowners that they have to sign the completion certificate so that the contractor can proceed with the remainder or they have to pay the workers to continue with the rest of the work. In many cases of contractor fraud, the contractor then disappears without completing the remainder of the work.

Response No. 1.1620.10.05: The Department has removed the phrase, in part, but the language leaves open the possibility that the assessment contract is financing only one part of the home improvement contract.

Comment No. 1.1620.10.06: The Consumer Coalition recommends adding the phrase "is provided free or at a nominal cost" before "or otherwise provided to a property owner because the property owner enters into an assessment contract" in paragraph (b)(8). A common fraud is to inflate the price of purported energy efficient home improvements and then claim that non-energy home improvements are being thrown in for free. This is a deceptive practice used by contractors to use PACE funds for non-energy efficient home renovations.

Response No. 1.1620.10.06: The Department has made the requested change.

Comment No. 1.1620.10.07: Ygrene recommends that the Department revise proposed section 1620.10(b)(8) to read "Representing to a property owner that a certain type of home improvement is eligible for financing through a PACE assessment when it is not, or may otherwise be provided to a property owner because the property owner enters into an assessment contract when such fact is untrue." Under California PACE law, improvements are not limited to efficiency improvements and, for example, can include renewable energy, seismic strengthening and wildfire mitigation improvements. See e.g., Cal. Sts. & High. Code §§ 5898.20, 5899, 5899.3 & 5899.4. The current proposed

rules, without the recommended modifications, could restrict a PACE program from financing such improvements by suggesting such improvements are ineligible for financing through PACE (even though such improvements are permitted expressly by law).

Response No. 1.1620.10.07: The Department has retained the language because the definition of “efficiency improvement” in Financial Code section 22019 is broad, but the Department recognizes your concern about how other terms are set forth in the Streets and Highways Code to apply to specific types of improvements.

Comment No. 1.1620.10.08: The Consumer Coalition recommends deleting the phrase “unless evidence supports the representation” in paragraph (b)(11). A home improvement contractor’s door-to-door sales agent is neither qualified nor experienced in assessing whether a particular improvement will increase the market value of the home. The provision lacks a standard for evaluating and verifying whether evidence actually exists. Property owners with questions about this issue can be advised by a real estate professional, who is in a better position to determine the existence of an increase in market value. PACE solicitors do not have the expertise to provide this assessment. If the language is kept, it should be limited to evidence that the particular home improvement in the particular house will increase the market value.

Response No. 1.1620.10.08: The Department declines to prohibit what may be lawful and truthful speech.

Comment No. 1.1620.10.09: The Consumer Coalition indicates price gouging is a serious and frequent problem in the home improvement contracts/PACE assessments. The Consumer Coalition recommends reinserting the prior language with the exception of the term “solely” in paragraph (b)(14). “Solely” is an absolute term and things being seldom absolute; we request that this word be removed.

Response No. 1.1620.10.09: The Department has removed the paragraph and renumbered the section, because the paragraph does not define an act that is prohibited by law.

Comment No. 1.1620.10.10: The Consumer Coalition indicates consumer advocates have often seen clients signed up with multiple assessments through different program administrators. Due to the delay between when assessment contracts are signed and when the related assessment liens are recorded, homeowners face a high risk of ending up with multiple PACE assessments that place them underwater or make their property tax bills unaffordable. The Department should thus include a rule in these regulations setting a deadline for program administrators to start using a real-time registry for all PACE assessment transactions. For the time period before this is set up, the Department should prohibit PACE solicitors and solicitor agents from facilitating a property owner’s entrance into more than one assessment contract on the same property in any twelve-month period. To address this issue and resolve a clerical error referring to a “pace” administrator, the Department should revise paragraph (b)(16) to

prohibit a PACE solicitor, PACE solicitor agent, or program administrator from assisting a property owner in entering into more than one assessment contract on the same property in any twelve-month period until a lien registry is implemented. Real time registries are vital and necessary to inform the various program administrators of "stacking" issues. We request that language requiring real time registries of the assessment, which include the work performed, be created, and routinely updated.

Response No. 1.1620.10.10: This recommendation to limit the transactions that a PACE solicitor or PACE solicitor agent may facilitate does not appear to be supported by law. With respect to a lien registry, the Department refers to Response No. 8.02, above.

Comment No. 1.1620.10.11: FortiFi indicates California Financial Code section 22161(a)(3) provides that a licensee shall not "[a]dvertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating ... assessment contracts... **that refers to the supervision of the business by the state or any department or official of the state**." (emphasis added). This language requires clarification by the Department in these regulations, since licensees are, in fact, licensed and regulated by the Department and the Commissioner. To address this, FortiFi recommends the addition of a new subsection at the end of 1620.10, as follows: *"(d) For purposes of Section 22161(a)(3) of the Financial Code, 'the supervision of the business by the state or any department or official of the state' does not include the licensure and regulation of a licensee by the Department or the Commissioner."*

Response No. 1.1620.10.11: The Department has added paragraph (c)(2), providing that nothing in the section authorizes any representation that is restricted or prohibited under any law.

Section 1620.11. PACE Solicitor Enrollment Standards and Processes

Comment No. 1.1620.11.01: PACE Funding indicates that subsection (c)(2)(B) requires that program administrators must review all past license and registrations of the solicitor or solicitor agent that are held with CSLB. Historically this data has not been consistent in its availability or reliability on the CSLB website.

Response No. 1.1620.11.1: The Department has added, to the extent this information is readily and publicly available.

Comment No. 1.1620.11.02: The Consumer Coalition does not understand why program administrators should ever be allowed to fund home improvement contracts solicited by persons not required to be enrolled. The whole purpose of enrolling PACE solicitors and their agents is to ensure that those soliciting homeowners to enter into PACE financing are properly regulated. The Consumer Coalition strongly recommends that the Department delete the insertion at the end of paragraph (a)(2). A program

administrator may not fund a home improvement contract if the PACE financing was solicited by a person not enrolled as a PACE solicitor or PACE solicitor agent unless the person was not required to be enrolled as a PACE solicitor or PACE solicitor agent at the time of solicitation.

Response No. 1.1620.11.02: The definitions of PACE solicitor and PACE solicitor agent in Financial Code section 22017 exclude employees of program administrators from the definitions of “PACE solicitor” and “PACE solicitor agent.” Therefore, the law allows for a category of persons who may engage in solicitation activities without being PACE solicitors or PACE solicitor agents, and who are not required to be enrolled.

Comment No. 1.1620.11.03: FortiFi indicates the revisions made in the modified proposed rules to paragraph (a)(2) adequately addressed the previous concern raised by FortiFi in comments on the proposed rules filed on December 9, 2019. By replacing “arranged” with “solicited,” the modification corrects the ambiguity and overbreadth of the prior version, and the added language now removes the potential prohibition on local agency involvement in PACE financing. FortiFi strongly supports these revisions.

Response No. 1.1620.11.03: The comments are noted.

Comment No. 1.1620.11.04: The Consumer Coalition reiterates its prior objections to subparagraphs (b)(3)(B) and (D). Given that program administrators lay the blame for consumer complaints with unscrupulous home improvement contractors, the Consumer Coalition asks the Department again to revisit the regulations to make clear that the quid pro quo of profiting from this unique business model is that program administrators must be responsible for the bad acts of their agents.

Response No. 1.1620.11.04: See Response No. 1620.11.07 regarding subparagraph (b)(3)(B). Regarding subparagraph (b)(3)(D), the Department has added, “This provision does not affect any responsibility a program administrator may otherwise have for the acts of a PACE solicitor or a PACE solicitor agent.”

Comment No. 1.1620.11.05: The Consumer Coalition indicates that it appreciates the intent of the insertion at clause (b)(3)(A)(3), which requires a PACE solicitor to notify the program administrator if the homeowner “is considering” other PACE programs. However, it is unclear how PACE solicitors are expected to discover this information: are they only required to notify the administrator if the homeowner happens to disclose this information? It would be better if program administrators, through their solicitors/agents, were under an obligation to actively seek out this information.

Response No. 1.1620.11.05: This provision is not the only way for program administrator to uncover the information, but it is one way. A PACE solicitor may know this information because the property owner tells the PACE solicitor, or the PACE solicitor is attempting to obtain financing for the property owner from different program administrators.

Comment No. 1.1620.11.06: The Consumer Coalition is troubled by the insertion of (b)(3)(C)(2): “In accordance with paragraph (a)(1) of Streets and Highways Code section 5940, subparagraph (C) is not applicable when work has already started under a home improvement contract and the property owner elects to seek PACE financing after the work on the project begins.” Consumer advocates regularly see elder and mono-lingual Spanish speaking clients who are mis-sold home improvements as free under a “government program” and who are signed up for PACE financing by tapping on an iPad or smartphone when they have no understanding what they are signing. The Consumer Coalition also has countless stories of contractors demolishing part of our clients’ properties and then abandoning work once they have been paid. This amended provision, if left to stand, will provide program administrators and unscrupulous agents/solicitors with another way of defrauding its low-income clients by telling them the work is free, demolishing their homes, and then forcing them into financing presented as their only option (if they are even aware they are entering into financing at all). The Consumer Coalition urges the Department to delete this insertion.

Response No. 1.1620.11.06: The Department has revised the provision to provide, “The PACE solicitor will not execute a home improvement contract nor begin work under a home improvement contract that is financed by an assessment contract unless the criteria set forth in Financial Code section 22684 are satisfied.”

Comment No. 1.1620.11.07: The Consumer Coalition commends the Department for adding a time limit in subparagraph (b)(3)(F) so that PACE solicitors must notify the administrator of complaints that are unresolved for a month or more. However, “unresolved” remains undefined and this provision would be much more effective if changed to “unresolved to the homeowner’s satisfaction.” This would be beneficial to the program administrators, allowing them to flag problem contractors at an early stage. The Consumer Coalition recommends again the insertion of an additional subparagraph to restrict PACE solicitors or their agents from arranging PACE financing for property owners with reverse mortgages, a practice program administrators recognize needs to end.

Response No. 1.1620.11.07: The Department has added the provision about the property owner’s satisfaction. Although an owner’s satisfaction may not be the standard set forth in the contracts among the parties, the Department believes it is reasonable for a PACE solicitor to notify the program administrator of property owners who have outstanding concerns that have not been resolved for a month or more, so the program administrator will be aware of potential concerns that may affect the underlying PACE financing. Regarding reverse mortgages, please see Response No. 1620.11.11.

Comment No. 1.1620.11.08: The Consumer Coalition indicates that, as an overarching matter, subdivision (c) again does not contain any guidance as to how frequently PACE program administrators should review publicly available information about their solicitors; we submit this exercise should be done at least annually. Additionally, these

reviews should include tracking of consumer complaints against PACE solicitors and their agents.

Response No. 1.1620.11.08: Section 1620.11 sets forth standards for enrolling PACE solicitors, whereas section 1620.14 sets forth monitoring requirements. Therefore, subdivision (c) of section 1620.11 does not contain guidance on monitoring PACE solicitors.

Comment No. 1.1620.11.09: The Consumer Coalition asks again that the rules be changed at sub-part (3)(A) such that the review of past civil and criminal actions, license discipline and consumer complaints not be cabined to those "related to the functions of a PACE solicitor." Finance Code Section 22680(e) is not limited in this way; the regulations should not provide refuge that the Legislature did not intend for program administrators that do not do their due diligence. A broader view would better protect consumers from solicitors who have a history of dishonest, unlawful, and criminal activity including, but not limited to, price gouging, using dangerous/prohibited materials, loaning out contractor licenses, shoddy workmanship, failing to get required permits, and/or elder abuse.

Response No. 1.1620.11.09: Please see Response No. 1620.11.16, above.

Comment No. 1.1620.11.10: FortiFi suggests that the new language added to the modified proposed rules in subparagraph (c)(2)(B) would require program administrators to review PACE solicitors' and agents' past CSLB licenses and registrations. Yet, this information is not consistently or reliably available on the CSLB database available to program administrators. It is not reasonable to require such information as part of the enrollment process. AB 1284 instead required program administrators to review "readily and publicly available information regarding each PACE solicitor." Cal. Fin. Code § 22680(a)(2). Past license or registration information does not satisfy this specification in the statute. Ygrene indicates that proposed section 1620.11(c)(2)(B) requires that a program administrator's process to evaluate PACE solicitors and PACE solicitor agents for enrollment must include a review of all current and past licenses and registrations held with the CSLB. Ygrene recommends clarifying that such review shall be of such license and registration information readily available on the CSLB website to make it clear what source of information may be relied upon. Therefore, Ygrene recommends inserting the following language at the end of section 1620.11(c)(2)(B): "to the extent such information is readily available on the Contractors State License Board website".

Response No. 1.1620.11.10: The Department has added the phrase, "to the extent the information is readily and publicly available."

Comment No. 1.1620.11.11: The Consumer Coalition maintains that no PACE solicitor should be enrolled without an active CSLB License and ask that the Department amend subparagraph (d)(1)(D) accordingly. Similarly, no PACE solicitor agent should be allowed to operate if not registered as a home improvement salesperson with the CSLB

(clause (d)(3)(C)(2)). Further, allowing for a category of “conditional enrollment” does nothing to protect consumers and the rule is silent about the validity of loans solicited by someone “conditionally enrolled” who later does not get through the fingerprint background check required by the CSLB. The Consumer Coalition notes that taking on board these suggestions would obviate the need for the insertions of subdivision (g) and (h) to this rule.

Response No. 1.1620.11.11: The definitions of PACE solicitor and PACE solicitor agent do not require licensure or registration with the CSLB. It is possible to fall outside the definitions in the CSLB for licensure or registration, but still fall within the definitions in the California Financing Law as a PACE solicitor or PACE solicitor agent. The provisions identified accommodate this situation. The provisions also require a program administrator to maintain documentation of why licensure is not required, so that the Department can review the documentation establishing that a PACE solicitor or PACE solicitor agent is not subject to oversight by the CSLB.

Section No. 1620.12. PACE Solicitor Agent Enrollment Standards and Processes

Comment No. 1.1620.12.01: The Consumer Coalition provides that, as an overall comment, it believes that solicitor agents should undergo re-enrollment and program administrators should update background checks at least annually.

Response No. 1.1620.12.01: The Department does not think this suggestion is consistent with the regulatory scheme. Subdivision (f) of Financial Code section 22680 requires monitoring compliance, and subdivision (g) provides for a process to cancel the enrollment of a PACE solicitor and PACE solicitor agent who fails to maintain the minimum qualifications required by section 22680. These provisions are intended to ensure a PACE solicitor agent remains eligible for enrollment. Annual re-enrollment is not a requirement.

Comment No. 1.1620.12.02: The Consumer Coalition provides that subparagraph (c)(2)(A) has been amended to restrict the lookback period for criminal convictions for fraud, dishonesty or deceit to seven years, and the prior reference to Business and Professions Code section 480 has been deleted. That code section, related to the denial of licenses, contains no similar seven-year lookback restriction, and we urge the department to return this sub-part to its previous iteration.

Response No. 1.1620.12.02: The Department has removed the seven years.

Comment No. 1.1620.12.03: The Consumer Coalition asks the Department to review again its recommendation to assess the number and nature of all lawsuits filed against the PACE solicitor agent, along with their engagement in any act that would constitute grounds for license revocation.

Response No. 1.1620.12.03: The Department believes that the provisions in paragraph (c)(2) set forth a reasonable scope for a background investigation of a PACE solicitor agent conducted by a program administrator.

Comment No. 1.1620.12.04: The Consumer Coalition commends the Department for adding the requirement that the solicitor agent must pass a test, in addition to undergoing training, as a prerequisite to soliciting property owners for PACE (paragraph (d)(2)). The Consumer Coalition reiterates that consumers would be better protected by the Department if it included within the regulations a detailed rubric covering topics to be covered in the test, the expected level of knowledge to be demonstrated in order to pass, and detailed procedures to ensure tests are properly administered.

Response No. 1.1620.12.04: Please see Response No. 1620.12.06.

Section 1620.13. Enrollment Denial

Comment No. 1.1620.13.01: PACE Funding indicates that prior drafts of the regulations allowed program administrators to rely on CSLB and their process as evidence that a solicitor or solicitor agent could be enrolled. As currently worded, the safe harbor of reliance on CSLB is no longer present and there is more liability created for failure to deny enrollment. Program administrators should be able to rely on the regulator responsible for regulating contractors.

Response No. 1.1620.13.01: For enrollment of a PACE solicitor agent, subdivision (c) of Financial Code section 22680 expressly authorizes a program administrator to rely on the background check conducted by the CSLB. However, subdivision (e) of Financial Code section 22680 provides that a program administrator shall not enroll a PACE solicitor if the program administrator finds any of the conditions set forth in paragraphs (e)(1) through (3) of Financial Code section 22680. Therefore, reliance on CSLB licensure is not sufficient.

Comment No. 1.1620.13.02: The Consumer Coalition states that as noted in its prior comments, it sees no reason to restrict enrollment denials only to those PACE solicitors that demonstrate a “high” likelihood of soliciting assessment contracts in a manner that does not comply with the law; in the Consumer Coalition’s view, evidence that would show any likelihood of substantial non-compliance with the law should be enough to deny enrollment.

Response No. 1.1620.13.02: “High” is the standard set forth in paragraph (e)(2) of Financial Code section 22680.

Comment No. 1.1620.13.03: The Consumer Coalition recommends expanding the types of wrongdoing in paragraph (b) (currently “deception, misrepresentation, or omission”) to include other forms of recurring complaints of the type consumer advocates see every day in relation to PACE, such as shoddy workmanship, price gouging, or any other practice that could result in civil or criminal prosecution or license suspension.

Response No. 1.1620.13.03: The overall purpose of licensure of program administrators, as set forth in Financial Code section 22001, is to protect property owners form deceptive and misleading practices. Workmanship complaints are under the jurisdiction of the CSLB, which actively regulates in this area, and with which the

Department regularly coordinates. If the workmanship issue arguably rises to the level of fraud, then the Department would evaluate whether an action is appropriate under the CFL. Otherwise, the Department defers to the CSLB for workmanship issues. Local agencies may also have requirements for program administrators regarding the workmanship of PACE solicitors enrolled by program administrators.

Comment No. 1.1620.13.04: The Consumer Coalition indicates that in paragraph (b)(2), and again in paragraph (d)(2), the Department allows program administrators to enroll solicitors despite evidence of a clear pattern of consumer complaints about the PACE solicitor for dishonesty, misrepresentations, or omissions, as long as the administrator documents its rationale. If the Department genuinely wishes to protect consumers it should remove this caveat: no enrollment should ever happen where there is evidence of a pattern of past misconduct.

Response No. 1.1620.13.04: The Department does not interpret the language in that manner. The statutory standard for denying enrollment of a PACE solicitor is a “clear pattern” of consumer complaints, as provided in paragraph (e)(1) of Financial Code section 1620.13. If a program administrator evaluates readily and publicly available information regarding a PACE solicitor involving dishonesty, misrepresentations, or omissions and finds evidence of such acts, yet the program administrator enrolls the PACE solicitor because the program administrator determines the information does not evidence a “clear pattern,” the program administrator must document in its books and records why it reached this conclusion. A clear pattern always requires the denial of enrollment. The Department does not believe the text of the regulation suggests the Department does not genuinely wish to protect consumers.

Comment No. 1.1620.13.05: The Consumer Coalition applauds the Department for removing former section 1620.13(b) that would have limited the liability of program administrators when the legislature did not elect to do so. The Consumer Coalition commends the Department for specifically including evidence of elder financial abuse in sub- part (c)(1)(F) as the type of evidence that would demonstrate that a solicitor will not comply with applicable law.

Response No. 1.1620.13.05: These comments are noted.

Comment No. 1.1620.13.06: The Consumer Coalition reiterates that there should be more clarity as to what “timely” means in the context of this rule and propose that complaints are timely responded to within three business days and are timely resolved within one month.

Response No. 1.1620.13.06: The Department has added the suggested time periods in paragraph (d)(4) as targets. Since a lot of variables may affect the time period for a contractor to respond to a property owner, the Department has not implemented an unmalleable rule. A program administrator is looking at readily and publicly available information for a clear pattern of a PACE solicitor failing to timely receive and respond

to property owner complaints regarding the PACE solicitor, and the underlying facts of the complaints may be relevant to this evaluation.

Section 1620.14. Monitoring Compliance

Comment No. 1.1620.14.01: PACE Funding states that subdivision (d) requires monitoring whether a solicitor is charging a higher price on PACE-funded improvements than it is for the same improvements when done outside the PACE program. Other than enforcing industry-wide price caps, program administrators are not in a position to regulate the pricing of contractors, nor are they even in a position to know what contractors are charging property owners outside of the PACE program that they are administering. This makes enforcement of this section impractical. FortiFi indicates that the modified proposed rules simply moved, but failed to delete, problematic language in the proposed rules requiring program administrators to monitor whether PACE solicitors are charging a higher price for PACE-funded projects vs. non-PACE projects. FortiFi indicates that these requirements go well beyond the requirements of statute, and compliance with such rules would not be feasible or commercially reasonable. FortiFi indicates it would be exceedingly difficult, on a practical basis, for program administrators to carry out this requirement. Each improvement is unique based on the characteristics of the home, the work required to construct or install the improvement, the features, materials, manufacturers, models, and myriad other details chosen by the property owner for a project. Program administrators would not be able to make apples-to-apples comparisons to conduct fair analyses. Collecting this data from contractors would be extremely difficult, absent subpoena power, which the program administrators lack. Moreover, requiring contractors to disclose this data is highly likely to be met with (valid) resistance regarding confidentiality and protected business information.

Response No. 1.1620.14.01: See Response No. 1620.15.06, above. The Department does not agree that this provision requires enforcing industry-wide price caps. The Department believes it is commercially reasonable for a program administrator to review the data already in its possession, like consumer complaints or the scope of work and price of an assessment contract, and to follow up with the PACE solicitor if the data suggests the PACE solicitor may be violating this important property owner protection.

Comment No. 1.1620.14.02. The Consumer Coalition provides that, overall, it commends the Department for additions to this section and for providing greater detail regarding what monitoring and testing needs to focus on to identify consumer protection issues. The Consumer Coalition reiterates that, in its view, monitoring compliance should include annual monitoring and testing that should include updating background checks, reviewing assessment contracts solicited against the underlying home improvement contracts, and making sure solicitors and their agents are complying with the Code of Conduct and PACE solicitor agreements.

Response No. 1.1620.14.02: See Response No. 1620.14.05.

Comment No. 1.1620.14.03: Consumer Coalition provides that, in terms of the timing of monitoring, the word “regularly” is repeatedly used in this rule but nowhere defined.

Response No. 1.1620.14.03: The Department has removed the term from subdivision (c) but left it in subdivision (e). Paragraph (f)(2) of Financial Code section 22680 uses the term “regularly” to describe how a program administrator must monitor the license or registration status of PACE solicitors and PACE solicitor agents. Subdivision (e) of section 1620.14 of the rules sets forth the minimum standards that constitute “regularly monitoring” licensure or registration status.

Comment No. 1.1620.14.04: The Consumer Coalition appreciates the inclusion of vulnerable populations within the sample size under paragraph (b)(1). However, the Department has now made the use of samples optional (“if a program administrator relies on samples of data…”) thereby allowing program administrators to sidestep the issue and effectively silencing vulnerable consumers who are most likely to have complaints. The Consumer Coalition respectfully requests that the use of data from samples of homeowners with PACE contracts be made mandatory, and that it specifically include elders, mono-lingual Spanish and non-English speakers.

Response No. 1.1620.14.04: The use of samples is optional because a program administrator may review all of its data in monitoring compliance, and not just a sample.

Comment No. 1.1620.14.05: The Consumer Coalition indicates that former section 1620.14(a)(1)(B) read “A program administrator may test compliance of PACE solicitors and PACE solicitor agents by posing questions to property owners during the initial confirmation of key terms call required under Streets and Highways Code section 5913.” It has been removed entirely i.e., it is missing, not merely crossed out. We recommend that this sub-part be reinstated and amended, as previously advised, to mandate program administrators to test the compliance of their solicitor/agents in oral completion calls, as well as the confirmation of key terms call.

Response No. 1.1620.14.05: The entire deletion of the section (i.e., without indicating its deletion with double strikethrough) was inadvertent. The Department has returned the provision as subparagraph (b)(2)(A). The provision is permissive to allow for the establishment of other commercially reasonable processes for monitoring and testing compliance. Subdivision (f) of Financial Code section 22680 allows a program administrator to establish the process to monitor and test compliance, and subparagraph (b)(2)(A) is permissive to allow a program administrator to design other commercially reasonable processes.

Comment No. 1.1620.14.06: The Consumer Coalition applauds the inclusion in subdivision (c) of more detail as to what kinds of activity should be monitored by program administrators, although it maintains that monitoring should be done annually as opposed to “regularly” which is nowhere defined.

Response No. 1.1620.14.06: The Department has deleted the word “regularly.”

Comment No. 1.1620.14.07: The Consumer Coalition states that with regard to paragraph (c)(1) it agrees that the program administrators should “track and review” complaints containing allegations of conduct but would also ask that program administrators be directed to investigate such claims. Only then will program administrators be able to determine whether the solicitor has committed any of the acts that do not comply with law described in paragraph (c)(2). Further, it objects to the use of the word “clear” used in various places when discussing patterns of consumer complaints: the point of monitoring is to identify any patterns of consumer complaints as those should prompt further tracking, reviewing and investigation by the program administrators. With regard to whether the PACE solicitors have a pattern of failing to timely receive and respond to property owner complaints, the Consumer Coalition again does not see why such a pattern has to be “clear” (paragraph (c)(3)). Further, failing to respond to multiple complainants should not be cabined only to those situations “over a sustained period of time, notwithstanding repeated contact by the complainants” – to do so places far too much responsibility on the property owner. Any pattern of failing to respond to complaints should prompt investigation with a view to de-enrollment.

Response No. 1.1620.14.07: The obligation under subdivision (c) of section 1620.14 of the rules is to determine whether a PACE solicitor or PACE solicitor agent is continuing to maintain the minimum qualifications under subdivision (g) of section 22680, which prohibits the continued enrollment of a PACE solicitor with a clear pattern of consumer complaints regarding dishonesty, misrepresentations, or omissions. Therefore, the Department is not including a directive to “investigate” complaints during compliance monitoring. The complaints would already fall within the procedures under section 1620.08 of these rules. In addition, “clear” is the statutory standard in paragraph (e)(3) of Financial Code section 22680, and therefore the Department is retaining the standard in the rules. The Department has deleted “notwithstanding repeated contact by the complainants” in paragraph (c)(3); however, the Department has retained the other language that provides guidance on what constitutes a “clear pattern.” The Department declines to change the standard to “pattern” without the “clear” adjective, because that change is not consistent with the statute.

Comment No. 1.1620.14.08: The Consumer Coalition commends the Department for amending (c)(2)(A) (prior proposed section 1620.13(a)(2)(A)(1)) so that it now covers false statements made to property owners in addition to program administrators.

Response No. 1.1620.14.08: The comment is noted.

Comment No. 1.1620.14.09: FortiFi indicates that the modified proposed rules now would require program administrators to monitor whether PACE solicitors are beginning work prior to the expiration of the 3-day right to cancel. Short of setting up video cameras outside the homes of all property owners who have signed assessment contracts (which would obviously violate privacy laws), there is no commercially reasonable way to comply with this rule. According to FortiFi, program administrators can provide in their solicitor training programs and require in their written agreements

with PACE solicitors that PACE solicitors comply with Streets and Highways Code sections 5926 and 5940, and, if program administrators have knowledge of violations of such statutory provisions, they can cancel the enrollment of solicitors who fail to comply. There is no feasible or commercially reasonable way, however, for program administrators to “monitor” or police compliance with these requirements. For these reasons, the Department should delete section 1620.14(d) of the modified proposed rules in its entirety.

Response No. 1.1620.14.09: See Response No. 1620.15.16. The Department is not persuaded that the obligation requires setting up video cameras, nor that there are no other commercially reasonable ways to comply. In subparagraphs (b)(2)(A) through (C), the Department identifies methods that are commercially reasonable. As the Department stated in Response No. 1620.15.06, given that these protections are in the Streets and Highways Code, the clearest way for property owners to receive the intended protection is for the program administrators to monitor for the activities under subdivision (a) of Financial Code section 22689, which provides that a program administrator shall not permit a PACE solicitor to engage in any act in violation of, among other provisions, chapter 29.1 (commencing with section 5900) of part 3, division 7 of the Streets and Highways Code. Subdivision (f) of Section 22680 requires a program administrator to establish and maintain a process to promote and evaluate the compliance of applicable law, and paragraph (f)(1) requires a risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of subdivision (a) of section 22689.

Comment No. 1.1620.14.10: Consumer Coalition provides that while it applauds the Department for setting out compliance testing for particular items, it recommends expanding the list to include other key areas of concern including, but not limited to: price-gouging (not just whether the contractor charges a different price for PACE funded projects than if paid in cash); lien stacking; identifying where the assessment and home improvement contracts materially differ; and contractors who do not complete work or who fail to get work passed through code inspection.

Response No. 1.1620.14.10: Under paragraph (f)(1) of Financial Code section 22680, a program administrator must monitor and test the compliance of PACE solicitors and PACE solicitor agents with the requirements of subdivision (a) of section 22689 of the Financial Code. The Department is not including these recommendations because the Department is not clear how they fall within the requirements of subdivision (a) of section 22689.

Comment No. 1.1620.14.11: With regard to the comparison of PACE prices vs cash prices the Consumer Coalition repeats here its prior comment (related then to former sub-part 1620.15(b)(7)) that the provision “needs clarification to specify how the administrator is to analyze whether a solicitor provides a different price for a project funded by PACE that it would if paid for in cash. For example, at least one program administrator has contracts that often include a large “contractor’s fee” (sometimes over

$10,000) that is paid to the administrator. Having analyzed some of these contracts, as explained in the presentation to stakeholders, consumer advocates believe such fees are related to price gouging. The regulations need to specify how program administrators that appear to be benefiting from these large fees can adequately protect consumers by assessing price differentials between projects financed by PACE versus those paid for by other methods."

Response No. 1.1620.14.11: See Response No. 1620.15.08.

Comment No. 1.1620.14.12: The Consumer Coalition appreciates that the Department took to heart its prior comment (related to prior section 1620.14(a)(1)(E)) about making sure that enrollments are cancelled where the PACE solicitor/agent fails to maintain minimum qualifications. However, the language used suggests the program administrator has to "find" this failure to maintain minimum qualifications. We submit that whether a solicitor/agent maintains minimum qualifications is an objective test and propose the following amendment: "The program administrator shall establish and implement a process for cancelling the enrolment of a PACE solicitor or PACE solicitor agent who ~~the program administrator finds is failing~~ fails to maintain the minimum qualifications…"

Response No. 1.1620.14.12: The provision was removed from section 1620.14 of the rules and instead added to subdivision (a) of section 1620.16, with the language amended as recommended.

Comment No. 1.1620.14.13: The Consumer Coalition indicates that paragraph (e)(3) of the rule has been revised to state that program administrators who have a process to routinely monitor licenses or registration status of solicitor/agents every quarter do not need to check the status of the solicitor/agent when they receive an application for financing. The prior iteration only gave this benefit to program administrators that routinely checked every month. Given that the Consumer Coalition has seen real damage wrought by a number of repeat bad actors within a very short space of time, and that dishonest salespeople who may work across various companies are routinely being identified by consumer advocates, the CSLB and law enforcement, the Consumer Coalition recommends the Department proceed with the rule before amendment.

Response No. 1.1620.14.13: The Department has considered the request but will keep the quarterly standard because the Department believes this is sufficiently often to protect consumers, and program administrators have represented that it is commercially reasonable.

Section 1620.15. Periodic Review Standards

Comment No. 1.1620.15.01: The Consumer Coalition is concerned about the removal of former sub-parts (1)-(3) and does not see any mention of them in rule 1620.14 as noted in the Notice of Modifications. These provisions included requirements that program administrators should review whether individuals employed and retained by PACE

solicitors are enrolled as PACE solicitor agents and confirm that each solicitor/agent has completed the six hours of required training. The Consumer Coalition respectfully requests these sub-parts be restored and, indeed, strengthened to include that the program administrators must ensure PACE solicitor/agents have passed the required test prior to engaging in the solicitation of property owners.

Response No. 1.1620.15.01: Proposed paragraph (b)(1) was removed because it was not consistent with the standard under subdivision (g) of Financial Code section 22680 for cancelling the enrollment of a PACE solicitor or PACE solicitor agent. Under subdivision (g) of Financial Code section 22680, the standard is whether a PACE solicitor or PACE solicitor agent fails to maintain the minimum qualifications, not whether a PACE solicitor has engaged in activity that would have resulted in the denial of enrollment. The minimum qualifications standard is set forth in subdivision (c) of section 1620.14. Proposed paragraphs (b)(2) and (b)(3) were consolidated into paragraph (e)(4) of section 1620.14.

Comment No. 1.1620.15.02: The Consumer Coalition indicates it disagrees with the replacement of the words “not false and misleading” with “are not untrue” from new sub-part (b)(1) (formerly (b)(4)). Contractors use a myriad of false and misleading statements that may technically have some sliver of truth to them. For example, promoting PACE financing as a “government program” or stating that costs can be covered by “tax rebates” or “utility savings” may contain an element of truth in some very specific circumstances but are generally false and misleading. As such the Consumer Coalition requests the Department use the original iteration of this section or amend to state “are not false, misleading, or untrue.”

Response No. 1.1620.15.02: The Department has returned the language to “false and misleading.”

Comment No. 1.1620.15.03: The Consumer Coalition indicates the following sentence has been added to subdivision (c) dealing with program administrators reviewing a random sampling of assessment contracts: “the review may include contacting a sample of property owners to review the relevant items in this subdivision.” In the Consumer Coalition’s view “may” should be replaced with “shall” and program administrators should contact every homeowner within the sample for review (not a sample of that sample). Further, as suggested previously, homeowners should be asked open-ended questions about the scope of work financed. Time and again program administrators talk about consumer complaints as “anecdotal evidence” and rely solely on their own internal data to produce statistics that are at odds with the client complaints the Consumer Coalition sees on a daily basis. The Department needs to ensure consumer voices are solicited and reported.

Response No. 1.1620.15.03: The Department has rephrased the sentence but contacting property owners continues to be optional. A program administrator can conduct the review based on its records.

Comment No. 1.1620.15.04: The Consumer Coalition provides that under (c)(3) program administrators no longer have to confirm that improvements installed are “of the same quality and grade” as those represented to the program administrator. The Consumer Coalition does not believe this amendment is appropriate. It is one thing to confirm the installation of “a solar system” and quite another to represent specifications and prices. One of the Consumer Coalition’s clients had a solar system installed using second hand, discontinued panels (that, not surprisingly, did not work). Program administrators should ensure that their solicitor/agents are installing the specific products being financed. As a side note, the Consumer Coalition wonders how program administrators can describe the energy efficiency savings attributed to PACE when they have no idea of the specifications of products being installed.

Response No. 1.1620.15.04: The provision now requires efficiency improvements installed to be the same as represented. The prior language did not ensure that the specifications of products were included in either the home improvement contract or the assessment contract, so little is achieved by having the language “of the same quality and grade.”

Comment No. 1.1620.15.05: The Consumer Coalition indicates that it is difficult to grasp the meaning of paragraph (c)(4), as drafted. However, to the extent it requires program administrators to confirm that all necessary building permits were pulled, all final approvals were obtained, and all solar panels were connected to the utility, the Consumer Coalition applauds the section.

Response No. 1.1620.15.05: The paragraph was revised for clarity.

Comment No. 1.1620.15.06: The Consumer Coalition indicates that paragraph (d)(1) now appears to allow program administrators to ignore consumer complaints entirely and rely solely on a random sample of assessment contracts for review. Moreover, paragraph (d)(2) states that no sampling of assessment contracts needs to occur at all if the program administrator establishes “its own review designed to ensure a PACE solicitor’s compliance.” The Consumer Coalition objects to these unnecessary additions which will create a patchwork of different systems among program administrators and will make comparisons across the industry impossible and regulation more difficult. Moreover, in order to ensure that consumer voices are heard, the Consumer Coalition asks that the Department make clear that sampling of actual assessment contracts must occur and that consumer complaints must be considered as part of period reviews. Without these changes, the Department is excluding any real review of solicitor/agent actions through a consumer protection lens.

Response No. 1.1620.15.06: Subdivision (b) outlines what must be covered in a periodic review, and paragraph (b)(4) states that the program administrator must conduct an analysis of complaints made against the PACE solicitor regarding the solicitation activities of the PACE solicitor, and the resolution of complaints. Therefore, an analysis of complaints is required, and paragraph (d)(1) does not allow program

administrators to ignore consumer complaints. Paragraph (c)(2) requires the review to confirm that the home improvement contract with the property owner covers the same work for which the program administrator paid the PACE solicitor. Therefore, the Department believes the rules require the review of complaints and assessment contracts.

Section 1620.16. Canceling Enrollment

Comment No. 1.1620.16.01: The Consumer Coalition reiterates that it would like to see the Department play a more active role in approving procedures for canceling enrollment or reviewing their adequacy. In setting at least minimum standards, the Department could ensure greater uniformity amongst administrators while still allowing discretion in creating procedures unique to them. In addition, in the Consumer Coalition's view, the amendments to paragraph (a) unnecessarily limit the written policy for cancellation of enrollment to solicitor/agents who fail to maintain minimum qualifications or who violate any provision of the California Financing Law.

Response No. 1.1620.16.01: The amendments to paragraph (a) set forth the standard for canceling enrollment that is set forth in subdivision (g) of Financial Code section 22680. The Department notes the additional comment about taking a more active role. Similar to Response No. 1620.15.01, the Department is not requiring approval of the procedures, but when the rules are operative the Department will amend its examination protocols to include the requirements of the rules, including developing protocols to confirm a program administrator's cancellation procedures meet the requirements of section 1620.16 of the rules.

Section 1620.17. Training Program

Comment No. 1.1620.17.01: The Consumer Coalition commends the Department for including additional items in the training program as the Consumer Coalition recommended, and for strengthening the language to make certain topics mandatory.

Response No. 1.1620.17.01: The comment is noted.

Comment No. 1.1620.17.02: The Consumer Coalition reiterates that under (e)(2) it should be spelled out in the training that the solicitor must disclose with clarity that the home improvements will be paid back through a special assessment that will cause the property owner's property tax bill to rise significantly, and that the specific amount of increase for the individual property owner must be made clear.

Response No. 1.1620.17.02: The Department has added (e)(2)(B)(2) to address this request.

Comment No. 1.1620.17.03: The Consumer Coalition recommends again that sub-part (e)7 be amended to read "elder and dependent adult financial abuse" in line with the California Welfare and Institutions Code, and that solicitors be trained that soliciting PACE financing from an elder with a reverse mortgage constitutes elder abuse. Elders

with reverse mortgages are a particularly vulnerable group who are generally unable to pay any increase in property taxes and should be afforded further protection from predatory solicitation.

Response No. 1.620.17.03: Paragraph (c)(7) of section 22681 provides the training shall include “senior financial abuse.” However, the Department will expand the training in section 1620.17 of the rules to include “elder and dependent adult financial abuse” to protect vulnerable populations.

Comment No. 1.1620.17.04: FortiFi strongly supports the change in paragraph (a)(4) of the modified proposed rules which would permit program administrators to combine the introductory training program for PACE solicitor agents with the six-hour training program, all prior to solicitation of property owners by such agents. This will provide for a more efficient process and has the potential to have better educated PACE solicitor agents from the get-go.

Response No. 1.1620.17.04: The comment is noted.

Comment No. 1.1620.17.05: FortiFi is concerned about a number of new requirements in the required 6 hours of education for PACE solicitors relating to mortgage instruments, mortgage lender processes and other issues. For example, section 1620.17(e)(1)(A)(4) requires that the education program include “the risk that the property owner will be breaching the property owner’s mortgage agreement by allowing a PACE lien.” Requiring program administrators to provide home improvement contractors and their salespersons with training that includes legal analysis of the terms of mortgage instruments and their legal interrelationship with and legal status vis-à-vis local government real property assessments and/or special taxes is highly problematic. FortiFi is concerned that such information could implicate rules regarding licensure of PACE solicitors, including whether they would need to become mortgage brokers if they were in a role of counseling property owners regarding mortgage instrument terms. FortiFi is also concerned about the regulatory implications of providing this legal advice to PACE solicitors, and PACE solicitors, in turn, providing such legal advice to property owners. FortiFi indicates the Department should consider this issue and whether to otherwise scale back section 1620.17(e). At a minimum, FortiFi recommends revising section 1620.17(e)(1)(A)(4) of the modified proposed rules as follows: “The risks to property owners~~, including the risk that the property owner will be breaching the property owner’s mortgage agreement by allowing a PACE lien.~~

Response No. 1.1620.17.06: Educating a PACE solicitor agent of potential mortgage agreement violations protects against a PACE solicitor agent making misrepresentations to property owners. The Department is not persuaded it will transform the PACE solicitor agent into a mortgage broker or an attorney.

Section 1620.19. Annual Report Data

Comment No. 1.1620.19.01: The Consumer Coalition remains concerned that the Annual Report Data does nothing to capture the foreclosures initiated by mortgage servicers as a result of increased property taxes paid through impound accounts. It also fails to track serious delinquencies that have not yet resulted in a foreclosure. Program administrators can easily track foreclosure and delinquency activity on properties subject to PACE assessment contracts by simply checking on free or commercially available online databases, so it is reasonable to require them to collect this information as part of their annual reporting obligation. The Consumer Coalition recommends that the Department include the following requirement: *The number of Notices of Default, Notices of Trustee's Sale and Trustee's Deeds upon Sale, respectively, recorded on properties subject to PACE assessment contracts administered by the program administrator during the prior calendar year. For each recorded Notice of Default and Notice of Trustee's Sale, include the year of the assessment contract, the original amount of the assessment contract, the zip code of the property, the date the Notice was recorded and the reinstatement amount reflected in the Notice. For each Trustee's Deed upon Sale, include the year of the assessment contract, the original amount of the assessment contract, the zip code of the property, the amount of the unpaid date at the time of the trustee's sale, and the amount paid by the buyer (grantee) in the trustee's sale.*

Response No. 1.1620.19.01: Please see Response No. 1620.19.03, above.

Comment No. 1.1620.19.02: The Consumer Coalition indicates it is also concerned about the significant increase in the interest rates in section 1620.19 (a)(3)(D) as PACE assessments average interest rates of 8 to 10 percent which would mean all of the assessments would fall under section (D)(i) rendering the subsequent sections moot. It should also be noted that PACE program administrators allow for an upfront "Contractor Fee" to offer a homeowner a lower interest rate and this information is not captured within the Annual Report Data.

Response No. 1.1620.19.02: The Department has changed the reporting of rates to match the reporting required by other CFL licensees, so that the reporting is equitable. However, the Department has added clause (a)(2)(D)(3), which requires reporting 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, seller's points, or as any other type of payment; the aggregate amount of the payments; and the average and median amount of the payments.

Comment No. 1.1620.19.03: FortiFi supports the revisions to section1620.19(a) in the modified proposed rules regarding the disclosure of interest rates on PACE assessment contracts in the annual report. FortiFi notes that there may be a typo in this section where section 1620.19(a)(2) is deleted, but subsection (a)(3) has not been changed to

(a)(2). If subsection (a)(2) is deleted, FortiFi is referring to section 1620.19(a)(3)(D) in its bullet point above.

Response No. 1.1620.19.03: The support is noted, and the typo is corrected.

Section 1620.21. Ability to Pay Determination

Comment No. 1.1620.21.01: The Consumer Coalition appreciates the Department's inclusion of provisions in subsection (a) requiring program administrators to maintain written procedures for determining a property owner's ability to pay that will allow the Department to assess the administrators' criteria for various aspects of that determination and compare those criteria to the underwriting conducted in actual transactions. The Consumer Coalition remains concerned, however, that these amendments still leave out critical issues regarding verification of debts, calculation of housing expenses and timing of the first assessment payment, which are discussed in detail in its prior comments at pages 32-34. While the Consumer Coalition is pleased to see that the Department has retained a provision aimed at ensuring that personnel involved in the ability to pay determinations are not incentivized to reach positive outcomes, the Consumer Coalition objects to the removal of the provisions in the previous version of the regulations that addressed the potential for influence and pressure being exerted on such personnel. In order to fully protect property owners, the Consumer Coalition recommends that the Department: (1) restore the requirement from the 2018 version of these regulations that there be a firewall separating personnel making the final ability to pay determination from other departments and functions; and (2) include in the final rule a provision prohibiting program administrators from paying to individuals involved in underwriting, directly or indirectly, compensation (including salaries, bonuses, commissions, and any financial or similar incentive) in an amount that is based on a term of the PACE transaction, the terms of multiple transactions involving such individuals, or the number (or quotas) of PACE assessment contracts that are approved for funding and recordation.

Response No. 1.1620.21.01: Regarding verification of debts, calculation of housing expenses and timing of the first assessment payment, please see Response Nos. 6.05, 6.06, 6.07, and 6.08, above. With regard to the Consumer Coalition's concerns about the removal of provisions intended protect against undue influence internally on employees evaluating a property owner's ability to pay, the Department is persuaded by concerns that the rule was overreaching and intruding on internal operations, by regulating internal relationships among staff. The Department would want evidence of bad practices that establish the need for the rule, and models of such a rule in other areas of finance requiring underwriting, prior to adopting a rule in this area. The same is true for the additional request regarding prohibiting program administrators from paying to individuals involved in underwriting any compensation based on a term of the PACE transaction, the terms of multiple transactions involving such individuals, or the number (or quotas) of PACE assessment contracts that are approved for funding and recordation. The Department would want evidence demonstrating the need for the rule.

Section 1620.22. Property Owner Income

Comment No. 1.1620.22.01: PACE Funding states that as currently worded, this section 1620.22 seems to prohibit the consideration of sources of household income outside of the property owners on title. In many situations, this would exclude the income of extended family members that were living together. Non property owner income should be able to be considered if they can demonstrate that they reside at the address where the work is being performed.

Response No. 1.1620.22.01: Paragraph (a)(3) of section 22687 limits the income that could be considered to persons 18 years of age or older who are on title, and their spouses or domestic partners. The Legislature has made the policy decision to exclude the income of extended family members that are living together, and a legislative change would be needed to expand it.

Comment No. 1.1620.22.02: The Consumer Coalition appreciates the significant changes the Department has made to this rule, particularly the addition of subsections (b)(2), (b)(3), (b)(4), (b)(6) and (b)(7). The Consumer Coalition recommends, however, that the Department revise subsections (b)(3) and (b)(4) further. The Consumer Coalition recommends revising paragraph (b)(3) as follows: 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 rental agreement and reasonably reliable third-party records *demonstrating the property owner's receipt of such income for at least the prior twelve months*. This amendment would help to prevent administrators from counting "phantom" boarder income that is documented only in an (easily drafted) rental agreement but is not actually being paid to the property owner at all or on a regular basis. According to FortiFi, the modified proposed rules provide that if other members of the property owner's household are paying rent or board to the property owner, this must be verified through a rental agreement. FortiFi indicates this provision could have the effect of excluding contributions to the income of the property owners on title or their spouses or domestic partners that comes from other members of the household that have not documented such board or other contributions via a formal rental agreement. This could exclude income to property owners that comes from extended family members in multigenerational households. This appears to be overly restrictive and could exclude certain types of households from receiving access to PACE financing. Such additional sources of income to property owners could be verified using other types of records, such as checks, banking transfers or otherwise. To remedy this, FortiFi recommends the following revision: "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 rental agreement or ~~and~~ reasonably reliable third-party records."

Response No. 1.1620.22.02: After several iterations and weighing the concerns of stakeholders, paragraph (b)(3) is amended to provide as follows: “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.” In enacting Financial Code section 22687, the Legislature intentionally did not authorize the income of household members not on title to be considered in the ability to pay determination, unless that household member was a spouse or domestic partner of the property owner on title. The Department’s rule, authorizing the recognition of income from persons within the household where the parties can document six months of rent or board payments through third-party records, is intended to recognize bona fide rental agreements, while at the same time preserving the statutory limitation on considering incomes of other household members who may not have a bona fide rent or board agreement with the property owner.

Comment No. 1.1620.22.03: The Consumer Coalition provides that with respect to subsection (b)(4), in order to avoid having gross rent receipts from a separate property counted toward a property owner’s income when the property owner may have significant expenses that offset such income, the Consumer Coalition urges the Department to revise this provision further so that the rental income counted is limited to net rental income after deducting the relevant property charges. In the absence of a specific statutory or regulatory requirement regarding debt-to-income levels or residual income thresholds in the ability to pay determination, allowing program administrators to count gross rental income toward the property owner’s total income and treat the expenses for that property only as a debt leaves open the door to abuse. The Consumer Coalition recommends the following amendments to this provision: Rental income for properties other than the property owner’s household may be included in determining income provided that ~~the~~ 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.* ~~considered as debt obligations of the property owner.~~

Response No. 1.1620.22.03: The Department does not object to the recommended change and has made the change.

Comment No. 1.1620.22.04: The Consumer Coalition also remains concerned that section 1620.22(b)(5) does not fully implement the requirement in Financial Code section 22687(b)(1). Section 22687(b)(1) permits the use of automated income

verification, but only if the source of the verification is “specific to the income of the property owner and not based on predictive or estimation methodologies and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator.” In contrast, section 1620.22(b)(5) simply provides that a program administrator shall not determine income “based on records or data that is not specific to the property owner.” The Consumer Coalition believes that without express guidance as to what is “specific” to a property owner, some program administrators may attempt to use automated income verification systems or other forms of verification that are not consistent with the minimum statutory requirements. The rule should therefore provide examples of what is not acceptable. For example, the final rule should state that records and data regarding average incomes in the property owner's geographic location or average wages paid by the property owner's employer are not sufficient for income verification.

Response No. 1.1620.22.04: The Department has amended the paragraph as requested.

Comment No. 1.1620.22.05: The Consumer Coalition states that the final rule should require that program administrators obtain approval from the Department before using any automated verification system to validate property owner income, employment, and asset data, after providing proof that the system is not based on predictive or estimation methodologies, and that it has been approved by a federal mortgage lending authority or regulator. The Department should also require an annual certification by program administrators that such automated system remains compliant.

Response No. 1.1620.22.05: Please see Response No. 1620.22.03.

Comment No. 1.1620.22.06: The Consumer Coalition indicates that the automated income verification systems that currently exist operate to verify only salary and wage income, by accessing third-party payroll service records or IRS tax transcripts. The Department should prohibit the use of automated systems for other purposes until they become reasonably reliable. The final rule should provide that until such time as a program administrator can demonstrate to the satisfaction of the Department that an income verification system is reasonably reliable, program administrators shall not use automated systems for verification of self-employment income, military or reserve duty income, bonus pay, tips, commissions, interest payments, dividends, retirement benefits or entitlements, rental income, royalty payments, trust income, public assistance payments, and alimony, child support, and separate maintenance payments.

Response No. 1.1620.22.06: See Response No. 1620.22.03. This recommendation is not accepted because it is inconsistent with paragraph (b)(1) of section 22687 which provides that a program administrator may use automated verification provided the source of that verification is specific to the income of the property owner and not based on predictive or estimation methodologies and has been determined sufficient for those verification purposes by a federal mortgage lending authority or regulator.

Comment No. 1.1620.22.07: As FortiFi discussed in prior comments, this language in paragraph (b)(5) is “inconsistent with Cal. Fin. Code §22687(b)(1), which expressly permits program administrators to use enumerated examples of records to verify the property owner’s income (e.g., copies of the most recent tax returns, payroll statements, Form W-2s, government agency statements, bank statements or employer records). If a document enumerated in Cal. Fin. Code §22687(b)(1) doesn’t reflect the ‘actual income’ of the property owner because, without any knowledge on the part of the program administrator, the document has been forged or falsified, or for some reason is not what it purports to be, or the property owner has lost that source of income or that asset but failed to disclose this to the program administrator and misrepresented their income in the application, the program administrator should not be made liable for such falsification or misrepresentation by the property owner, solicitor agent or other person.” FortiFi indicates the proposed language could also prohibit the use of automated verification in circumstances in which section 22687(b)(1) would otherwise expressly permit it (i.e., where it is ‘specific to the income of the property owner and not based on predictive or estimation methodologies and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator.’).”

Response No. 1.1620.22.07: The Department has amended the section to be consistent with the statute.

Section 1620.25. Emergency

Comment No. 1.1620.25.01: The Consumer Coalition continues to believe that the need to install air conditioning when temperatures have reached 80º F or higher is the only genuine PACE-eligible home improvement emergency in California. The Consumer Coalition recommends that the rule be amended accordingly. At minimum, though, the Department should expand the list of non-qualifying home improvements and situations to address other common abuses of the emergency exception which advocates have repeatedly seen. These include air conditioning equipment installation when temperatures have not reached 80º F or above; heater installation when temperatures have not reached 50º F [or another threshold determined by the Department] or below; and installation of insulation. The Consumer Coalition recommends that the Department restore the requirement that any waiver of the right to cancel shall be in the same language as the confirmation call under Streets and Highways Code section 5913. To safeguard against abuse of what should be a very narrow exception, the final rule should also require that the waiver be handwritten and personally signed by the owner. Neither DocuSign nor e-sign should be allowed for the waiver because they open the door to predatory practices as seen time and time again by advocates.

Response No. 1.1620.25.01: Please see Response No. 1620.25.02, above.

Comment No. 1.1620.25.02: FortiFi indicates the modified proposed rules would still fail to allow window replacements to be subject to the emergency exception from the ability to pay documentation requirement (i.e., Fin. Code, § 22687(e)). As FortiFi argued in

comments on the proposed rules, “[d]uring colder months or hotter months in certain parts of California (Sierra Nevadas, Central Valley, desert areas), having a broken window could absolutely constitute an ‘emergency or immediate necessity’ for a window replacement.” FortiFi again requests that the Department delete “window replacements” from this section, as Financial Code section 22687(e) already provides that the primary function of improvement must be temperature regulation to qualify for this exception.

Response No. 1.1620.25.02: See Response No. 1620.25.01.

Section 1620.27. Automated Valuation Model

Comment No. 1.1620.27.01: In order to protect homeowners from over-leveraging their homes, the Consumer Coalition urges the Department to reconsider its decision not to modify the proposed regulation regarding the use of automated valuation models (AVMs) in determining home values. Financial Code section 22684 provides that a property owner’s total loan-to-value ratio for all mortgage related debt including all PACE assessments shall not exceed 97 percent of the market value of the property. With such a high loan-to-value ratio, even modest errors in valuation could result in a property owner owing considerably more than the home is worth. As explained in the Consumer Coalition’s prior comments, research has shown that there is wide variation in the accuracy of AVMs. AVMs are not generally used as the sole basis for a property valuation except to support bulk decisions such as portfolio valuations or for appraisal reviews. Instead, they are commonly used in combination with other analytics, data reviews, property inspections or appraisals. Their accuracy is weaker when used for valuation for any individual property. For example, in one study of 666 U.S. counties, on average the percentage of automated valuations across all counties falling within +/- 10 percent of the sales price was only 70 percent, with variation between 20 percent and 92 percent, depending on the county. Thus, 30 percent of valuations on average were more than 10 percent different from sales price (which can itself be different from appraised value). On average, almost half of all valuations across all of the counties were more than 5 percent higher or lower than the sale price. On an individual level, such widespread potential for error undermines the lending process and a property owner’s security. The proposed regulations do not include any substantive provisions addressing the significant consumer protection concerns raised by the use of AVMs. The Consumer Coalition is particularly concerned that an assumption made by all AVM models is that the property is in a marketable condition and is not in need of any significant repairs and that such an assumption may not be correct for a given property. The Consumer Coalition strongly recommends that the final rule require program administrators to include requirements for their enrolled PACE solicitors and solicitor agents that if a solicitor or solicitor agent has knowledge that these assumptions about the condition of a property are not correct, they must communicate that information to the program administrator before a valuation is completed. Upon receipt of such information, the program administrator should be required to obtain a full appraisal (or a broker’s price opinion (BPO) that meets designated rigorous standards).

Response No. 1.1620.27.01: See Response No. 1620.27.01.

Comment No. 1.1620.27.02: According to the Consumer Coalition, Financial Code section 22685(b) requires that “[t]he market value determination by the program administrator shall be disclosed to the property owner prior to signing the assessment contract.” The Consumer Coalition recommends that the Department clarify that this disclosure must be in writing in order to ensure that property owners are able to review and refer back to the information as needed.

Response No. 1.1620.27.02: The Department has made this change.

Section 1620.28. Useful Life of Improvement

Comment No. 1.1620.28.01: For the reasons set forth in FortiFi’s comments on the proposed rules, FortiFi supports the revisions to section1620.28.

Response No. 1.1620.28.01: The support for the revisions is noted.

Comment No. 1.1620.28.02: According to the Consumer Coalition, Financial Code Section 22684(j) states: “The term of the assessment contract shall not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract is attributable. The program administrator shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations.” While credible third-party standards can be used to measure the life of the improvement, those standards must be informed by the specific equipment installed and, as such, the equipment manufacturer or installer’s specifications are highly relevant and should be included. As with 1620.15(c)(3), the actual product installed is critical to the analysis – whether it be for estimating its useful life, or for making sure the financed product has been installed as specified.

Response No. 1.1620.28.02: The statute requires a program administrator to determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations. The Department is unclear on how to include the equipment manufacturer or installer’s specifications in a way that is not contrary to the code. Further, the Department believes that such a requirement would be unreasonably burdensome.

Comment No. 1.1620.28.03: FortiFi indicates the proposed rules would require a program administrator to base the useful life of the efficiency improvement on “the equipment manufacturer or installer’s specifications.” Although FortiFi previously supported this additional specification, based on further analysis of the statute, this language conflicts with Cal. Fin. Code section 22684(j), which provides “The program administrator shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by

appropriate government agencies or nationally recognized standards and testing organizations." In addition, FortiFi changes its previous comment to now note that equipment manufacturer or installer specifications may be shorter than the actual useful life of an improvement because such entities typically seek to limit warranty periods and warranty liability. By restricting the useful life determination to such specifications, this could shorten the term of the assessment contract, making each installment payment higher and thereby making the assessment less affordable for some property owners. To resolve this, the Department should delete this subsection, as the requirement is fully covered by the Financial Code. Moreover, the Financial Code does not require program administrators to maintain information on an improvement's useful life it its books and records. That is unduly burdensome and further reason for the Department to delete this section.

Response No. 1.1620.28.03: FortiFi's changed recommendation is in the rulemaking record. The Department amended the provision to be consistent with the statute.

Section 1620.29. Commercially Reasonable

Comment No. 1.1620.29.01: The Consumer Coalition appreciates the Department's addition of a provision to this rule that requires a program administrator to obtain information about existing PACE assessments on a property from PACE solicitors. The Consumer Coalition urges the Department to strengthen and clarify this requirement by requiring administrators to obtain written confirmation from PACE solicitors that they have no knowledge the property owner has sought, authorized, or obtained other PACE assessments on the property, whether already recorded or not. If the PACE solicitor has knowledge of other improvements, this information should trigger an inquiry by the administrator to other PACE programs and tax collection offices, and a search of land records on the property.

Response No. 1.1620.29.01: See Response No. 1620.29.01.

Comment No. 1.1620.29.02: The Consumer Coalition strongly objects to the modifications made to this rule in subsections (b) and (c) that include exemptions from requirements that administrators use "commercially reasonable" independent sources to verify the criteria in Financial Code section 22684 "where Financial Code section 22684 authorizes a program administrator to rely on the representation of a property owner." Subsection 22684(l) states that "program administrators shall use commercially reasonable and available methods to verify the above." This provision does not contain any exceptions for any of the criteria listed in the statute, so a regulation that exempts administrators from having to use commercially available independent sources to verify certain criteria is inconsistent with the statutory directive. Moreover, there are no criteria listed in the statute that authorize administrators to rely solely on information from property owners. Subsection 22684(a) requires an administrator to ask a property owner about delinquent property tax payments, but, as the Department clearly recognizes, that requirement does not replace or override a requirement that the

administrator also verify recent property tax payment history using property tax records and/or information from government websites. Subsection 22684(k) states that "[t]he program administrator shall verify the existence of recorded PACE assessments and shall ask if the property owner has authorized additional PACE assessments on the same subject property that have not yet been recorded." The requirement to ask the property owner about unrecorded PACE assessments does not replace or override an administrator's obligation to use commercially reasonable independent resources to verify this information.

Response No. 1.1620.29.02: The Department notes that the statute does not require “independent” sources, and so the Department disagrees with the arguments asserting that the Department’s proposed language was inconsistent with the statute. Nevertheless, the Department has removed the provision expressly authorizing a program administrator to rely on the representation of the property owner.

Comment No. 1.1620.29.03: The Consumer Coalition remains concerned that this rule does not address arguments made by program administrators in comments submitted to the Department in 2018 indicating that they believe that it is not commercially reasonable to require program administrators to independently verify that the measures financed by an assessment contract are eligible. Given that program guidelines, home improvement contracts and PACE solicitors--rather than property owners themselves--are much more reliable and reasonable sources about the eligibility of a particular item or project, the Consumer Coalition urges the Department to either include these sources in the list of examples of commercially reasonable and available sources in subsection 1620.29(a) of this rule or add a provision that requires administrators to use such sources of information to verify this criterion.

Response No. 1.1620.29.03: The requirement that the program administrator document the verification sources allows the Department to ensure during the routine regulatory examinations that the program administrator has verified the criteria. Therefore, the Department has not made additional changes to the rule.

Comments Received During the Second Notice of Modifications from September 2, 2020 through September 18, 2020

The following persons submitted comments to the Department during the 15-day comment period from September 2, 2020 through September 18, 2020:

1. California Association of Realtors, Anna Buck, Legislative Advocate - by letter dated September 17, 2020, received via email.
2. California Low-Income Consumer Coalition, Bet Tzedek, Legal Aid Society of San Diego, Inc., East Bay Community Law Center, National Housing Law Project, Public Counsel, Riverside Legal Aid, Public Law Center, and UCI Law Consumer Law

Clinic, on behalf of their clients – by letter dated September 18, 2020, received via email.[2]
3. PACE Funding Group, Robert Giles, Chief Executive Officer – by letter dated September 18, 2020, received via email.
4. FortiFi Financial, Inc., Christopher Nard, Chief Executive Officer – by letter dated September 18, 2020, received via email.
5. PACENation, Colin Bishopp, Executive Director – by letter dated September 18, 2020, received via email.
6. Ygrene Energy Fund, Farschad Farzan, General Counsel – by letter dated September 18, 2020, received via email.

Section 1422.5. License Application Through NMLS

Comment No. 2.1422.5.01: According PACE Funding, section 1422.5(a)(3) adds language requiring that an MU2 form be filed by: "any individual who is directly responsible for the conduct of the applicant's lending activities or for administering PACE programs for the applicant in this state." This language is vague and unreasonably broad and brings unnecessary ambiguity that will cause confusion and the possibility of requiring an MU2 form of previously unrequired individuals. Under a broad interpretation, every single employee of a program administrator could be considered "directly responsible for…administering PACE programs." For this reason, PACE Funding feels it would add clarity if the Department were to revert back to the prior language, which included "individual applicants, officers, directors, managing members (in the case of a limited liability company), general and managing partners (in the case of a partnership), and individual control persons (both direct and indirect) that own 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant." Further, the Department should delete the language: "and any individual who is directly responsible for the conduct of the applicant's lending activities or for administering PACE programs for the applicant in this state" Additionally, the Department should accept and adopt the previous comments submitted by program administrators suggesting that the Department add language waiving the requirement for entities registered under section 12 or section 15(d) of the Securities Exchange Act of 1934, if that entity is current in all of its material SEC reporting requirements.

Response No. 2.1422.5.01: Section 22105 of the CFL provides that the Commissioner must investigate, among others, any person responsible for the conduct of the applicant's lending or program administration activities in this state. However, the Department agrees that the language is vague. The Department has removed the vague language. Instead, the Department has added that for purposes of the section, an individual control person shall include (i) an individual who owns 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant, and (ii) an officer, director, managing member, or partner of an entity who owns 10 percent or

[2] Although the signatories of the letter from consumer advocates have changed from the prior comment periods, the Department will continue to refer to the comments as those of the "Consumer Coalition."

more of the outstanding interests or the outstanding equity securities of the applicant, if that individual has the power to direct the management or policies of the applicant's lending activities or PACE program administration activities in this state.

Comment No. 2.1422.5.02: As discussed in FortiFi's comments on the May 2020 modifications to proposed text, the Department's proposed modifications to Exhibit C, which appears in section 1422(c), would provide an exemption from the MU2 and fingerprinting requirements for owners and control persons that are public companies. However, this exemption would only apply to finance lenders and brokers. Unfortunately, the Department's second modifications to proposed text did not reflect FortiFi's recommendation to equally extend this exemption to program administrators. FortiFi continues to recommend that the Department apply this reasonable and helpful exemption to program administrators. Specifically, the Department should add the following language to the end of section 1422.5(a)(3): "The Commissioner shall waive this requirement for the owners and control persons of any entity that owns 10 percent or more of the outstanding equity interests or outstanding equity securities of the applicant if the entity is a reporting company registered under section 12 or section 15(d) of the Securities Exchange Act of 1934, if that registered reporting company is current in all of its material reporting requirements under said law and the regulations of the Securities Exchange Commission thereunder."

Response No. 2.1422.5.02: The Department has updated the background check requirements under both section 1422 and 1422.5 to make the MU2 and fingerprint requirements only applicable to individual owners of more than 10 percent, or an officer, director, managing member, or partner of an entity who owns 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant, if that individual has the power to direct the management or policies of the applicant's lending activities or PACE program administration activities in this state. Therefore, the waiver language is no longer applicable.

Comment No. 2.1422.5.03: According to FortiFi, the second modifications to proposed text would add the following language to the list of individuals that must be identified on the MU1 form and who must file an MU2 form: "any individual who is directly responsible for the conduct of the applicant's lending activities or for administering PACE programs for the applicant in this state." FortiFi is concerned that this proposed language is vague and needlessly broad. Depending on how the Department interpreted the phrase "directly responsible," this proposed language would likely require some individuals to file MU2 forms who were previously not required to do so. Arguably any employee of a program administrator could be considered to be "directly responsible for … administering PACE programs" since the primary function of a program administrator is to administer PACE programs. program administrator staff are supervised by the program administrator's executive officers, directors, and branch managers (or by its members or partners in the case of LLCs or partnerships), who are themselves required to file MU2 forms. Requiring MU2 forms and fingerprinting for potentially all additional

staff members who may be “directly responsible” for administering the PACE programs is unnecessary and extremely burdensome. FortiFi recommends that the Department revert to the language that appeared in its first May 2020 modifications to proposed text, which required only the following individuals to file MU2 forms: “individual applicants, officers, directors, managing members (in the case of a limited liability company), general and managing partners (in the case of a partnership), and individual control persons (both direct and indirect) that own 10 percent or more of the outstanding interests or the outstanding equity securities of the applicant.” This language is sufficient and clear.

Response No. 2.1422.5.03: See Response No. 2.1422.5.01, above.

Section 1437. Surety Bond Requirements

Comment No. 2.1437.01: According to FortiFi, section 1437 requires licensees to maintain a surety bond in accordance with Section 22112 of the Financial Code and the provisions of section 1437. In the second modifications to proposed text, the Department has proposed to add a new subsection 1437(c)(3), which prescribes specific provisions that must appear in the required surety bond. It is unclear from the proposed modifications whether current licensees whose surety bonds were approved when their license applications were granted must obtain and file new surety bonds that contain the specific language in section 1437(c)(3). FortiFi does not oppose any of required information or representations that appear in proposed section 1437(c)(3). FortiFi recommends that the Department clarify, however, that only *new* applicants will be required to post surety bonds that contain the precise language in section 1437(c)(3). It would be needlessly burdensome to require an existing licensee to obtain a new surety bond with language that matches the language in section 1437(c)(3). To that end, FortiFi recommends that the Department add the following clarifying language to section 1437(c)(3): “When filing a new license application through NMLS after the effective date of these rules, the surety bond shall be in the form of an electronic surety bond and shall include the following information and representations by the applicant or licensee, and the surety… .”

Response No. 2.1437.01: As part of the transition to NMLS, licensees will submit electronic bonds through NMLS, rather than in paper. The Surety Company will have an account in NMLS and issue the bonds through the NMLS process. Existing bonds can be transitioned onto NMLS. Once a surety bond is on NMLS, the licensee will be able to renew the bond electronically and nothing will need to be delivered to the Department in paper. The signatures will not need to be notarized. Notices regarding expiring bonds will be delivered through NMLS. The goal of these changes is to take advantage of NMLS functionality intended to improve the ease and efficiency of maintaining a state license. Therefore, the requested changes have not been made.

Section 1620.02. Definitions

Comment No. 2.1620.02.01: The Consumer Coalition appreciates the clarifying modification the Department has made to subdivision (b), adding to the definition of "administrative or clerical tasks" the requirement that the individual be an employee of a program administrator. PACE Funding indicates that section 1620.02(b) has changed the exemption from being a PACE solicitor or PACE solicitor agent for persons performing purely "administrative or clerical tasks" and restricted such exemption to employees of PACE program administrators. PACE Funding indicates this would mean that an office-based employee of a PACE solicitor who only does data entry on customer applications and is not in the field soliciting assessment contracts, or even having any contact whatsoever with customers, would need to be an enrolled as a PACE solicitor agent, subject to the 6-hour training program and exam, background check, and have their name reported to the Department. Furthermore, PACE Funding indicates making this exemption apply only to employees of PACE program administrators is redundant because Financial Code section 22017(c)(1) already separately exempts all persons employed by program administrators. According to PACE Funding, the legislative intent here is clear. The Legislature intended to also exempt administrative and clerical employees of third parties by including the separate exception in Financial Code section 22017(c)(3) for persons who perform "purely administrative or clerical tasks." To limit this exemption to employees of program administrators is to ignore these two separate provisions of the Financial Code and their clear legislative intent. For this reason, the Department should delete "when conducted by an employee of the program administrator" in section1620.02(b) of the September 2, 2020 version of the proposed rules. FortiFi and Ygrene make substantially similar comments as PACE Funding.

Response No. 2.1620.02.01: The Department has reevaluated the definition and is persuaded by PACE Funding's argument that the Legislature did not intend to have the definition limited to program administrator employees, since these employees are exempt under another provision. However, the Department believes the activities should be overseen by a person who is licensed or enrolled, and therefore accountable. Therefore, the Department has added to the description of administrative or clerical tasks, "when performed by an individual under the supervision and direction of an enrolled PACE solicitor, an enrolled PACE solicitor agent, or a program administrator."

Comment No. 2.1620.02.02: According to Ygrene, section 22017 of the Financial Code codifies the definition of a "PACE solicitor" and "PACE solicitor agent" and in part, indicates that these do not include "[a] person, including a home improvement contractor or subcontractor, who does not solicit property owners to enter into assessment contracts." Cal. Fin. Code § 22017(c)(2) (emphasis added). Proposed section 1620.02(a)(2) of the proposed rules, however, seems to, in part, create a new group of PACE solicitors or PACE solicitor agents based on property owner's actions of soliciting information, which appears to directly contradict the language of the statute

that says a person is not a PACE solicitor or PACE solicitor agent if they are not soliciting property owners. Therefore, Ygrene recommends modifying proposed section 1620.02(a)(2)(A) to read in full as follows: “(2)(A) ‘To solicit a property owner to enter into an assessment contract’ does not include responses by a person who a property owner makes a request to regarding PACE financing.”

Response No. 2.1620.02.02: Former paragraph (a)(2) was established based on a request for a safe harbor when a property owner seeks the financing. However, the paragraph is not providing clarity and is unnecessary because the statute already limits the definition to persons who solicit property owners. Therefore, the Department has deleted the paragraph.

Comment No. 2.1620.02.03: Under subdivision (n), FortiFi indicates the new definition “PACE-authorized improvement” is not consistent with the California Financing Law. This new definition uses terminology not used by the Legislature in the Financial Code, ignores the specific cross-references in statute and possibly leaves out additional types of public purpose improvements that the Legislature may permit to be financed via contractual assessments or special taxes and made subject to the Financial Code in the future. Instead, the operative defined term under the California Financing Law is “efficiency improvement” as defined in section 22019 of the Financial Code. The Legislature has adjusted the types of improvements subject to PACE assessments, as defined in Financial Code section 22015, over time. To avoid being either over or under inclusive of the types of improvements the Legislature has authorized and remain within the appropriate regulatory boundaries set by the California Financing Law, the Department should simply cross-refer to the defined term used by the Legislature. The definition of “PACE-authorized improvement” in the proposed rules should be changed to “an Efficiency improvement, as defined in Section 22019 of the California Financial Code.” This change would address any concerns about simply using the term “efficiency improvement” in the regulations, as Section 22019 refers to the defined term “PACE assessment,” which is defined in section 22015, and which has a specific set of cross- references in the Public Resources Code. Ygrene indicates section 22016 of the Financial Code makes reference to the three sources of statutory authority for PACE programs in California. Proposed section 1620.02(n) creates a new definition of “PACE authorized improvements” inconsistent with existing state statute. As proposed, section 1620.02(n) limits “PACE-authorized improvements” to those found under the Streets and Highways Code and as a result places new limitations on what may qualify as a PACE improvement under programs created under the Mello-Roos Act, under a charter city’s constitutional authority, or what may be added by the state legislature as an authorized improvement in the future (as has occurred in the past with the addition of seismic resiliency improvements and most recently wildfire resiliency improvements). Therefore, Ygrene recommends revising proposed section 1620.02(n) to read as follows: “’PACE-authorized improvement’ includes any improvement permitted by the statutory authorities under which a PACE program exists as identified by Section 22016 of the Financial Code.”

Response No. 2.1620.02.03: The new definition was established to better describe what is intended throughout the regulations. However, the Department is persuaded that keeping the existing definition provides more clarity. Therefore, the Department is striking the new definition and reverting to the phrase “efficiency improvement” as defined in Financial Code section 22019.

Section 1620.05. Advertising Standards

Comment No. 2.1620.02.04: The Consumer Coalition appreciates the Department’s recharacterizing of the advertising standards to provide greater clarity; however, it believes that the list of prohibited advertising behaviors contained in subdivision (a) is not exhaustive. Under California’s Unfair Competition Law (Bus. & Prof Code § 17200) and False Advertising Law (Bus. & Prof. Code § 17500), as well as the Federal Trade Commission Act (15 U.S.C. § 45), a fraudulent or deceptive act, practice or statement includes any representation or omission that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment. The standard for “unfair” under the Unfair Competition Law, like that under the FTC Act, is also deliberately framed in general terms since the Legislature and Congress both recognized the impossibility of drafting a complete list of unfair trade practices that would not quickly become outdated or leave loopholes for easy evasion. Accordingly, the Consumer Coalition recommends adding “includes but is not limited to” language to the preamble in order to ensure the statute's applicability to a more expansive interpretation of unfair and deceptive advertising. With the recommended changes in mind, the preamble would thus read: “advertising of a PACE program that is untrue, deceptive, or likely to mislead a property owner includes, but is not limited to,....”

Response No. 2.1620.05.04: The Department notes that this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)). However, the Department is persuaded the amendment improves the text and is otherwise making changes to the rules, so the Department is accepting the recommendation.

Comment No. 2.1620.05.05: Ygrene indicates section 1620.05(f)(2) places responsibility on a program administrator who “knows . . . a third party that solicits . . . through untrue, deceptive, or misleading advertising. . . .” (emphasis added). However, sections 1620.05(f)(1) and (f)(3) unfairly penalize program administrators, who do not have knowledge of a third party’s alleged wrongdoing. Ygrene recommends revising proposed sections 1620.05(f)(1) and (f)(3) to only penalize program administrators who have knowledge of any alleged wrongdoing by a third party, similar to the standard in section 1620.05(f)(2).

Response No. 2.1620.05.05: The Department agrees and has made the requested change.

Comment No. 2.1620.05.06: Though the Consumer Coalition greatly appreciates the DFPI’s reduction from 500 to 300 words for the exemption for written advertisements of 300 or fewer, we are concerned the current wording is still too broad in scope.

Advertisers are trained to use concise ads as they are more effective and can be circumvented by the use of pictograms (using pictures of objects instead of words) and other methods that would end up well under the word limit. Accordingly, the Consumer Coalition recommend as a qualification to the exemption that pictograms be limited to company identification images (i.e., logos). The proposed language should read: "(e) written advertisement on an advertising platform that is limited to 300 or fewer characters and a company identification image, such as a logo, need not comply with subdivisions (b) or (c) of this section…"

Response No. 2.1620.05.06: The Department is not persuaded this change is necessary and this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)), so the Department declines to take this recommendation.

Section 1620.06. Assessment Contracts and Disclosures

Comment No. 2.1620.06.01: According to C.A.R., the latest proposed amendments to section 1620.06 require that if a property owner/potential PACE customer opts to solely receive electronic copies of documents and disclosures, then that agreement must be acknowledged separately from any other agreement. Based on the experience of C.A.R. 's members in the field, C.A.R. continues to strongly urge that the disclosures should be provided in paper form to the homeowner in every instance. Given that the result of PACE financing is a super priority lien on a property, the terms and disclosures of the financing should not have the potential of being hidden away and potentially lost in a homeowners' email. Furthermore, a consumer's ability to have other trusted persons easily review documents during the 3-day rescission period is vital. Many consumers do not have printers to print documents and taking a physical document to, for example, a senior center or legal aid for advice is much easier than trying to pull up an email on a smartphone or other device to have it reviewed. Seniors and non-English speakers who are often targeted by unscrupulous contractors have the most to lose from not being able to have someone easily review what they signed be it a non-profit, friend or relative look at what they signed. Because C.A.R. believes so strongly that hard copy disclosures should be provided to every consumer considering this transaction, C.A.R. sponsored AB 1551 (Arambula), in the Legislature which is currently pending on the Governor's desk. Among other provisions, AB 1551 mandates that a hard copy of the financing estimate and disclosure (FED) required by Streets and Highways Code Sec. 5898.17 be given to the consumer as the default option. If the property owner wishes to receive the disclosure electronically, they must sign an additional printed paper agreement agreeing to the option. AB 1551 also requires that electronic disclosures must be consistent with Cal-UETA, California's version of the ESIGN act. If AB 1551 is signed by Governor Newsom, the Department may wish to revise the regulations to reflect this change more accurately, which is, in C.A.R.'s opinion, not inconsistent with the intent of the proposed amendment to section 1620.06. Proposed section 1620.06 and AB 1551 both serve as a further confirmation the

property owner's wishes are to receive electronic only disclosures. Another revision that the Department may wish to make to this section is adding the specific text of the form that a property signs verifying their wish to receive disclosures electronically.

Response No. 2.1620.06.01: The Department notes C.A.R.'s urging that PACE disclosures should be provided in paper form to a property owner in every instance, but the Department will follow the statutory scheme regarding how the documents should be provided to property owners. C.A.R. further requests the Department revise the regulations to reflect the changes to law made by AB 1551. After several iterations, the Department believes section 1620.06 of the rules is consistent with AB 1551. See Response No. 1620.03.01, above. Finally, C.A.R. recommends adding the specific text of the form that a property owner signs verifying the wish to receive disclosures electronically. The Department has considered this request and is not establishing the content of the notice at this time but will continue to evaluate compliance with section 1620.06.

Comment No. 2.1620.06.02: The Consumer Coalition appreciates the Department's inclusion of a requirement that an agreement to transact electronically be acknowledged separately from any other agreement in subdivision (a), and that property owners are entitled to physical copies of their assessment contracts. However, the language as proposed is open to broad interpretation, and the Consumer Coalition is concerned that it will not sufficiently accomplish the Department's goals of ensuring that PACE transactions are sufficiently insulated from electronic manipulation and fraud, including e-signature forgery, which has been a widely reported consumer issue. For this reason, the Consumer Coalition recommends that the Department require the agreement to transact electronically be on a separate page or screen from any other agreement or document, precede any electronic agreement or document, and state clearly in large font that the homeowner is not required to transact electronically to participate in the program.

Response No. 2.1620.06.02: The Department has followed the statutory scheme for delivering the notices and agreement and has incorporated the requirement of title 15 United States Code section 7001(c)(1)(C)(ii), providing that the consumer's consent be in a manner that demonstrates the consumer can access the information in electronic form. Streets and Highways Code section 5898.17 requires consent to receive the Financing Estimate and Disclosure to be on a printed paper copy, and paragraph (a)(4) of section 1620.06 of the rules provides that the consent to receive a copy of the signed assessment contract solely in electronic format must be in a written document separate from the contract. The Department is not establishing the content of the notice at this time but will continue to evaluate compliance with section 1620.06.

Comment No. 2.1620.06.03: The Consumer Coalition indicates the Department's proposed changes to subdivision (d) are helpful, but still fall short of what is necessary to address electronic signature fraud and forgery. As written, the rule implies that any one of the included steps would constitute "reasonable steps" to ensure a signature

belongs to the property owner. This is insufficient. What steps are reasonable will be context-specific, and the Department should make clear that this rule provides suggestions but does not limit what is “reasonable” to taking any one of the suggested actions. For example, if a program administrator chose not to confirm identity using a photo ID, did not track IP geolocation, did not make any verbal confirmation of signature, but only sent a confirming letter by postal mail, this would not constitute “reasonable steps” to ensure a signature belongs to a property owner; if the property owner were defrauded, they may not recognize the name of the program administrator and may discard the letter as junk mail. Likewise, if a program administrator only confirmed an identity with IP geolocation, depending on the sophistication of the location data, that may not be sufficient to distinguish a signature that was submitted from a contractor’s iPad on the homeowner’s doorstep vs. from a homeowner’s own secure computer or device. In addition, for the reasons described in the following section, relying solely on information obtained during a confirmation of key terms call is not an effective fraud-prevention tool if there are no other methods in place to authenticate signatures. The Consumer Coalition believes that the language suggested in its June 12, 2020 comments would better protect homeowners from forgery without burdening program administrators. If the Department will not include the language we previously suggested, we recommend the following alternative language, which would provide less protection to homeowners but represents a compromise position with the proposed rule as currently written: *The program administrator shall take reasonable steps to ensure the signature belongs to the property owner. These steps may include, but are not limited to, the following: (1) Confirming the identity of the property owner(s) through photo or other unique identification presented by the property owner(s) or a two-step authentication process. (2) Tracking IP geolocation information. (3) Sending a confirmation letter by postal mail. (4) Confirming the identity of the property owner(s) and that the property owner(s) will be the person(s) signing the assessment contract during the oral confirmation of key terms.*

Response No. 2.1620.06.03: See Response No. 1.1620.06.06, above.

Comment No. 2.1620.06.04: The Consumer Coalition indicates that practically speaking, very few if any property owners will ever object to the presence of PACE solicitor agents on the calls. In many cases the PACE solicitor or their agent is already in the room with the property owner and asking them to leave would create an uncomfortable situation. In the Consumer Coalition’s experience, PACE solicitors often ingratiate themselves as the property owner’s friend and someone just trying to help, rather than disclosing that they are a beneficiary and counterparty to a serious financial transaction. PACE solicitors tell the property owners to trust them, and not to worry too much about what is said on the call. Most property owners initially have no reason to be skeptical of what PACE solicitors or their agents are telling them about PACE, and the Consumer Coalition has heard dozens of stories of property owners being coached through these calls by PACE solicitor agents to “just say yes” so they can qualify for what often turns out to be a misrepresented “free” product. It is therefore unlikely that a

property owner would object to the PACE solicitor agent's presence, even though it is almost always in their best interest to do so. In the Consumer Coalition's view, the most practical solution to this problem is to forbid PACE solicitors and PACE solicitor agents from participating in the oral confirmation of key terms calls altogether. Property owners may authorize the inclusion of others, such as family members, in these calls, but allowing PACE solicitors or their agents to participate enables the perception that they are acting in the property owners' interests regarding PACE financing. The perception created for property owners is that the PACE solicitors and PACE solicitor agents are on their team, helping them understand and evaluate the terms of the program without self-interest. This is a harmful and incorrect perception. To ensure the best chance for property owners to receive and comprehend the important information disclosed on the oral confirmation of key terms calls, PACE solicitors and PACE solicitor agents must be prohibited from participating. Since part of the reason for the confirmation of key terms calls is to ensure that property owners understand the true terms regardless of what they may have gleaned from the solicitor or solicitor agent, there is no legitimate purpose to be served by solicitors and solicitor agents being present on these calls. For these reasons, the Consumer Coalition again recommends that section 1620(e)(3) and (e)(4) be combined and revised to read as follows: (3) A program administrator may not proceed with the oral confirmation of key terms if the PACE solicitor or PACE solicitor agent is present.

Response No. 2.1620.06.04: See Response Nos. 1620.03.03 and 1620.03.04, above. The Department notes that this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)).

Comment No. 2.1620.06.05: The Consumer Coalition urges the Department to require delivery of a mandatory brochure created by the Department at least 48 hours before the property owner enters into a PACE assessment contract.

Response No. 2.1620.06.05: The Department notes that this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)).

Comment No. 2.1620.06.06: The Consumer Coalition repeats the recommendation made in Comment No. 1.6.03.

Response No. 2.1620.06.06: Please see Response No. 1620.03.07.

Section 1620.07. Books and Records

Comment No. 2.1620.07.01: The Consumer Coalition asserts the records maintained pursuant to section 1620.07, subparagraphs (b)(1)(B) and (C) should be publicly available on the Department's website through a searchable database.

Response No. 2.1620.07.01: The Department notes that this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)) and has been addressed in Response No. 1620.07.02 above.

Comment No. 2.1620.07.02: The Consumer Coalition indicates that though the program administrators, PACE solicitors and solicitor agents are now listed on the DFPI website, information on whether a program administrator, PACE solicitor, solicitor agent has been suspended, terminated, or placed on probation should also be made available through this proposed database.

Response No. 2.1620.07.02: The Department notes that this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)) and has been addressed in Response No. 1620.07.04 above.

Comment No. 2.1620.07.03: The Consumer Coalition appreciates the requirement for the program administrator to retain the audit trail of the electronic signatures used in the PACE transaction. However, the Consumer Coalition asserts records required by section 1620.06, paragraphs (a)(1) and (b)(2) should also be included because there is significant documentation of email addresses being created for PACE transactions. For instance, the In Re: Renovate America Finance Cases, Case No. RICJCCP4940, showed that 6,349 of class members were associated with questionable email addresses such as “none@renovateamerica.com,” “none@herofinancial.com”, “none@herofinancing.com,” and “none@heroprogram.com.” Furthermore, the Department’s Desist and Refrain Order dated May 27, 2020 against Eco Technology, Inc. also alleged the company forged electronic signatures and created invalid email addresses and phone numbers to sign people up for the loans without their express consent. Considering past incidences of program administrators, solicitors, and solicitor agents generating and/or using invalid email addresses to enroll people into PACE, program administrators should be required to retain records of homeowner’s consent to signing electronically and electronic signature verification.

Response No. 2.1620.07.03: Amended subparagraph (b)(2)(E) requires a program administrator to retain disclosures required by Streets and Highways Code sections 5898.16 and 5898.17 and, if provided electronically, documentation of the property owner’s consent to receive the documents electronically, and evidence of receipt of the disclosures by the property owner. The Department is persuaded that these records will provide an audit trail but will review the efficacy of the requirements as component of oversight such as while reviewing complaints and during regulatory examinations.

Comment No. 2.1620.07.04: According to the Consumer Coalition, program administrators should also retain information on the quality of work done using PACE financing including home improvement contracts, invoices, and descriptions of work associated with each assessment; and all permits and inspection reports. As depicted through stories collected by the National Consumer Law Center and the Los Angeles Times, many PACE borrowers complained of incomplete or shoddy work. Accordingly, program administrators should retain the aforementioned documents.

Response No. 2.1620.07.04: Subparagraph (b)(2)(I) requires a program administrator retain in its books and records documentation of the scope of work subject to PACE

financing from the home improvement contract. The Department is not persuaded that program administrators must gather and retain the additional documents as part of the rules regarding PACE financing, and the Department defers to the CSLB to respond to allegations of shoddy work by contractors.

Comment No. 2.1620.07.05: The Consumer Coalition indicates program administrators should also retain documentation aimed to determine whether a homeowner can afford the PACE loan including: mortgage-related debt used in determining the amount of financing and program eligibility; verification the property does not have a reverse mortgage/home equity conversion mortgage recorded against the property; all notices and correspondence sent to or from a mortgage lender; and credit reports used in determining eligibility. The legislature has acknowledged the importance of determining whether a borrower can afford a loan. For instance, Financial Code section 22684 lists criteria a borrower must satisfy to qualify for a PACE assessment. These criteria include whether there have been any late payments on property taxes, an absence of any outstanding liens in excess of $1000, no notices of default recorded on the property, and nine other criteria. Despite the requirement to assess whether a property owner can afford a PACE assessment, a common complaint among PACE borrowers is that they were persuaded into taking a loan they did not understand and could not afford. Therefore, requiring program administrators to retain these records is justified.

Response No. 2.1620.07.05: Subparagraph (b)(2)(C) requires a program administrator to retain documentation of ability to pay for each assessment contract, including verification of a property owner's eligibility for an assessment contract. The Department notes that this request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)).

Comment No. 2.1620.07.06: For the reasons discussed in FortiFi's comments on the May 2020 modifications to proposed text submitted on June 12, 2020, FortiFi supports the revisions made by the Department in sections 1620.07(b)(3), 1620.10(a)(2), (3) and (4), and 1620.11(c)(2)(B) of the proposed rules. These are reasonable and sound revisions that align with the practical reality of a program administrator's role in administering PACE programs on behalf of local governments, and their transactions with PACE solicitors and property owners. These revisions better reflect the information to which program administrators have access and the degree of control they are able to exert in PACE solicitations and transactions. FortiFi thanks the Department for taking these facts and operational realities into account in the Second Modifications to Proposed Text.

Response No. 2.1620.07.06: The comments are noted.

Comment No. 2.1620.07.07: The Consumer Coalition appreciates the modification to require program administrators to maintain records pursuant to section 1670.07, subparagraphs (b)(2)(A)-(H) for five years. The Consumer Coalition recommends for all relevant records to be maintained for five years because it allows for records to remain

available for the entirety of the statute of limitations for any possible actions. Additionally, it takes time for people to realize they have been defrauded and have a PACE assessment, seek assistance, and initiate action.

Response No. 2.1620.07.07: Please see Response Nos. 1620.07.14 and 1.1620.07.04, above.

Section 1620.08. Complaint Processes and Procedures

Comment No. 2.1620.08.01: PACE Funding's comments on this section focus on the need to remove the proposed additions in subparagraphs (a)(3)(D) and (E). Subparagraph (a)(3)(D) reads: "If the response to an inquiry, question, request, or criticism involves a decision by the program administrator about how to respond to factual allegations, then the matter is a complaint subject to subdivision (b)." Subparagraph (a)(3)(E) reads: "If the response to an inquiry, question, request, or criticism will require longer than one week, the matter is a complaint subject to subdivision (b)." PACE Funding fields calls in the regular course of business that are clearly not complaints, yet the addition of subsections (D) and (E) are so broad that they would incorrectly classify many of these calls as complaints. Our call center frequently provides customer service to homeowners related to requests for information including questions about improvement eligibility, warranty information, or the timing of the delivery of custom ordered products. Providing answers to these questions can often require contacting additional parties such as the contractor or manufacturer. We are marshalling this information for the property owner and making decisions on how to be most responsive to their question. The presence of a decision-making process should not elevate an informational inquiry to a complaint, yet that is what could happen under the language in subsection (D). As for subsection (E), inquiries can often require information from multiple parties as in the examples above, or as in another common example of a property owner requesting information regarding their updated payoff amounts. With these types of inquiries, or with something that requires a visit to the property, a week can be insufficient to thoroughly respond to the property owner's inquiry. Response time alone is not an accurate indicator of the nature of an inquiry, and if anything, using one week as a determining factor will incentivize program administrators to provide a lower quality response to respond within one week. This does not serve the property owner's interests. FortiFi, Ygrene, and PACENation raise similar concerns. FortiFi suggests that sometimes a program administrator response to an inquiry requires more than one week. An example might be a question that requires a program administrator to get in touch with a contractor, research regarding project eligibility, or even conduct a site visit. A common example is property owner questions regarding adjustments they may need to make to their mortgage impound account to account for PACE assessments. To properly respond to such questions, program administrators frequently provide customer service and assist property owners by getting in touch with lenders or mortgage servicers. Another example includes property owner questions regarding how they can prepay PACE assessments. A response can often

take more than one week. Such inquires or questions are not “complaints” and should not be made to reflect poorly against program administrators as complaints as a result of these regulations. PACENation indicates the proposed modification is deeply problematic because it would undermine the public’s ability to correctly gauge how well PACE programs are serving property owners and achieving local governments’ policy goals. Ygrene indicates that in some cases, the program administrator in good faith desires to assist the property owner fully and comprehensively but for reasons beyond the program administrator’s control, more than one week may be required to resolve the inquiry. Such timing should not put an onus on the program administrator to fulfill additional requirements.

Response No. 2.1620.08.01: To address these concerns, the Department has amended the language to strike subparagraph (a)(3)(E) and to amend (a)(3)(E) to only apply to factual allegations of a mistake or wrongdoing.

Comment No. 2.1620.08.02: PACE Funding indicates section 1620.08(d)(4) is also problematic in its expansion of those complaints entitled to expedited review. The previous language of “delinquent property tax assessments and delinquent mortgages resulting from a third-party lender or servicer advancing the payment of the PACE assessment” has been changed to “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.” This new language is so broad, that it could be read to apply to any assessment contract on a home that is subject to a mortgage since lenders or servicers have a right to advance property tax payments on behalf of the property owner if those payments are delinquent. For this reason, PACE Funding recommends DFPI revert to the prior text in section 1620.08(d)(4). FortiFi has raised the same concerns and recommends striking the provision regarding the right to advance payment. On the other hand, the Consumer Coalition recognizes and applauds the Department for making clear that this provision applies to property owners who are at risk of harm from their lenders advancing payments, though the lenders may not have yet done so.

Response No. 2.1620.08.02: The Department has considered the requests and is persuaded that the provision, as drafted, would unnecessarily make almost every complaint an expedited complaint. Therefore, the Department has removed the provision requiring the expedited review process be available to complaints where a lender or servicer has rights as a lienholder to advance payments on behalf of the property owner, and the provision is now only applicable to circumstances where those payments have already been advanced.

Comment No. 2.1620.08.03: The Consumer Coalition recognizes and appreciates the Department’s continued effort in section 1620.08(b) to ensure that property owners have adequate access to information about submitting a complaint. However, the revisions to section 1620.08(b)(3) may still fail to ensure language access for all property owners. This provision now requires program administrators to make the complaint process available to complainants “in the language used to solicit the property

owner to enter into the assessment contract, the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language." Although this represents a significant improvement from the previous version of the rule, it still presents several concerns. For example, how can administrators know what language was used to solicit the property owner before making the complaint process available in that language? The Consumer Coalition understands that the Department may be reluctant to burden the program administrators with making the complaint process available in every conceivable language. However, tying the complaint process language options to the language of the transaction will be difficult to administer, and will risk shutting out homeowners who have suffered the most serious fraud. For this reason, the Consumer Coalition recommends that the Department require program administrators to make the complaint process available in at least the five most commonly spoken languages in each county where the program administrator operates. FortiFi indicates that program administrators cannot control and do not have transparency into the language a PACE solicitor or PACE solicitor agent uses to solicit assessment contracts. There is no reliable way for a program administrator to know or control this use of language, and thus program administrators should not be subject to discipline or liability as a result of such requirements. However, FortiFi indicates program administrators do control the language they use in the oral confirmation, as required by Streets and Highways Code section 5913(d), and the language of the Assessment Contract, as required by section 5913(e). For consistency with statute, and these operational realities, the Department should revise the proposed rules as follows: "The program administrator shall make the complaint process available to a complainant in the language used to solicit the property owner to enter into of the assessment contract, used by the program administrator in the oral confirmation as required by Section 5913(d) of the Streets and Highways Code, and, if supported by the program administrator, the property owner's preferred language."

Response No. 2.1620.08.03: The Department has considered the argument and is persuaded that the Department should align the language requirement for complaints to the requirement for the oral confirmation and the contract. The Department has revised the language to provide, "The program administrator shall make the complaint process available to a complainant in the language used to communicate during the oral confirmation under subdivision (d) of Streets and Highways Code section 5913, the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language."

Comment No. 2.1620.08.04: The Consumer Coalition supports program administrators being required to correct "errors" identified in the complaint process. However, the Consumer Coalition reiterates that not all "errors" between parties to a contract can be unilaterally corrected and these regulations should also specify errors which, if substantiated, require program administrators to cancel or otherwise release property owners from their obligations. For example, if a property owner is complaining that their PACE solicitor agent did not disclose the true terms of their PACE assessment, sending

the property owner a packet of disclosures to “correct” that error does not address the underlying defect in the transaction. As another example, as PACE assessments require voluntary agreement by property owners, errors due to fraud or forgery of signatures or other aspects of the agreement cannot be “corrected” other than by voiding the assessment contract.

Response No. 2.1620.08.04: Please see Response No. 1.1620.08.11, above.

Section 1620.10. Dishonest Dealings and Misleading Statements

Comment No. 2.1620.10.01: The Consumer Coalition indicates the Department helped strengthen protections for consumers by adopting the recommended changes in sections 1620.10(b)(7) and 1620.10(b)(8). In Section 1620.10(b)(7), deleting the phrase “unless completion of work in the home improvement contract is not a requirement of the assessment contract” clarifies that failure to complete the agreed upon home improvements is a prohibited, dishonest practice. Program administrators’ enforcement of this provision on its PACE solicitors will be critical in curbing fraud. Likewise, in section 1620.10(b)(8), adding the phrase “is provided free or at a nominal cost” deters a prevalent fraud where the PACE solicitor inflates the price PACE-authorized, energy efficient home improvements, the claiming that non-energy home improvements are being thrown in for “free” or almost free. The inclusion of these changes improves homeowner protections from dishonest practices.

Response No. 2.1620.10.01: The comments are noted.

Comment No. 2.1620.10.02: According to the Consumer Coalition, the express intent of section 1620.10(a) is to prohibit dishonest dealings by the program administrator. The current version, however, vitiates this prohibition of deceptive acts by a program administrator by adding an inappropriate safe harbor provision for the program administrator. In section 1620.10, paragraphs (a)(2), (a)(3), and (a)(4), the Department added the phrase, “For purposes of this paragraph, 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 Consumer Coalition indicates that this turns on its head the premise that the program administrators cannot **knowingly** pay contractors for underperformed, uninstalled, or materially different, less expensive products. Now, even where the program administrator knows the work was underperformed or the materials were not installed, it can still pay the contractor if the completion certificate is signed by the homeowner. The addition of this phrase renders the entire protection hollow. A known and widespread fraud is related to the purported “completion certificates.” The program administrators routinely deny relief for fraudulent business practices, including failure to perform the terms of the contract and failure to provide the materials as agreed because the property owner alleged signed the “completion certificate.” Each and all of the program administrators use the same language in their completion certificates--that the work has

been performed and installed as agreed. According to the Consumer Coalition, the program administrator should not be absolved for its deceptive practices, like paying a contractor for work it knew was not performed, by having a homeowner sign a completion certificate. No other consumer statute protecting against fraud (i.e., the Consumers Legal Remedies Act, the Unfair Competition Law) creates a similar safe harbor provision for a party knowingly engaging in deceptive acts. The inclusion of this phrase not only makes the protections it was designed to provide illusory, but an outlier among consumer protection laws. It insulates dishonest actors from knowingly doing bad acts. As such, the Consumer Coalition recommends deletion of the phrase, "For purposes of this paragraph, 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[,]" from section 1620.10, paragraphs (a)(2), (a)(3), and (a)(4). On the other hand, FortiFi supports the amended language. For the reasons discussed in FortiFi's comments on the May 2020 modifications to proposed text submitted on June 12, 2020, FortiFi supports the revisions providing that a program administrator may rely in the representation of a property owner. FortiFi indicates these are reasonable and sound revisions that align with the practical reality of a program administrator's role in administering PACE programs on behalf of local governments, and their transactions with PACE solicitors and property owners. FortiFi indicates these revisions better reflect the information to which program administrators have access and the degree of control they are able to exert in PACE solicitations and transactions. FortiFi thanks the Department for taking these facts and operational realities into account in the second modifications to proposed text.

Response No. 2.1620.10.02: The Department has considered all the comments and is persuaded by the Consumer Coalition's concerns. Therefore, the Department has struck the language expressly providing that a 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. Removing the language does not mean that a program administrator may not rely on this representation, but if the program administrator knows the representation is false or knows other facts that would suggest reliance on the representation is unreasonable, the program administrator may not disregard the other knowledge that calls into question the validity of the representation.

Comment No. 2.1620.10.03: Ygrene suggests proposed section 1620.10, paragraphs (a)(2), (a)(3), and (a)(4) include an additional requirement that the "program administrator may rely on the representation of a property owner . . . if the representation is made directly to the program administrator and not through a PACE solicitor or PACE solicitor agent." These sections may be construed to unnecessarily place additional burdens on both the property owner and the program administrator. Ygrene recommends revising proposed section 1620.10, paragraphs (a)(2)-(4) to read

as follows: “program administrator may rely on the representation of a property owner . . . if the representation is made directly to the program administrator through its portals, systems or by use of forms generated by the program administrator and not through a PACE solicitor or PACE solicitor agent.”

Response No. 2.1620.10.03: This recommendation is not consistent with the amendments accepted as described in Response No. 2.1620.10.02, above, and therefore the Department is not changing the language as requested.

Comment No. 2.1620.10.04: The Consumer Coalition renews its prior request that the “knew or should have known” standard be included in subparagraph (a)(4). Program administrators, seeking to avoid “knowledge,” routinely fail to request copies of the home improvement contracts and fail to require proof of the work performed, the products installed, and materials used. Program administrators intentionally opt to not request this basic information to “not know” about the known abuses in this program. It is essential to include the “known or should have known” standard in subparagraph (a)(4) to avoid the program administrators willfully hiding their heads in the sand.

Response No. 2.1620.10.04: The Department has amended paragraph (a)(4) so that the standard is the same as in paragraphs (a)(2) and (a)(3), consistent with the Consumer Coalition’s request.

Comment No. 2.1620.10.05: FortiFi indicates that the May 2020 modifications to proposed text deleted language in the initial proposed text that had clarified that if a solar system or battery were fully installed, but just awaiting interconnection approval and permission to operate by the distribution utility, making payment to a contractor would not constitute payment for an uninstalled product. The absence of this clarification is logistically problematic in the solar and battery installation and finance industry. Once a contractor has fully completed an installation, it is up to the property owner to schedule an inspection and up to the applicable distribution utility to process the interconnection application. Utilities are known to get backed up on this process, sometimes even for months. The reasons for this delay are by and large completely unrelated to the characteristics of the installation, but rather the interconnection queue and other priorities of the utility company. One way to address this while still requiring program administrators to hold back a small portion of the payment under the PACE financing from an installer to ensure that the work was done correctly is to make clear that payment of up to 95 percent of the full installation cost may be made and not deemed payment for an uninstalled product where the only remaining approvals required are utility interconnection/permission to operate.

Response No. 2.1620.10.05: See Response No. 1.1620.10.02, above.

Comment No. 2.1620.10.06: The Consumer Coalition suggests that after the first sentence of paragraph (b)(6), the Department add the phrase: “A copy of the written representation, statement, or opinion of the Internal Revenue Service or applicable state tax agency about the tax treatment of a PACE assessment be provided to the property

owner." This will allow the homeowner to be able to review the actual text of the IRS's or state tax authority's statement to verify the veracity of the PACE solicitor's claims regarding tax relief.

Response No. 2.1620.10.06: This request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)).

Comment No. 2.1620.10.07: The Consumer Coalition recommends in paragraph (b)(9) deleting the phrase "unless the property owner will not be liable for the payments." This phrase is confusing. Further, PACE solicitors do not have the legal expertise or experience to assess whether a homeowner would be liable for payments. The protection is designed to protect homeowners from false, baseless representations by PACE solicitors regarding property owner's rights and obligations. For these reasons, deletion of this phrase is warranted.

Response No. 2.1620.10.07: While not related to a change proposed in the modified text, the Department is nevertheless accepting the request to clarify the text and has amended the provision to describe the misleading statement as misrepresenting to a property owner whether the property owner will be obligated to pay for the efficiency improvements financed through the assessment contract.

Comment No. 2.1620.10.08: The Consumer Coalition recommends in paragraph (b)(11) deleting the phrase "unless evidence supports the representation." A home improvement contractor's door-to-door sales agent is neither qualified nor experienced in assessing whether a particular improvement will increase the market value of the home. The provision lacks a standard for evaluating and verifying whether evidence actually exists.

Response No. 2.1620.10.08: See Response No. 1.1620.10.08, above.

Comment No. 2.1620.10.09: The Consumer Coalition recommends adding this section to prohibit a contractor from "Inflating the price of an efficiency improvement above the market price range for such improvement because the improvement is financed through a PACE Assessment." Price gouging is a serious and frequent problem in the home improvement contracts/PACE assessments. Further, PACE advertising includes promises of fair market pricing, however the fair market pricing guidelines are not enforced. This section would require the enforcement of the purported fair market guidelines allegedly in place already.

Response No. 2.1620.10.09: This request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)).

Section 1620.11. PACE Solicitor Enrollment Standards and Processes

Comment No. 2.1620.11.01: The Consumer Coalition reiterates its recommendation to delete the sub-clause that states program administrators can fund home improvement contracts solicited by persons not required to be enrolled. The whole purpose of

enrolling PACE solicitors and their agents is to ensure that those soliciting homeowners to enter into PACE financing are properly enrolled and regulated. Consumer advocates cannot think of any circumstance in which any PACE solicitor or agent would not be required to be enrolled.

Response No. 2.1620.11.01: See Response No. 1.1620.11.02. Under Financial Code section 22017, an employee of a program administrator is not a PACE solicitor or PACE solicitor agent. Section 22017 sets forth additional exclusions from the definitions.

Comment No. 2.1620.11.02: The Consumer Coalition reiterates its prior objections to subparagraph (b)(3)(B). The Consumer Coalition appreciates the insertion of the second sentence at subparagraph (b)(3)(D) that program administrators are not relieved of their responsibility for the acts of solicitors or agents. The Consumer Coalition is also grateful to the department for deleting paragraph (c)(2) and for defining resolved complaints as “to the property owner’s satisfaction” under sub-part (F). The Consumer Coalition reiterates that (b)(3)(A)(3) should require program administrators, through their solicitors/agents, to actively seek out whether the homeowner is considering financing by other PACE program administrators. Further, the Consumer Coalition repeats its recommendation for the insertion of an additional sub-part to restrict PACE solicitors or their agents from arranging PACE financing for property owners with reverse mortgages, a practice program administrators recognize needs to end.

Response No. 2.1620.11.02. The comments are noted and have been previously considered. Refer to Response Nos. 1620.11.11 and 1.1620.11.05, above.

Comment No. 2.1620.11.03: According to Ygrene, section 1620.11(b)(3)(D), which is contained in the “PACE Solicitor Enrollment Standards and Processes” section adds that “[t]his provision does not relieve the program administrator of any responsibility for the acts of a PACE solicitor or a PACE solicitor agent.” First, the added language appears misplaced because the section relates to PACE solicitors and their agents. Second, the language is impermissibly overbroad and as written, program administrators would be responsible for any and all acts of PACE solicitors or their agents without any limitation. Third, the language is ambiguous because it does not define “responsibility.” Fourth, program administrators should not be responsible for PACE solicitor’s or PACE solicitor agent’s actions for which they have no knowledge. Finally, other provisions of the proposed regulations already outline where a program administrator may be responsible for specific acts of PACE solicitors for which they have knowledge. Ygrene recommends that proposed section 1620.11(b)(3)(D) be deleted.

Response No. 2.1620.11.03: To address these concerns, the section has been reworded to provide, “This provision does not affect any responsibility a program administrator may otherwise have for the acts of a PACE solicitor or a PACE solicitor agent.”

Comment No. 2.1620.11.04: The Consumer Coalition indicates that as an overarching matter, paragraph (c) again does not contain any guidance as to how frequently PACE program administrators should review publicly available information about their solicitors; we submit this exercise should be done at least annually. Additionally, these reviews should include tracking of consumer complaints against PACE solicitors and their agents.

Response No. 2.1620.11.04: This request is not related to a change proposed in the modified text (see Gov. Code, § 11346.8, subd. (c)).

Comment No. 2.1620.11.05: The Consumer Coalition asks again that the rules be changed at subparagraph (c)(3)(A) such that the review of past civil and criminal actions, license discipline and consumer complaints not be cabined to those "related to the functions of a PACE solicitor." Finance Code section 22680(e) is not limited in this way; the regulations should not provide refuge that the legislature did not intend for program administrators that do not do their due diligence. A broader view would better protect consumers from solicitors who have a history of dishonest, unlawful, and criminal activity including, but not limited to, price gouging, using dangerous/prohibited materials, loaning out contractor licenses, shoddy workmanship, failing to get required permits, and/or elder abuse.

Response No. 2.1620.11.05: Please see Response Nos. 1.1620.11.09 and 1620.11.16, above.

Comment No. 2.1620.11.06: For the reasons discussed in FortiFi's comments on the May 2020 modifications to proposed text submitted on June 12, 2020, FortiFi supports the revisions made by the Department in section 1620.11(C)(2)(B) of the proposed rules.

Response NO. 2.1620.11.06: The comment is noted.

Comment No. 2.1620.11.07: The Consumer Coalition provides that with regard to changes to subdivisions (d) and (e), the Consumer Coalition maintains that no PACE solicitor should be enrolled without an active CSLB License and ask that the Department amend sub-part (d)(1)(D) accordingly. Similarly, no PACE solicitor agent should be allowed to operate if not registered as a Home Improvement Salesperson with the CSLB (sub-part (d)(3)(C)(2)). Further, allowing for a category of "conditional enrollment" does nothing to protect consumers and the rule is silent about the validity of loans solicited by someone "conditionally enrolled" who later does not get through the fingerprint background check required by the CSLB. We note that taking on board these suggestions would obviate the need for the insertions of sub-parts (g) and (h) to this rule.

Response No. 2.1620.11.07: See Response Nos. 1620.11.18 and 1620.12.8. The Department has not proposed a change to clause (d)(3)(C)(2) in the second modified text.

Section No. 1620.12. PACE Solicitor Agent Enrollment Standards and Processes

Comment No. 2.1620.12.01: The Consumer Coalition reiterates that solicitor agents should undergo re-enrollment and program administrators should update background checks at least annually. The Consumer Coalition commends the Department for removing the unnecessary seven-year lookback period for criminal convictions for fraud in subparagraph (c)(2)(A), dishonesty or deceit; this now comports Business and Professions Code section 480, related to the denial of licenses, which contains no time restriction. However, the Consumer Coalition again asks the Department to review its recommendation to assess the number and nature of all lawsuits filed against the PACE solicitor agent, along with their engagement in any act that would constitute grounds for license revocation. The Consumer Coalition reiterates that consumers would be better protected by the Department if it included within the regulations a detailed rubric covering topics to be covered in the solicitor agent test (paragraph (d)(2)), the expected level of knowledge to be demonstrated in order to pass, and detailed procedures to ensure tests are properly administered.

Response No. 2.1620.12.01: The Department notes these comments. All of the requests for changes have been previously made and addressed in prior responses, above, and are not related to a proposed change in the second modified text.

Section 1620.13. Enrollment Denial

Comment No. 2.1620.13.01: As noted twice previously, the Consumer Coalition sees no reason to restrict enrollment denials only to those PACE solicitors that demonstrate a “high” likelihood of soliciting assessment contracts in a manner that does not comply with the law; in the Consumer Coalition’s view, evidence that would show any likelihood of substantial non-compliance with the law should be enough to deny enrollment. The Consumer Coalition also again recommends expanding the types of wrongdoing in this paragraph (b) (currently “deception, misrepresentation, or omission”) to include other forms of recurring complaints of the type consumer advocates see every day in relation to PACE, such as shoddy workmanship, price gouging, or any other practice that could result in civil or criminal prosecution or license suspension. In sub-part (b)(2), and again in sub-part (d)(2), the Department allows program administrators to enroll solicitors despite evidence of a clear pattern of consumer complaints about the PACE solicitor for dishonesty, misrepresentations, or omissions, as long as the administrator documents its rationale. Again, we implore the Department to remove this caveat: if consumers are to be protected, no enrollment should ever happen where there is evidence of a pattern of past misconduct.

Response No. 2.1620.13.01: The comments are noted. None relate to a current change, and the Department has responded to the comments above.

Comment No. 2.1620.13.02: The Consumer Coalition appreciates the Department clarifying “timely” in the context of this rule such that complaints are timely responded to within three business days and are timely resolved within one month.

Response No. 2.1620.13.02: The comment is noted.

Comment No. 2.1620.13.03. Ygrene states that with respect to “Enrollment Denial,” proposed section 1620(d)(4) adds a new qualification that “a PACE solicitor’s action is timely if the PACE solicitor ordinarily acknowledges complaints within three business days and takes actions to reach a resolution of complaints within thirty days.” A program administrator has no ability to determine a PACE solicitor’s complaint response rate before the solicitor is enrolled with the program administrator. Further, three business days for acknowledgment is arbitrary; it is not tied to any metric and fails to recognize that complaint handling can vary on a case-by-case basis depending on the property owner, the type of complaint, the manner in which it is delivered, and the size of the contractor. Finally, the thirty-day resolution period is again dependent on the type of complaint and property owner’s participation in resolving said complaint with the contractor. Ygrene recommends that proposed section 1620.13(d)(4) be deleted.

Response No. 2.1620.13.03: To address Ygrene’s concerns, the Department has added language stating that longer time periods may be appropriate based on the characteristics of the business and the detail of the complaints.

1620.14. Monitoring Compliance

Comment No. 2.1620.14.01 The Consumer Coalition reiterates that, in our view, monitoring compliance should include annual monitoring and testing that should include updating background checks, reviewing assessment contracts solicited against the underlying home improvement contracts, and making sure solicitors and their agents are complying with the Code of Conduct and PACE solicitor agreements. Again, regarding paragraph (b)(1), the Consumer Coalition requests that the use of data from samples of homeowners with PACE contracts be made mandatory, and that it specifically include elders, mono-lingual Spanish and non- English speakers.

Response No. 2.1620.14.01: The Department notes these comments, which have been responded to, above, and do not related to a currently proposed change.

Comment No. 2.1620.14.02: The Consumer Coalition thanks the Department for including examples of what it considers to be “commercially reasonable processes for monitoring and testing.” However, the Consumer Coalition recommends that the testing through questioning and calls to homeowners be expressly limited to circumstances when the PACE solicitor or agent is not present with the homeowner.

Response No. 2.1620.14.02: The Department has considered this request but is choosing not include the requirement because having conditions on the examples in subparagraphs (b)(2)(A) and (B) will discourage a program administrator from using the confirmation call or the completion call as a tool for monitoring compliance.

Comment No. 2.1620.14.03: The Department has removed the word “regularly” from this paragraph (c) that now requires monitoring as to whether PACE solicitors are maintain minimum qualifications with no indication at all as to how often this should

occur; the Consumer Coalition maintains that monitoring should be done annually. As such the Consumer Coalition requests this provision specify annual monitoring or that the word “regularly” be reinstated and be defined as annually elsewhere.

Response No. 2.1620.14.03: The Department does not consider monitoring as a discrete event, and therefore we decline to specify annual monitoring or any time period for monitoring.

Comment No. 2.1620.14.04: Regarding paragraph (c)(1) the Consumer Coalition reiterates that the program administrators should not only “track and review” complaints containing allegations of conduct, but also that program administrators should be directed to investigate such claims. Only then will program administrators be able to determine whether the solicitor has committed any of the acts that do not comply with law described in paragraph (c)(2). Further, the Consumer Coalition again objects to the use of the word “clear” used in various places when discussing patterns of consumer complaints: the point of monitoring is to identify any patterns of consumer complaints as those should prompt further tracking, reviewing and investigation by the program administrators.

Response No. 2.1620.14.04: The Department notes these comments, which do not relate to a currently proposed change. See Response No. 1.1620.14.07, above.

Comment No. 2.1620.14.05: The Consumer Coalition provides that with regard to whether the PACE solicitors have a pattern of failing to timely receive and respond to property owner complaints, the Consumer Coalition commends the Department for removing the condition at paragraph (c)(3) that solicitors had to fail to respond to complainants “notwithstanding repeated contact by complainants.” However, again the Consumer Coalition does not see why such a pattern has to be “clear” nor why failing to respond to multiple complainants should be cabined only to those situations “over a sustained period of time.” Any pattern of failing to respond to complaints should prompt investigation with a view to de-enrollment.

Response No. 2.1620.14.05: See Response No. 2.1620.14.07, above.

Comment No. 2.1620.14.06: The Consumer Coalition again recommends expanding the list of PACE solicitor compliance items to be monitored to include other key areas of concern including, but not limited to price-gouging (not just whether the contractor charges a different price for PACE funded projects than if paid in cash); lien stacking; identifying where the assessment and home improvement contracts materially differ; and contractors who do not complete work or who fail to get work passed through code inspection.

Response No. 2.1620.14.06: See Response No. 1.1620.14.10, above.

Comment No. 2.1620.14.07: With regard to the comparison of PACE prices vs cash prices the Consumer Coalition repeats here its prior comment (related then to former sub-part 1620.15(b)(7)) that it “needs clarification to specify how the administrator is to

analyze whether a solicitor provides a different price for a project funded by PACE that it would if paid for in cash. For example, at least one program administrator has contracts that often include a large “contractor’s fee” (sometimes over $10,000) that is paid to the administrator. Having analyzed some of these contracts, as explained in the presentation to stakeholders, consumer advocates believe such fees are related to price gouging. The regulations need to specify how PACE administrators that appear to be benefiting from these large fees can adequately protect consumers by assessing price differentials between projects financed by PACE versus those paid for by other methods.”

Response No. 2.1620.14.07. See Response Nos. 1.1620.14.11 and 1620.15.08.

Comment No. 2.1620.14.08: PACE Funding indicates that section 1620.14(d) requires program administrators to monitor whether PACE solicitors are charging a higher price for PACE-funded projects as compared to non-PACE projects. These requirements go beyond the requirements of statute and it would be commercially unreasonable to comply. For this reason, it is requested that the requirement be removed. Every property is unique and there are so many variables to consider, that it would be impossible to make an “apples to apples” comparison of two similar projects on two different properties. Program administrators do not have access to the level of information needed to conduct a relevant analysis, nor do they have the power to require that information from contractors that would validly refuse on the basis of confidentiality and protected business information. FortiFi states that section 1620.14(d) continues to require program administrators to monitor whether PACE solicitors are charging a higher price for PACE-funded projects as compared to other home improvement projects performed by that PACE solicitor that are not funded via PACE. These requirements go well beyond the requirements of statute, and compliance with such rules is neither feasible nor commercially reasonable. FortiFi indicates it is fair to require program administrators to provide in their PACE solicitor training programs and written agreements with PACE solicitors that PACE solicitors comply with Streets and Highways Code sections 5926 and 5940, and, if program administrators have knowledge of violations of such statutory provisions, they can cancel the enrollment of Solicitors who fail to comply. There is no feasible or commercially reasonable way, however, for program administrators to “monitor” or police compliance with these requirements.

Response No. 2.1620.14.08: See Response Nos. 1.1620.14.01 and 1620.15.06, above.

Comment No. 2.1620.14.09 PACE Funding indicates the proposed rules continue to require that program administrators monitor whether PACE solicitors are beginning work prior to the expiration of the 3- day right to cancel. Once again, there is no known commercially reasonable way to comply with this requirement. It is for these reasons that PACE Funding requests section 1620.14(d) be deleted in its entirety. FortiFi indicates the proposed rules continue to require program administrators to monitor whether PACE solicitors are beginning work prior to the expiration of the 3-day right to

cancel for assessment contracts. As FortiFi previously commented: “Short of setting up video cameras outside the homes of all property owners who have signed assessment contracts (which would obviously violate privacy laws), there is no commercially reasonable way to comply with this rule.”

Response No. 2.1620.14.09: See Response Nos. 1.1620.14.09 and 1620.15.16, above.

Comment No. 2.1620.14.10: The Consumer Coalition appreciates that the Department amended the proposed rules to remove the language in subdivision (g) that suggested the program administrator has to “find” failure to maintain minimum qualifications. The language now properly reflects that whether a solicitor/agent maintains minimum qualifications is an objective test. FortiFi indicates that the second modifications to proposed text delete the program administrator “knowledge” element in the requirement that program administrators establish and implement a process for canceling the enrollment of a PACE solicitor or PACE solicitor agent who is failing to maintain the minimum qualifications required by Financial Code section 22680 or who is violating any provision of the California Financing Law. With respect to PACE solicitor or PACE solicitor agent compliance with the requirements of section 22680, program administrators have access to data published by the CSLB on its website regarding the license and registration status of home improvement contractors and Home Improvement Salespersons, but only to the extent such records are updated and accurate. Program administrators do not have a way of knowing whether a PACE solicitor or PACE solicitor agent is “exempt from, or not subject to, licensure or registration under the Contractors’ State License Law” as per section 22680(c)(3). With respect to section 22680(a)(2) and (b), (d) and (e) the language in section 1620.14(g) does not fit or make sense. PACE solicitors cannot “fail” to maintain something with respect to these background check requirements. The current proposed rule language is duplicative of what already exists in section 22680 and is just confusing. At a bare minimum, section 1620.14(g) of the regulations should be restricted to Financial Code section 22680(c)(1) and (2), and requirements should be limited to checking the CSLB’s website regularly. Program administrators are not omniscient beings. They can establish processes for monitoring CSLB licensure or registration status regularly, or for cancelling enrollment of PACE solicitors or PACE solicitor agents where program administrators know such entities or persons are violating the California Financing Law, but program administrators cannot be expected to know what PACE solicitors and their agents are doing at all times. Program administrators cannot, for example, know whether a PACE solicitor or PACE solicitor agent is violating law. Accordingly, FortiFi indicates the Department should reinstate the language “the program administrator finds is failing” in this section. PACE Funding states that section 1620.14(g) removes the program administrator “knowledge” element in the requirement that each program administrator establish and implement a process for cancelling the enrollment of a PACE solicitor or solicitor agent who fails to maintain the minimum qualifications required by Financial Code section 22680 or who is violating any provision of the California Financing Law. Removal of the “knowledge” element creates a strict liability

standard here that is not appropriate. All program administrators have processes for the regular monitoring of CSLB licensure or registration status, and for canceling the enrollment of PACE solicitors or solicitor agents where the program administrator knows such persons to be violating the California Financing Law. Such processes can and should be standardized across the industry, but creating strict liability goes too far. The knowledge of what PACE solicitors and their agents are doing at all times, cannot be imputed to the program administrators. For this reason, the Department should reinstate the previous language: “the program administrator finds is failing.”

Response No. 2.1620.14.10: The Department has considered the arguments and the Department is persuaded that section 1620.16 of the rules already sets forth the obligations related to canceling enrollment. Therefore, the Department has struck subdivision (g) and renumbered subdivision (h) as subdivision (g). The obligation is that a program administrator establish and implement a written process for canceling enrollment. The requirement is for a written process, which must be implemented. The section reflects subdivision (g) of Financial Code section 22680 and is intended to be interpreted in the same way.

Comment No. 2.1620.14.11: The Consumer Coalition indicates this part of the rule states that program administrators who have a process to routinely monitor licenses or registration status of solicitor/agents every quarter do not need to check the status of the solicitor/agent when they receive an application for financing. A prior iteration only gave this benefit to program administrators that routinely checked every month. Given that the Consumer Coalition has seen real damage wrought by a number of repeat bad actors within a very short space of time, and that dishonest salespeople who may work across various companies are routinely being identified by consumer advocates, the CSLB and law enforcement, the Consumer Coalition once again asks the Department to proceed with the original iteration of this rule.

Response No. 2.1620.14.11: Please see Response No. 1.1620.14.13, above.

Section 1620.15. Periodic Review Standards

Comment No. 2.1620.15.01: The Consumer Coalition is concerned that there is no established procedure in section 1620(b)(4) for determining when PACE solicitors have a clear pattern of continuously receiving complaints regarding dishonesty, misrepresentation, and omission. The Consumer Coalition recommend that the Department set a threshold for establishing such a pattern, with the threshold being either that they have received two complaints from the same geographical area, or that the facts of a complaint that they received indicate dishonesty, misrepresentation, or omission.

Response No. 2.1620.15.01: The Department notes that this suggestion does not relate to a currently proposed change. The Department declines to add new requirements but will consider the suggestions for future rulemaking.

Comment No. 2.1620.15.02: The Consumer Coalition is also concerned that there is no process for tracking when program administrators are either not responding to complaints or delaying investigations into complaints. The Consumer Coalition recommends that language be added to section 1620(b)(5) requiring the tracking of complaints and inquires as described in section 1620.08.

Response No. 2.1620.15.02: The Department notes that this suggestion does not relate to a currently proposed change. The Department declines to add new requirements but will consider the suggestions for future rulemaking.

Comment No. 2.1620.15.03: The Consumer Coalition remains concerned that section 1620.15(c) does not include the sample size for responses to the open-ended questions asked to homeowners during the oral confirmation call. The Consumer Coalition recommends that a sample size be included so that the voices and opinions of those homeowners are documented and reported. Without this requirement, administrators could continue to dismiss consumer complaints as merely “anecdotal evidence.”

Response No. 2.1620.15.03: The Department notes that this suggestion does not relate to a currently proposed change and has not previously been raised. The Department declines to add new requirements but will consider the suggestions for future rulemaking.

Comment No. 2.1620.15.04: The Consumer Coalition applauds the Department’s removal of former section 620.15, paragraph (d)(2), as the Consumer Coalition feels that without it there will be far more uniformity in the administrators’ sampling process. The Consumer Coalition remains concerned, however, that section 1620.15(d)(1) still allows the program administrator to develop the sampling size for the periodic review and that consumer complaints may be identified. The Consumer Coalition is of the opinion that reviewing complaints is necessary and should be required to ensure that solicitors are complying with the program administrator as well as the law.

Response No. 2.1620.15.04. See Response Nos. 1.1620.15.06 and 1620.15.14.

Comment No. 2.1620.15.05: The Consumer Coalition is also concerned that section 1620.15(d) places no requirement on program administrators to reveal the method that they used to choose their sample for review. For full transparency and to ensure that administrators are complying with requirements, the Consumer Coalition recommends that program administrators be required to report the method that they use to choose a random sample for review. This would not be unduly burdensome on the program administrators, as they are already required to retain documentation of the review process under section 1620.15(e)(2).

Response No. 2.1620.15.05: The Department notes that this suggestion does not relate to a currently proposed change and has not previously been raised. The Department declines to add new requirements but will consider the suggestions for future rulemaking.

Section 1620.16. Cancelling Enrollment

Comment No. 2.1620.16.01: The Consumer Coalition reiterates that it would like to see the Department play a more active role in approving procedures for canceling enrollment or reviewing their adequacy. In setting at least minimum standards, the Department could ensure greater uniformity amongst administrators while still allowing discretion in creating procedures unique to them. In addition, in the Consumer Coalition's view, sub-part (a) unnecessarily limits the written policy for cancellation of enrollment to solicitor/agents who fail to maintain minimum qualifications or who violate any provision of the California Financing Law.

Response No. 2.1620.16.01: See Response No. 1.1620.16.01.

Section 1620.17. Training Program

Comment No. 2.1620.17.01: The Consumer Coalition remains concerned that there is no language in section 1620.17(b) requiring the solicitor to pass the test mentioned in section 1620.17(a)(2)(B) prior to soliciting homeowners. Merely requiring that the solicitors take the test is not sufficient to determine whether they have learned the training materials or not. If the Department chooses to make this change regarding the requirement to pass the test, the Consumer Coalition recommend the following changes for continuity: (1) That section 1620(c)(1) also require that the records show that solicitor have passed the test, not merely finished the training. (2) That section 1620.17(c)(2)(A) say that the certificate will only be given after the completion of the training and the passing of the test.

Response No. 2.1620.17.01: The requirement is set forth in paragraph (d)(2) of section 1620.12 regarding the enrollment of a PACE solicitor agent.

Comment No. 2.1620.17.02 The Consumer Coalition remains concerned that the "may include" in section 1620.17(e)(1)(B) should be changed to "must include", as the general requirements under the California Financing Law ought to be included by the program administrator so that solicitors have a full understanding of the PACE program.

Response No. 2.1620.17.02: This request is unrelated to a change made during the comment period, but the Department has made the change.

Comment No. 2.1620.17.03: The Consumer Coalition remains concerned that the PACE disclosures in section 1620.17(e)(2)(A) still do not include a disclosure saying that the special assessment will cause the homeowners property tax bill to raise significantly. The specific or approximate amount of the increase should be made clear to the property owner. This change is necessary because several of our clients received misleading information regarding the increase to their property taxes and were placed in financially precarious situations as a result. This change would help to prevent future cases in which people are not able to afford the increase to their property taxes as a result of a special assessment.

Response No. 2.1620.17.03. The information on repaying the assessment is included in clause (e)(2)(B)(2) of the training requirements. The Department notes that this suggestion does not relate to a currently proposed change and has not previously been raised.

Comment No. 2.1620.17.04: The Consumer Coalition indicates it remains concerned that section 1620.17(e)(2)(B)(5) does not have any language placing an absolute prohibition on soliciting owners with a reverse mortgage. The Legislature recently passed AB 1551 that prohibits a PACE assessment on a property subject to a reverse mortgage as this practice can be easily abused to exploit homeowners through misrepresentation and omission, specifically those homeowners who are elderly.

Response No. 2.1620.17.04: This comment is not related to a current proposed change but given the change in the law the Department added the item as clause (e)(2)(B)(6). The Department notes the subject is also included in subparagraph (e)(5)(B).

Comment No. 2.1620.17.05: The Consumer Coalition appreciates the Department's decision to change "elder financial abuse" in section 1620.17(e)(2)(A)(7) to "elder and dependent adult financial abuse", but the Consumer Coalition still remains concerned that this section does not include specific language clearly stating that soliciting reverse mortgages is elder and dependent adult financial abuse. The Consumer Coalition recommends that the Department include such a statement regarding soliciting reverse mortgages.

Response No. 2.1620.17.05: The Department notes that this suggestion does not relate to a currently proposed change.

Section 1620.19. Annual Report Data

Comment No. 2.1620.19.01 The Consumer Coalition remains concerned that the annual data does not track the foreclosures initiated by mortgage servicers as a result of increased property taxes paid through impound accounts. The annual data also fails to track major delinquencies that have not yet led to foreclosure.

Response No. 2.1620.19.01: Please see Response Nos. 1620.19.03 and 1.1620.19.01, above.

Comment No. 2.1620.19.02: The Consumer Coalition also remains concerned about the interest rates in section 1620.19(a)(3)(D) as PACE assessments average interest rates of 8 to 10 percent, which would mean that all of the assessments would fall under section (D)(i), stripping all subsequent sections of any utility. The Consumer Coalition recommends that the Department change the interest rates in section 1620.19(a)(3)(D) to reflect the difference more accurately in interest rates for PACE assessments.

Response No. 2.1620.19.02: See Response No. 1.1620.19.02.

Comment No. 2.1620.19.03. The Consumer Coalition appreciates the Department's inclusion of section 1620.19(a)(2)(D)(3) tracking the payment of "contractors fees", but

the Consumer Coalition remains concerned that this does not acknowledge the fact that these payments can be made to administrators to secure a lower interest rate for the homeowner. The Consumer Coalition recommends that this information be included in the annual report data.

Response No. 2.1620.19.03: The Department has considered the comment and has concluded it is not necessary to seek additional data at this time but will consider the request in future rulemaking.

Comment No. 2.1620.19.04: The Consumer Coalition is concerned that under section 1620.19(a)(2)(G), the collection of information on PACE assessments after 12 months of delinquency as of December of the prior year will not give an accurate reflection of delinquencies on PACE assessments. This is because a mortgage servicer will step in and pay the past due taxes prior to 12 months in order to protect their lien status. In addition, tax delinquencies are considered in default at the end of the tax year. As described in Renovate America's Be-Annual Report, Select Program activity between January 1, 2018 and June 30, 2018: "Delinquencies refer to late payments during a given tax year. At the end of the tax year, property tax bills are still delinquent are considered to be in default. Delinquency rates are typically higher than default rates because property owners whose tax payments are delinquent often make late payments prior to the point at which a default occurs. For example, property-tax tracking provider Lereta reported property-tax delinquency rates in California of 3.0 percent, 2.5 percent, and 3.3 percent in 2013, 2014, and 2015, respectively. By comparison, the California State Controller's Office reported effective property-tax default rates in California of 1.6 percent, 1.3 percent, 1.2 percent, 1.1 percent, and 1.1 percent in 2012/2013, 2013/2014, 2014/2015, 2015/2016 and 2016/2017, respectively. Similarly, delinquency rates and default rates each tend to decline over time as back taxes are paid." Furthermore, the PACE authorities and program administrators are entering into multi-year purchase and sale agreements with third parties to purchase the delinquent assessments installments. The current definition fails to address whether or not these properties will be included in the annual report data. In addition, the time frames used in tracking the delinquencies and within these agreements is aligned with the tax year of July 1 to June 30 whereas the regulations are defined by the calendar year. In order to better reflect the actual delinquency numbers, the Consumer Coalition recommends that information on PACE assessments be collected in accordance with the tax year, with delinquency being defined as not making the payment during the time period to pay taxes each year before the tax penalty, which would be December and April 10th.

Response No. 2.1620.19.04: The Department notes that this recommendation is not regarding a currently proposed change to the language. The Department will consider the comment in future rulemaking or with respect to requesting a special report.

Comment No. 2.1620.19.05: The Consumer Coalition indicates it is also concerned that information on properties with two PACE assessments is not being collected under section 1620.19(a)(2)(G), as properties with two PACE assessments are significantly

more likely to default than properties with only one PACE assessment. The Consumer Coalition recommends that information also be collected on properties with two PACE assessments.

Response No. 2.1620.19.05: The Department notes that this recommendation is not regarding a currently proposed change to the language. The Department will consider the comment in future rulemaking if this is a record maintained by the program administrator.

Comment No. 2.1620.19.06: The Consumer Coalition appreciates the Department's reporting of the zip codes of PACE assessments recorded under the emergency procedures in Financial Code Section 22687 in section 1620.19(a)(2)(F), as the PACE assessments recorded under emergency procedures have a high potential for abuse by administrators. The Consumer Coalition is concerned, however, that census tract and zip code information for every PACE assessment are not being reported by administrators. Given the concerns raised by consumer advocates about the targeting of vulnerable populations, the reporting of this data at a census tract and/or zip code level would help assess whether program administrators are targeting particular communities; give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. In fact, it would be the Consumer Coalition's recommendation that program administrators are held to the same reporting standards as the Home Mortgage Disclosure Act for every property with a PACE assessment. The Consumer Coalition feels that this is not an unduly burdensome requirement, as the infrastructure for reporting at least the zip code is already in place for section 1620.19(a)(2)(F).

Response No. 2.1620.19.06: The Department notes that this recommendation is not regarding a currently proposed change to the language. The Department will consider the comment in future rulemaking or with respect to requesting a special report.

Section 1620.21. Ability to Pay Determinations

Comment No. 2.1620.21.01: As explained in the Consumer Coalition's prior comments, the Consumer Coalition is very concerned that the regulations as amended to date still leave out critical issues regarding verification of debts, calculation of housing expenses and timing of the first assessment payment, which are discussed in detail in the Consumer Coalition's December 9, 2019, comment letter at pages 32-34. While the Consumer Coalition is pleased to see that the Department has retained a provision aimed at ensuring that personnel involved in the ability to pay determinations are not incentivized to reach positive outcomes, the Consumer Coalition objects to the removal of the provisions in the previous version of the regulations that addressed the potential for influence and pressure being exerted on such personnel. In order to fully protect property owners, the Consumer Coalition recommends that the Department: (1) restore the requirement from the 2018 version of these regulations that there be a firewall separating personnel making the final ability to pay determination from other

departments and functions; and (2) include in the final rule a provision prohibiting program administrators from paying to individuals involved in underwriting, directly or indirectly, compensation (including salaries, bonuses, commissions, and any financial or similar incentive) in an amount that is based on a term of the PACE transaction, the terms of multiple transactions involving such individuals, or the number (or quotas) of PACE assessment contracts that are approved for funding and recordation.

Response No. 2.1620.21.01: See Response No. 1.1620.21.01. above.

Section 1620.22. Property Owner Income

Comment No. 2.1620.22.01: The Consumer Coalition appreciates the additional changes the Department has made to this rule with respect to subsections (b)(4) (rental income) and (b)(5) (automated income verification). The Consumer Coalition reiterates its request that the final rule require program administrators to obtain approval from the Department before using any automated verification system to validate property owner income, employment, and asset data, after providing proof that the system is not based on predictive or estimation methodologies, and that it has been approved by a federal mortgage lending authority or regulator. The Department should also require an annual certification by program administrators that such an automated system remains compliant. Because automated income verification systems that currently exist operate to verify only salary and wage income, the Department should also prohibit the use of automated systems for other purposes until they become reasonably reliable. The final rule should provide that until such time as a program administrator can demonstrate to the satisfaction of the Department that an income verification system is reasonably reliable, program administrators shall not use automated systems for verification of self-employment income, military or reserve duty income, bonus pay, tips, commissions, interest payments, dividends, retirement benefits or entitlements, rental income, royalty payments, trust income, public assistance payments, and alimony, child support, and separate maintenance payments.

Response No. 2.1620.22.01: Please see Response Nos. 1620.22.03, 1.1620.22.05, and 1.1620.22.06, above.

Comment No. 2.1620.22.02: The Consumer Coalition appreciates the Department's addition of a 12-month lookback period for rental income in subsection (b)(3). The Department's revision to subsection (b)(3), however, has created a new problem. The prior version required both a rental agreement and reasonably reliable third-party records, but the Department has replaced the "and" with an "or". In doing so, the Department has opened the door to income verification based solely on a rental agreement without any third-party records showing that the income referenced in the rental agreement has actually been received. The Consumer Coalition requests that the Department change the "or" back to an "and" to ensure that income a homeowner is not actually receiving will not be included in the ability to pay determination.

Response No. 2.1620.22.02: See Response No. 1.1620.22.02, above.

Comment No. 2.1620.22.03: FortiFi indicates the second modifications to proposed text now require that if “rental income is established solely by third-party records, the records shall demonstrate the property owner’s receipt of such income for at least the prior twelve months.” This comment ignores the reality of multigenerational households in California. Many property owners that apply for PACE financing rely on income from other family members living in the home that are not on title. Contributions to monthly or annual living expenses from family members are not typically documented via a rental agreement or even in a third-party record. Thus, requiring twelve (12) months of such records is not realistic. Overly restrictive underwriting terms are not reflective of the household income composition for a significant portion of Californians, and this would exclude such homeowners from PACE eligibility and the ability to strengthen homes and reduce monthly energy costs. To address this, FortiFi recommends the following revision: “(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 rental agreement or reasonably reliable third- party records. If rental income is established solely by third-party records, the records shall demonstrate the property owner’s receipt of such income for at least the prior two months.”

Response No. 2.1620.22.03: See Response No. 1.1620.22.02, above.

Section 1620.25. Emergency

Comment No. 2.1620.25.01: According to the Consumer Coalition, traditionally, energy efficiency repairs are not “emergencies.” The Consumer Coalition recommends including the following PACE eligible, non-emergent products to the list in section 1620.25: solar energy system equipment and storage devices; wind turbines; electric vehicle charging stations; air conditioning; insulation; pool equipment; lighting; indoor and outdoor water systems; and artificial turf. None of these are emergency items that require an abbreviation of the three-day notice period.

Response No. 2.1620.25.01: The Department notes that this recommendation is not regarding a currently proposed change to the language. The Department will consider the comment in future rulemaking.

Section 1620.27. Automated Value Model

Comment No. 2.1620.27.01: The Consumer Coalition suggests that in order to protect homeowners from over-leveraging their homes, the Consumer Coalition urges the Department to reconsider its decision not to modify the proposed regulation regarding the use of automated valuation models (AVMs) in determining home values. Financial Code section 22684 provides that a property owner’s total loan-to-value ratio for all mortgage related debt including all PACE assessments shall not exceed 97 percent of the market value of the property. With such a high loan-to-value ratio, even modest errors in valuation could result in a property owner owing considerably more than the

home is worth. As explained in the Consumer Coalition's prior comments, research has shown that there is wide variation in the accuracy of AVMs. AVMs are not generally used as the sole basis for a property valuation except to support bulk decisions such as portfolio valuations or for appraisal reviews. Instead, they are commonly used in combination with other analytics, data reviews, property inspections or appraisals. Their accuracy is weaker when used for valuation for any individual property. For example, in one study of 666 U.S. counties, on average the percentage of automated valuations across all counties falling within +/- 10 percent of the sales price was only 70 percent, with variation between 20 percent and 92 percent, depending on the county. Thus, 30 percent of valuations on average were more than 10 percent different from sales price (which can itself be different from appraised value). On average, almost half of all valuations across all of the counties were more than 5 percent higher or lower than the sale price. On an individual level, such widespread potential for error undermines the lending process and a property owner's security. The proposed regulations do not include any substantive provisions addressing the significant consumer protection concerns raised by the use of AVMs. The Consumer Coalition is particularly concerned that an assumption made by all AVM models is that the property is in a marketable condition and is not in need of any significant repairs and that such an assumption may not be correct for a given property. The Consumer Coalition therefore reiterates its recommendation that the final rule require program administrators to include requirements for their enrolled PACE solicitors and solicitor agents that if a solicitor or solicitor agent has knowledge that such assumptions about the condition of a property are not correct, they must communicate that information to the program administrator before a valuation is completed. Upon receipt of such information, the program administrator should be required to obtain a full appraisal (or a broker's price opinion (BPO) that meets designated rigorous standards).

Response No. 2.1620.27.01: Please see Response Nos. 1620.27.01 and 1.1620.27.01.

Comment No. 2.1620.27.02: The Consumer Coalition appreciates the Department's decision to clarify that the disclosure required by Financial Code section 22685(b) must be in writing.

Response No. 2.1620.27.02: The comment is noted.

Section 1620.28. Useful Life of Improvement

Comment No. 2.1620.28.01. The Consumer Coalition provides as follows. Financial Code section 22684(j) states: "The term of the assessment contract shall not exceed the estimated useful life of the measure to which the greatest portion of funds disbursed under the assessment contract is attributable. The program administrator shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations." The Consumer Coalition reiterates that, while credible third-party standards can be used to measure

the life of the improvement, those standards must be informed by the specific equipment installed and, as such, the equipment manufacturer or installer's specifications are highly relevant and should be included. The actual product installed is critical to the analysis – whether it be for estimating its useful life, or for making sure the financed product has been installed as specified.

Response No. 2.1620.28.01: See Response No. 1.1620.28.02, above.

Section 1620.29. Commercially Reasonable

Comment No. 2.1620.29.01. The Consumer Coalition reiterates its request that the Department strengthen and clarify subsection (d) by requiring administrators to obtain written confirmation from PACE solicitors that they have no knowledge the property owner has sought, authorized, or obtained other PACE assessments on the property, whether already recorded or not. If a PACE solicitor has knowledge of other improvements, this information should trigger an inquiry by the administrator to other PACE programs and tax collection offices, and a search of land records on the property.

Response No. 2.1620.29.01. See Response No. 1620.29.01.

Comment No. 2.1620.29.02. The Consumer Coalition appreciates the Department's removal of prior subsection (b)(1), which was inconsistent with the relevant statutory mandate. The Consumer Coalition continues to object, however, to subsection (c) and revised subsection (b) to the extent that these provisions include or imply exemptions from requirements that administrators use "commercially reasonable" independent sources to verify the criteria in Financial Code section 22684. Subsection 22684(l) states that "program administrators shall use commercially reasonable and available methods to verify the above" (emphasis added). This provision does not contain any exceptions for any of the criteria listed in the statute, so a regulation that exempts administrators from having to use commercially available independent sources to verify certain criteria – or implies such an exemption as subsection (b) does -- is inconsistent with the statutory directive. As previously noted, there are no criteria listed in the statute that authorize administrators to rely solely on information from property owners. Subsection 22684(a) requires an administrator to ask a property owner about delinquent property tax payments, but, as the Department clearly recognizes, that requirement does not replace or override a requirement that the administrator also verify recent property tax payment history using property tax records and/or information from government websites. If such information is not available, an administrator should not be permitted to proceed with the transaction.

Response No. 2.1620.29.02: These comments are addressed in Response No. 1.1620.29.02.

Comment No. 2.1620.29.03: The Consumer Coalition also remains concerned that this rule still does not address arguments made by program administrators in comments submitted to the Department in 2018 indicating that they believe that it is not

commercially reasonable to require program administrators to independently verify that the measures financed by an assessment contract are eligible. Given that program guidelines, home improvement contracts and PACE solicitors--rather than property owners themselves--are much more reliable and reasonable sources about the eligibility of a particular item or project, the Consumer Coalition urges the Department to either include these sources in the list of examples of commercially reasonable and available sources in subsection 1620.29(a) of this rule or add a provision that requires administrators to use such sources of information to verify this criterion.

Response No. 2.1620.29.03: See Response No. 1.1620.29.03, above.

Comments Received During the Third Notice of Modifications from November 18, 2020 through December 3, 2020

The following persons submitted comments to the Department during the 15-day comment period from November 18, 2020 through December 3, 2020:

1. California Low-Income Consumer Coalition, Bet Tzedek, Legal Aid Society of San Diego, Inc., East Bay Community Law Center, National Housing Law Project, Public Counsel, Riverside Legal Aid, Public Law Center, and UCI Law Consumer Law Clinic, on behalf of their clients – by letter dated December 3, 2020, received via email, and supplemented December 9, 2020.[3]
2. PACE Funding Group, Robert Giles, Chief Executive Officer – by letter dated December 3, 2020, received via email.
3. FortiFi Financial, Inc., Christopher Nard, Chief Executive Officer – by letter dated December 3, 2020, received via email.
4. PACENation, Colin Bishopp, Executive Director – by letter dated December 3, 2020, received via email.
5. Ygrene Energy Fund, Farschad Farzan, General Counsel – by letter dated December 3, 2020, received via email.
6. California Financial Service Providers Association (“CFSP”), Thomas Leonard, Executive Director – by letter dated December 3, 2020, received via email.
7. Law Offices of Paul Soter, R. Paul Soter Jr. - by letter dated December 3, 2020, received via email.

Operative Date of Regulations

Comment No. 3.0.01: PACE Funding suggests the latest version of the proposed regulations call for extensive changes. Operationalizing these changes will impact many facets of its business, both internally, and in its business practices with third parties. These changes would include, but not be limited to, changes in call scripts, advertising, background checks, and documentation. These changes will require extensive work with hundreds of PACE solicitors. These changes will also require engaging with

[3] Although the signatories of the letter from consumer advocates have changed from past comment periods, the Department will continue to refer to the comments as those of the “Consumer Coalition.”

outside developers to make changes to its technology, which will require at least one round of testing and feedback before implementation. The current timeline appears to have a deadline of February 14, 2021 to announce finalized regulations, at which point PACE Funding might only have until April 1, 2021 to implement changes. This is not a practical timeline in which to accomplish all that these regulations would require, and PACE Funding would want to make sure that it had enough time to be fully compliant. PACE Funding is asking for a more reasonable implementation deadline of January 1, 2022.

FortiFi notes that on page 8 of the notice of third modifications, the Department notes that the proposed rules will not become effective until approved by the Office of Administrative Law ("OAL") and filed with the Secretary of State in accordance with Government Code section 11349.3. Assuming OAL approves the rulemaking and files the proposed rules with Secretary of State by February 29, 2021, they will become effective April 1, 2021. There is insufficient time between now and April 1st for program administrators to implement the numerous, complex additional requirements contained in the proposed rules. Even if the Department did not submit the proposed rules to OAL in time for OAL to file with the Secretary of State by February 29th, 2021, and instead OAL filed the proposed rules by May 31, 2021, the proposed rules would become effective July 1, 2021. This is still not sufficient time for program administrators to make the many operational changes required to comply with the proposed rules. Yet, agencies have the ability to prescribe a later effective date for their regulations as part of their filing with OAL pursuant to Government Code section 11343.4(b)(2). Given the extent, complexity, and regulatory burden of the proposed rules, the DFPI should exercise this authority and prescribe an effective date of January 1, 2022 to give licensees, including program administrators, sufficient time to implement procedures to comply with these complex and detailed new regulations.

PACENation indicates the proposed rules will impose numerous new requirements on program administrators that do not exist under current law. Just a few examples include updating the introductory and six hours of training required for PACE solicitor agents, complying with extensive contractor vetting and monitoring requirements, and updating underwriting requirements. The Department has issued four versions of the proposed rules over the past year, with many substantive changes in each round. Once the proposed rules are finalized and adopted by the Department, program administrators will need time to process and implement these regulations correctly, and this will take much more than the ordinary thirty days between OAL approval and filing and effective date.

If the OAL approves the rulemaking and files the proposed rules with Secretary of State by February 29, 2021, they will become effective April 1, 2021. There is insufficient time between now and April 1, 2021 for program administrators to implement the numerous, complex additional requirements contained in the proposed rules. Yet, the Department has the authority to "prescribe" a later effective date for the proposed rules. Given the

extent and complexity of the regulations, the Department should exercise this authority and prescribe an effective date of January 1, 2022, to give program administrators sufficient time to implement procedures to comply. The PACE community wants to get this right and for program administrators to be in compliance once the rules go into effect. Time is needed for these important rules to be implemented.

Response No. 3.0.01: The Department has considered the requests for a delayed implementation time. The Department believes that the time period under the ordinary process will provide sufficient time for program administrators to come into compliance. If a program administrator encounters an obstacle that affects its ability to come into compliance in a particular area, the program administrator may contact the Department for an accommodation. However, the Department cannot delay the rules in their entirety because they include important property owner protections.

California Financing Law Migration to NMLS

Comment No. 3.6.01: CFSP supports the proposed migration to NMLS. CFSP has no objection to the underlying concept of migration of CFL license applications to the NMLS. Such a development is long overdue. The length of time that it currently takes to process a CFL license application - usually, four to six months - is disproportionate to the complexity of the task and to other states' processing times for similar license applications. CFSP supports the move away from the current paper application method of submission to an electronic system.

Response No. 3.6.01: The comments are noted.

Comment No. 3.6.02: CFSP indicates the NMLS is and remains a work in progress, and a regulation directing the migration to the NMLS will not magically solve all of applicants' issues with the current process. CFSP notes that its members can attest to instances where straight- forward California applications to the Department for a license already covered by the NMLS process badly stalled due to the fact that an NMLS-required document went astray after having been submitted; the problem could not be addressed through the NMLS system, and the NMLS system operators were unhelpful in resolving the problem. In that instance, however, Department personnel worked energetically and constructively with the applicant to process portions of the application manually: that is as it should be.

Response No. 3.6.02: The comment is noted.

Comment No. 3.6.03: CFSP indicates that part of the reason for the slow processing of CFL license applications is understaffing. In this regard, CFSP supports funding for the Department to institute a fast-track CFL licensing program. The $300 application fee for the valuable CFL license is absurdly low, and most business entities would pay multiples of that amount in order to have a licensed processed and approved in, say, 45-60 days rather than the current four to six months. Accordingly, CFSP reiterates that

the Department should seriously consider such a structure, as CFSP has previously suggested.

Response No. 3.6.03: The comment is noted.

Comment No. 3.6.04: CFSP's comments are primarily directed at the portions of the September 2, 2020, version of the proposal rather than to the most recent changes. The Department has not been transparent in explaining the nature of substantive changes buried in the most recent draft regulations and it has failed to adequately alert stakeholders to these proposed changes. Instead, the public information pertaining to the proposal has focused on changes for program administrators and migration to the NMLS. This approach is not consistent with the Department's public statements about outreach to stakeholders, nor with the Administrative Procedure Act ("APA"). The Department has not complied with two specific outreach provisions set forth in the APA. Government Code section 11346.4(a)(3) directs agencies to mail a copy of the proposed regulations to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action and defines "representative" as including a trade association: i.e., CFSP. This was not done with regard to the proposal.

Response No. 3.6.04: The Department strives to be transparent, and any impression of opaqueness is unintended. The proposed rulemaking has been sent to over 5000 stakeholders, including CFL licensees, for the first notice and the four subsequent proposed modifications. However, based on CFSP's comments the Department is reviewing its processes and mailing lists to ensure that the lists are appropriately capturing interested parties. The Department notes that under Government Code section 11342.610 of the APA, a finance lender is not a "small business," but the Department nevertheless sends rulemaking to all licensees and trade associations. However, the Department has checked its mailing list, and it does not appear CFSP was on the list until it commented. With regard to the substantive changes, as part of the transition to NMLS the Department is reviewing the information requested with an application and the requirements for keeping an application current. The proposed changes are not intended to be "buried" in the regulations, and stakeholders have identified impacts from proposed changes that were unintended. The Department wants stakeholders to comment so that the Department understands the impact of proposals on its constituents.

Comment No. 3.6.05: According to CFSP, Government Code section 11346.45(a) provides that, in order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period. This also did not occur. Nor did the Department comply with section 11346.45(c), which provides that, if the agency

does not or cannot comply with the provisions of subdivision (a), the agency must state the reasons for noncompliance with reasonable specificity in the rulemaking record.

Response No. 3.6.05: The Department held public discussions on the PACE portion of the rulemaking. That is the only part of this rulemaking that involves complex proposals or a large number of proposals that cannot easily be reviewed during the comment period. The provisions transitioning to NMLS are not complex and few substantive changes have been proposed. Most of the changes are technical, and the size of the package is solely the result of the 50-page CFL application package being embedded within one section of the rulemaking, not because the rule includes a large number of proposals. Consequently, the Department disagrees that it failed to comply with Government Code section 11346.45.

Comment No. 3.6.06. CFSP states that given the lack of transparency and lack of compliance with the APA, CFSP requests that the Department withdraw the specific portions of the proposal addressed below, and, consistent with California law, actively consult with stakeholders, comply with the APA requirements to conduct an economic analysis, discussed below, and then re-publish a fair, reasonable, and practical proposal for notice and comment. That course of action would comply with both the letter and the spirit of the APA. The Law Offices of Paul Soter indicate that the concerns pertaining to the Department's failure to comply with the requirements of the APA are extremely important to commercial lenders. Indeed, the commercial lending community has noted with appreciation the conscientiousness with which the Department has sought both to comply with the APA and to reach out to stakeholders in connection with the rules it is in the process of promulgating under Senate Bill 1235. For that reason, the Law Offices of Paul Soter must express both surprise and dismay that the same level of APA compliance and stakeholder outreach was not provided by the Department in connection with this proposal. For that reason, the Law Offices of Paul Soter are also copying the OAL to reiterate the request that the OAL expeditiously review the process of the proposal to date and its APA infirmities, and consider recommending another round of comments to implement the fundamental transparency and fairness goals of the APA, both as they apply to the proposal and as they apply to existing regulations pertaining to CFL licensees.

Response No. 3.6.06: The Department has considered this request. The Department disagrees that it has not been transparent or complied with the APA. The rulemaking was sent to over 5000 interested parties, including all CFL licensees, on four separate occasions before the submission of this comment, and once more after the submission of this comment. The Department is not persuaded that withdrawing provisions of the rulemaking is necessary.

Comment No. 3.6.07. The CFSP states that the proposal contains several regulatory changes that would significantly change the obligations of and burdens on CFL licensees. The changes seem designed to create additional enforcement opportunities, rather than to improve the application process. Under the guise of procedural changes,

the Department seeks to codify its strained view of certain CFL provisions, views that are not supported by those statutory provisions. In this regard, the CFSP notes that it appears that the Department has failed to comply with several APA provisions in promulgating these proposed regulations. Government Code sections 13146.2(b)(2)(A) and (B) and 11346.36 specify the economic analysis that is required for the promulgation of major and non-major rules, respectively. It is unclear whether the Department views this as a major rule, although it certainly is a major rule in terms of its impact upon CFLs' operations. In any event, either the major rule or non-major rule economic analysis requirements apply, and the Department has not complied with either. The CFSP believes that this failure alone is sufficient to require the Department to withdraw and reconsider the portions of the proposal discussed below.

Response No. 3.6.07: A major regulation is defined by Government Code section 11342.548 is a proposal that will have an economic impact in an amount exceeding $50 million. The Department's economic analysis did not find that this proposal is a major regulation. The Department identifies the transition to NMLS in the Economic Impact Assessment in the Initial Statement of Reasons. Some of the areas of concerns identified by CFSP were added to the rulemaking during the rulemaking process and were not an impact upon the Notice of the Rulemaking Action.

Comment No. 3.6.08: CFSP indicates that the current CFL application review process is not only cumbersome, but opaque. Licensees and applicants have no idea why it takes 4 to 6 months to process a license application. CFSP's efforts to understand this process over the years have not been met with forthcoming responses from the Department. Many of the objectionable provisions in the proposal would require applicants to submit even more material to the Department and licensees to continually update that information. Given what appears to be significant challenges in the Department's ability to digest and respond to the current scope of required submissions, CFSP expects the proposed expansion of the scope of required submissions will only make that situation worse. The Department has not explained how it will process the additional information it seeks to require or why it needs that additional information or ongoing updating of that information. Again, this seems not to comply with the entire process set forth in the APA, including specifically Government Code section 11346(b)(1). In CFSP's experience over the years, Department staff have not focused on post-licensing submissions, have followed up on such information only intermittently and only as to some licensees; and have, appropriately, largely relied on the CFL Annual Report as a tool for monitoring licensees and determining whether additional ongoing information should be requested from particular licensees. CFSP does not understand why the Department now deems this procedure inadequate. CFSP's concern, based on the Department's failure to explain why it requires the additional information it seeks, is that this indicates that the purpose of these provisions is to create additional leverage in settling disputes with licensees rather than to improve the licensing process.

Response No. 3.6.08: The Department anticipates NMLS will assist in remediating any deficiencies related to post-licensing submissions and maintaining accurate licensing records. The Department is updating the licensing regulations and seeking additional information related to applications to understand increasingly complex business structures and arrangements, to clarify ambiguous requirements, and to obtain information on our licensee's roles in broader financial markets. The immediate purpose of the changes is to facilitate administering the CFL and protecting borrowers, and the broader purpose is to provide the Department information regarding the availability of credit in this state.

Comment No. 3.6.09: CFSP would like to reiterate its disappointment that, despite its public statements regarding its intent to work with stakeholders, the Department did not reach out to stakeholders to discuss or even disclose the substantive nature of the changes to the regulations contained in the proposal. The proposal will affect not only new applications but current licensees' ongoing operational compliance, and to a significant extent. This is not in compliance with either the letter or the spirit of the APA and is not conducive to amicable relations with licensees: which, after all, are ultimately to the benefit of the people of the State of California.

Response No. 3.6.10: The Department disagrees with the assertion that it failed to comply with the APA. However, the Department appreciates that CFSP has submitted a comment letter and identified areas of concern for its membership.

Comment No. 3.6.11: The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *The Department's failure to inquire into the economic impact of the proposal.* This is at least as significant for commercial lenders as it is for consumer lenders.

Response No. 3.6.11: The economic impact on licensees of transitioning to the CFL was considered as part of the rulemaking. In addition, the Department has revised the impact in this Final Statement of Reasons to reflect changes made and impacts identified since the initially proposed rules.

Section 1422. Application for License under the California Financing Law: Form

Comment No. 3.1422.01: Subdivision (c) sets forth the application, and at the end of the application is an Execution Section. CFSP disagrees with Item 6 of the Execution Section, regarding loan referrals. According to CFSP, this item is not reflected in any regulatory provision, so requires comment here. The revised Item 6 includes the following language: "That the applicant for a broker's license agrees that a license issued pursuant to the California Financing Law does not provide the authority to broker loans to lenders that are not licensed as finance lenders as defined in Financial Code section 22009; that the applicant will maintain any license necessary to broker loans to a lender not licensed as a finance lender; and that a finance lender may not pay compensation for brokerage services (i.e., brokerage commission, finder's fee, referral fees, etc.) to anyone not licensed as a broker under this division, except for those

exempt persons as provided for in section 1451 of the Department's regulations (Cal. Code Regs., tit. 10, § 1451)." As a preliminary matter, CFSP notes that its research has indicated that section 1451 was adopted as an emergency regulation in 1971 but was never finalized. Thus, under Government Code section 11346.1(e), this regulation ceased to be effective by 1972 at the latest. In addition, there are years of ongoing legal disputes between the lender, broker, finder, and lead generator industry that the Department packed into the last four lines of this proposed instruction. In its briefest form, it breaks down as follows.

The CFSP states that, beginning in about 2015, the Department began to take issue with CFL licensees' use of lead generators and other loan finders. The Department's position may be distilled into an assertion that any entity that receives compensation for a loan referral is a "broker" under Financial Code section 22009. The Department resisted all industry efforts to establish a baseline definition of define the term "brokering;" to distinguish across the spectrum of (1) mere introduction referrals; (2) referrals in which qualification or screening was done in connection with such referrals, and (3) referrals in which information was collected on potential applicants and forwarded to lenders. The Department steadfastly refused to acknowledge the First Amendment issues arising out of the first category; the existing California Supreme Court case law permitting the second category; and the absence of regulatory guidance pertaining to the third category. The Department also has refused to acknowledge that the lending business in California has changed significantly over the years, such that consumer borrowers are generally no longer charged broker fees by various intermediaries providing loan referrals. In addition, the Department has steadfastly refused to work with licensees in determining how the broker disclosure language of the existing CFL (Financial Code sections 223397(a) and (b) and 22338) is to be modified to represent current business reality.

Thus, according to the CFSP, the blanket statement "that a finance lender may not pay compensation for brokerage services (i.e., brokerage commission, finder's fee, referral fees, etc.) to anyone not licensed as a broker under this division, except for those exempt persons as provided for in section 1451 of the Department's regulations" is an inaccurate statement of law and seeks to continue the Department's efforts at regulatory overreach through the device of assent obtained under duress: i.e., the necessity of obtaining a CFL license, or of settling an unmeritorious enforcement action in view of the overwhelming disparity of negotiating power between a licensee and the Department. It also seeks to rely on an invalid regulation, as noted above.

The CFSP states: What the Department should do here is what it should have done at some point since 1971: develop and promulgate a regulation that accurately and fairly distinguishes among marketer, finder, and broker activities, in a manner that protects consumers, respects existing law, and fosters the availability of credit to Californians; and then provide an opportunity for notice and comments by impacted licensees. The Department of Real Estate has had such a regulation for decades, at California Code of

Regulations title 10, section 2841, which would serve as an appropriate model. But the language objected to here does not do that and is directly contrary to the California case law providing that loan finders need not be licensed in order to collect finders' fees, set forth by the California Supreme Court in *Shaffer v. Beinhorn* (1923) 190 Cal. 569; in *Tyrone v. Kelley* (1973) 9 Cal.3d 1; and in subsequent cases. The Law Offices of Paul Soter believe that the Department lacks the authority to promulgate a regulation that contravenes either the First Amendment to the United States Constitution or California case law, and that this language must be removed from the proposal on that basis.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: Item 6 of the Execution Section: Loan Referrals. This area is as muddled for certain commercial lenders as it is for consumer lenders. And, likewise, the Department's interpretation of the vague language in the CFL, drafted in a very different economic era, is problematic for many commercial lenders.

Response No. 3.1422.01: The Department's rulemaking does not amend the language in item 6 of the Execution Section regarding referrals, and the rulemaking does not amend section 1451 of the rules. The only substantive amendment in item 6 strikes an inaccurate clause stating that loans will only be brokered to lenders licensed pursuant to the California Finance Lenders Law. The revised language clarifies that the applicant will maintain any license necessary to broker loans to a lender not licensed as a finance lender. The Department will take under consideration the recommendation to develop and promulgate a regulation regarding marketer, broker, and finder activities, but this is not that rulemaking action. The Department has considered the comment and determined that the concerns raised are not related to the change proposed by the Department. Therefore, the Department is not amending the language.

Comment No. 3.1422.02: CFSP disagrees with item 8 of the of the application, regarding other business at a CFL location. According to CFSP, the proposal adds a new certification, as follows: "Financial Code section 22154 requires written authorization from the Commissioner of Financial Protection and Innovation to conduct non-CFL business from a CFL-licensed location. Check the appropriate box. Describe, if applicable, any other business that will be conducted from the same location as the CFL-licensed business in sufficient detail that will allow the Commissioner of Financial Protection and Innovation to find that the character of the other business is such that the granting of authority to conduct other business at a CFL-licensed location would not facilitate evasions of the CFL or its rules and regulations. If none, so state." However, the actual item 8 on the application form expands the current language to read as follows: "Does the applicant conduct or intend to conduct any other business at the applicant's proposed licensed place of business (Item Number 3 above)? If yes, describe any business being conducted or planned to be conducted on the applicant's premises in sufficient detail that will allow the Commissioner of Financial Protection and Innovation to find that the character of the other business is such that the granting of authority to conduct other business at a licensed location would not facilitate

evasions of the California Financing Law or its rules and regulations. If the Commissioner of Financial Protection and Innovation's authorization is not required because the products or services are of a supervised financial institution affiliated with the applicant, so indicate." The CFSP does not intend to belabor this language here. The CFSP notes, however, that the language of section 22154 was incorporated into the CFL unchanged from a provision in the Personal Property Brokers ("PPB") Law as enacted in 1939. That language was intended for one specific purpose: to prevent high-pressure cross-selling of non-loan products at licensed PPB locations. It was not, and could not, have been intended to apply to licensed locations located in other states, online activities, or even mail activities. There was, in 1939, no interstate consumer lending, no online lending, and not even mail lending. Thus, while this language is unremarkable and unobjectionable on its face, the CFSP notes that the Department has sought to assert expansive interpretations of this statute not supported by the plain language of the statute, nor the context of the statute as enacted.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *Item 8 of the Execution Section: Other Business at CFL Location.* The Department's interpretation of section 22154 of the CFL, also drafted for a specific purpose in a very different economic era, is problematic for many commercial lenders.

Response No. 3.1422.02: The Department has reviewed the comments and the language in the rulemaking action. The Department believes the language in the rulemaking action is consistent with the statute. Financial Code section 22154 requires the Commissioner's approval for other business to be conducted at the same location as the making of loans, and the amendment to item 8 of the application was intended to set forth the standard for the approval of that other business and alert the public that a specific finding is required. The Department does not believe any change to the rulemaking action is necessary.

Comment No. 3.1422.03. CFSP states that the proposal would add the following to this regulation and to Exhibit M of the application: "The organizational chart shall identify the principal officers, directors, managing members, general partners, and trustees, as applicable, for each entity owning or controlling 10 percent or more of the outstanding interests or outstanding equity securities of the applicant." This creates two new major issues for applicants. First, it increases the amount of ownership information a licensee must collect and disclose in connection with an application. At present, such information is required as to the applicant, but not as to each of its 10 percent owners, unless those owners are to be actively involved in managing the licensee's California business. Thus, this new requirement could increase the amount of information the applicant is required to submit, and the Department is required to review by as much as 900 percent for an applicant that had nine corporate owners, each holding 11 percent of the applicant's shares. Such arrangements are fairly common in the context of commercial lending entities.

Second, it is not clear as to what is meant by “as applicable” in this context. That is hugely important for assessing what information needs to be compiled and reported, and there is no clarity provided as to that question. This proposed requirement needs some work; needs to be explained as required by the APA; and needs serious engagement with stakeholders to determine what the Department needs and why the most practical way is to provide that information. The Department should withdraw this portion of the proposal and rework it into something reasonable and realistic, in compliance with the APA.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *proposed revisions to California Code of Regulations, title 10, section 1422(a)(7): New Requirements for Granular Disclosure of Ownership of 10 Percent or Greater Percentages of Applicants.* This provision is burdensome and unnecessary.

Response No. 3.1422.03: The Department disagrees with description of the existing application requirement. Exhibit C of the existing CFL application provides that if an entity owns or controls 10 percent or more of the applicant, a Statement of Identity Questionnaire and fingerprints must be submitted for each officer, director, general partner, or managing member, as applicable, although the Commissioner may waive this requirement if it is determined that further investigation is not necessary for public protection. This requirement is substantially more burdensome than simply identifying these persons in Exhibit M. Through this rulemaking action, the Department has eliminated the requirement that these individuals submit Statement of Identity Questionnaires or fingerprints, and instead required mere ownership disclosure in Exhibit M. The allegations regarding the increase in work appear questionable. However, on or after July 1, applicants will be filing through NMLS. To address CFSP’s concerns, the Department has changed the parallel provision under subparagraph (a)(7)(B) of section 1422.5 of the rules to only require this information upon request of the Commissioner, where additional information is necessary to investigate the applicant or owners, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting reasons for denial are present. Finally, the phrase “as applicable” is in the existing application and existing regulations, and the Department has not encountered an applicant or licensee who did not understand its meaning. Consequently, the Department disagrees that the term is vague.

Comment No. 3.1422.04: CFSP states that subparagraph (a)(7)(F) adds a new requirement, again with no explanation as to why the information is needed, or how it will be used: “(F) Each business entity applicant shall upload to NMLS a state-certified copy of its formation documents, including any subsequent amendments, relevant resolutions, and a list of any name changes.” This granular level of corporate information has never been required for licensees. Again, there has been no explanation of the purpose of this increase in the burden upon applicants, nor as to how this information will be used. Will an application be rejected because the Department

determines its articles of incorporation or bylaws to be deficient? Why does the Department need corporate resolutions? And what is a “relevant resolution?” It would appear that the Department has not considered the cost of this significant new burden upon applicants, or at least the proposal does not indicate that it has done so.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *proposed revisions to California Code of Regulations title 10, section 1422(a)(7)(F): Uploading of Documents.* This provision is burdensome and unnecessary.

Response No. 3.1422.04: The Department acknowledges the concerns and has amended the requirement to no longer require the information with an application. Since the Department on occasion asks for formation documents to understand the structure of the applicant, the Department has changed the provision to only require the documents on request, where additional information is necessary to investigate the applicant, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting a reason for denial are present.

Comment No. 3.1422.05. CFSP indicates the Department’s proposed penalty of perjury requirement is unworkable and unreasonable. Specifically, the Execution Section of the CFL license application, set forth in California Code of Regulations, title 10, section 1422(a), requires the natural person who signs the application on behalf of the applicant to certify, under penalty of perjury, a number of assertions. Those include the following: (1) That the signatory has familiarized themselves with the CFL and its regulations, even though those regulations are inaccessible; and (2) that the signatory is responsible for future compliance. With regard to the signatory’s verification that they have reviewed the CFL’s regulations, the CFPS strongly suspects that every signatory is a perjurer. Those regulations are essentially completely inaccessible. In order to read them, it is necessary to go on to Westlaw, access each section individually, and read each one separately. Unlike, for example, the Department of Real Estate (see https://www.dre.ca.gov/files/pdf/relaw/2019/regs.pdf) or the Money Transmission Section of the Department (see https://dfpi.ca.gov/money-transmitter-division/) the Department does not make its CFL regulations accessible on its website nor through any other single source. Therefore, this requirement creates a statement that the Department can use at will to bring pressure to bear on the signatory, or the licensee, during settlement negotiations. Accordingly, either all regulations must be easily accessible, or this requirement must be deleted. With regard to item (2), the signatory must personally attest, under penalty of perjury, that the applicant will comply with over 33 future actions, including, for example, future compliance with the invalid regulation at California Code of Regulations, title 10, section 1451; that the applicant company will maintain adequate staff to meet the requirements of the California Financing Law; and that the applicant company agrees to comply with the requirements of the CFL, the rules adopted, and the orders issued by the Department. Therefore, if the signatory leaves the company’s employ and the Department asserts a technical violation of one of

the unclear provisions of the CFL or a regulation, the Department can threaten perjury charges against the signatory (and has, on occasion, done so). This clearly will not stand up to the most basic notions of fundamental fairness and will discourage applicants' executives from signing the application. Accordingly, the application form should be redrafted to achieve a reasonable end: to certify the accuracy of the information provided in the application to the best of the applicant's knowledge. This could easily be done by simply mirroring the certification language of the Statement of Identity and Questionnaire: "I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." In contrast to the verification language of the Execution Section, this language is clear, concise, and reasonable. It relates solely to information provided to the Department by a natural person.

Comment No. 3.1422.05. The Department has not proposed changing this Execution Section in this rulemaking action. Therefore, the Department has determined no change is necessary. However, the Department will continue to consider the comments as it transitions to NMLS and streamlines the licensing process.

Section 1422.4. Electronic Filings

Comment No. 3.1422.4.01: CFSP indicates that the first sentence of paragraph (b)(3) will, if adopted, require all CFL licensees to submit complete new CFL license applications through NMLS by December 31, 2021. This is both burdensome and unrealistic (particularly since it would appear that the Department will lack the ability to process the resulting approximately 7,000 applications). It is unclear what benefits the Department will derive from this requirement, and it will be a significant burden on existing CFL licensees. It appears that this subsection contemplates an avalanche of unnecessary applications that the Department lacks the current capacity to process or review, but that will nonetheless create significant additional and unnecessary expense for current licensees. And, again, the Department has failed to address either the basis for this new requirement or the compliance costs to licensees.

CFSP suggests a more realistic option would be for the Department to promulgate, and then require, a short-form license application ratification to be submitted by all licensees by some realistic deadline. The benefits of this will be two-fold: less burden and cost to the CFL licensees, and less burden and cost to the Department.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *proposed revisions to California Code of Regulations title 10, section 1422.4(b)(3). New License Applications from All Licensees.* This provision is burdensome and unnecessary.

Response No. 3.1422.4.01: The Department agrees with CFSP's points about relicensing. The Department intends to use a short-form process – all of the CFL licensees are already licensed, so the Department does not intend to relicense them. But the licensees must create new license records by submitting an MU1 company form

in NMLS. To address CFSP's concerns, the Department has added subdivision (e) to section 1422.5, clarifying that a licensee does not need to resubmit documents that the Department has on file, unless the licensee is updating a record.

Section 1422.5. License Application through NMLS

Comment No. 3.1422.5.01: Paragraph (a)(6): According to CFSP, historically, the business plan has been a very general plan consisting of a few sentences generally stating the nature of the lending or brokering activity contemplated by the applicant. Here, however, the Department proposes to expand this requirement into an extremely detailed set of information points which appear aimed entirely at small dollar consumer loans and, to some extent, co-branded loans or loans made by a bank which are marketed and/or serviced by a non-bank entity. The Department has failed to address either the basis for this new requirement or the costs to licensees of compliance imposed by this significant new requirement. Accordingly, the Department should withdraw this portion of the proposal and rework the concept into a requirement that is reasonable and realistic.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *proposed revisions to California Code of Regulations title 10, section 1422.5(a)(6): New Requirements for Business Plans.* This provision is burdensome and unnecessary.

Response No. 3.1422.5.01: The current application asks the applicant to provide a short description of how the applicant plans to conduct business but provides little guidance on what on should be provided. The current application indicates that an applicant is to include any information necessary for the Commissioner to understand the type of business that the applicant plans to conduct under the license. This vague standard results in some applicants submitting substantial marketing plans, and other applicants providing a few lines. The information submitted to the Department is not uniform among applicants and is not always the information that the Department seeks. The result is that the Department is unable to identify market trends through application filings. The ten items in paragraph (a)(6) specifically identify the information to be provided. The Department seeks the information to understand the activities conducted under its license. The Department does not necessarily believe the ten items are extremely detailed, and the Department understands that companies may be in a development stage where decisions on the ten items may change. However, the Department still believes the information is helpful to provide the Department with information about the intended activities of its licensees, and to standardize the type of information provided to the Department. While some long-term industry experts may advise clients to only submit a few sentences, other applicants submit substantial plans. By identifying the specific information the Department wants, the Department is creating a level playing field for all applicants. Consequently, the Department is not amending the language.

Comment No. 3.1422.05.02: CFSP indicates subdivision (d) would add the following to this section: “In the event of a change to the information in the application, or exhibits thereto, the mortgage lender, mortgage broker, or mortgage lender and broker applicant or licensee shall file an amendment to the Form MU1, MU2, or MU3 through NMLS in accordance with the procedures in section 1409.1 of subchapter 6 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within five (5) days. Any change that cannot be reported through NMLS shall be reported directly to the Commissioner.” It is not clear whether this section applies only to information submitted in connection with a pending license application, or if it also applies to an approved application. If it applies after the license is approved, it will impose a very significant burden on licensees and create ambiguity regarding the time in which licensees should make any such submissions. Thus, clarification is needed. Also needed here is the explanation as to why the Department requires this information, and how it will be used, and whether the Department has considered the cost to licensees of providing this information on an ongoing basis.

The Law Offices of Paul Soter indicate that of particular concern to commercial lenders is the following portion of the proposal: *proposed revisions to California Code of Regulations, title 10, section 1422.5(d): Filing of Amendments.* This provision is burdensome and unnecessary.

Response No. 3.1422.05.02: This rule provides that changes previously submitted by postal mail to the Department must be submitted through NMLS after licensees transition onto the system. Currently licensees must update their applications when information changes. In the current CFL license application set forth in section 1422 of the rules, applicants agree to file with the Commissioner an amendment to the application prior to any material change in the information contained in the application for licensure, including without limitation, the plan of operation. Licensees routinely submit changes to information to the Department – a change to organization type, a name change, an address change, a surety bond change, a DBA change, a branch change, a branch manager change, a criminal disclosure change, an ownership change, a change to officers and directors, a plan of operations change, etc. It is a routine licensure requirement to update license information when the information on record with a regulator is no longer accurate. Subdivision (d) of section 1422.5 of these rules provides that the obligation to update the application is applicable to both licensees and applicants. Subdivision (a) of Financial Code section 22108 authorizes the Commissioner to require amendments, and subdivision (g) of Financial Code section 22101 expressly provides that the Department may require amendments and modifications to an application to be made through NMLS. The Department has considered the concerns and determined that changes are not necessary.

Section 1423. Short Form Application for Licensees Seeking Additional Location License; Form

Comment No. 3.1423.01: CFSP indicates item number 3 the form in section 1423 of the rules continues the current policy applicable to Individuals in Charge of a licensed CFL location. It states: Each office must have a person who is in charge. Provide the full name of the individual who will be in charge of this location. If the applicant has no middle name, indicate, e.g., "John [no middle name] Smith." The same concept is further clarified in the instructions as to Statement of Identity and Questionnaire submitted in connection short form applications: “Statement of Identity and Questionnaire: The individual named in Item Number 3 of the application must complete and submit a Statement of Identity and Questionnaire. If a Statement of Identity and Questionnaire has already been provided to the Department for the individual named in Item Number 3, there is no need to complete the form. The same individual cannot be in charge of multiple locations, and each location must have an individual in charge.” While this has been the Department’s historical position, this position has been a source of tension between CFL’s and the Department for many years. Licensees believe that one person can adequately supervise more than one license location. The Department, citing no empirical information, does not so believe. In this regard, the CFSP notes that a 2013 amendment to the Pilot Program for Increased Access to Responsible Small Dollar Loans, in effect since January 1, 2014, permitted licensees holding Pilot Program licenses to experiment with allowing one person to be the manager of multiple locations. Thus, for seven years, Financial Code section 22378 has provided that a CFL licensee: may appoint one or more branch managers with responsibility for multiple branch locations, subject to approval by the Commissioner, and a finding by the Commissioner that the centralized nature of underwriting and other key business activities performed by the licensee does not require a unique manager for each branch location, to ensure the protection of consumers who seek out loans from the licensee. The Commissioner may revoke this approval at any time, upon a finding that a unique branch manager at each branch location is required for consumer protection. Has the Department evaluated its experience with this experiment? If so, and the experience has been problematic, why has that information not been communicated to stakeholders? If that experience has not been problematic, then why does the Department maintain its previous position, which can be unnecessarily extremely expensive and operationally difficult for licensees? CFSP request this portion of the proposal be revisited.

Response No. 3.1423.01: The Department has not proposed a change to the language in CFSP’s comment and therefore the comment is outside the scope of this rulemaking.

Section 1425: Books and Records: To Be Maintained at the Licensed Place of Business

Comment No. 3.1425.01: CFSP indicates the proposal re-states the current, brick-and-mortar, paper-based rule: “Except as otherwise provided by section 22158 of the Financial Code, a finance company shall always maintain its books, records, and accounts at its licensed location.” It is unclear what this provision is included, given that

this is an age of electronic records or why the Department has not accounted for current recordkeeping processes in the proposal.

Response No. 3.1425.01: The Department agrees that the rule should be amended to modernize the rule and has revised the rule to recognize electronic records.

Section 1550. Advertising

Comment No. 3.1550.01: CFSP indicates the proposal adds the following language in Subsection (b): “Any advertisement proposed to be used by a licensee on NMLS, including a mortgage loan originator licensee, shall indicate the unique identifier of the licensee.” Again, why? The current rule requires full disclosure of the fact of CFL licensing, and CFSP is unaware of any problems that have arisen due to the fact that the current rule does not require disclosure of the CFL license number. If it is difficult for a member of the public to look up a license number by name on the Department’s website, the Department should fix its website rather than impose a somewhat burdensome requirement on its entire CFL licensee base. And, again, there is no indication that the Department has inquired into the cost of making this change to all existing advertisement materials. This observation is further supported by the gift in the next subsection (c) of the proposal to licensees who by advertise sending texts: “A written advertisement on an electronic advertising platform that is limited to 300 or fewer characters need not comply with this section, as long as the electronic advertisement contains a link, and the linked location contains the information required by this section.” Aren’t the customers who are likely to obtain their information from an electronic advertising platform the customers who are most in need of full disclosure of CFL licensing information? If the Department has determined that that is not the case, what is the basis for that determination, and why hasn’t it been shared with stakeholders?

Comment No. 3.1550.01: The Department proposed the change for uniformity but agrees that the burden may outweigh the benefit. Consequently, the Department has restored the existing language in subdivision (b).

Section 1620.02. Definitions

Comment No. 3.1620.02.01. According to PACE Funding, the most recent draft has eliminated the language in section 1620.02(a)(2) creating an exception to the definition of a PACE solicitor in instances where the homeowner is the one who has reached out and initiated the inquiry about PACE. Without that exception, it is not foreseeable who might be deemed a solicitor, and in fact it opens the possibility of situations where employees could unexpectedly be deemed a solicitor in situations where it was not intended. For this reason, the exclusion where homeowners initiate the conversation should be reinstated.

Response No.3.1620.02.01: The language was removed because it adds ambiguity to what constitutes a PACE solicitor. If a property owner is offered PACE financing by a contractor, that contractor must be enrolled as a PACE solicitor. If the property owner is

seeking PACE financing, the contractor would need to be enrolled as a PACE solicitor before providing the financing.

Comment No. 3.1620.02.02: The Consumer Coalition indicates that with respect to the further changes the Department has made to subdivision (b), it is concerned that these changes once again create uncertainty that could open the door to the participation in core PACE solicitation activities by unenrolled individuals working with or for enrolled solicitors or solicitor agents. The Consumer Coalition has two objections to the current amendments: First, the Consumer Coalition believes it is unnecessary and unwise to create a new category of participants in PACE assessment transactions whose conduct is not supervised or controlled by a program administrator, either directly or via enrollment as a PACE solicitor or solicitor agent for the program administrator. Second, as currently drafted, this provision allows such unenrolled individuals to engage in "communication with a property owner to obtain information necessary for the processing of an application for an assessment contract, or for an assessment contract". Given that such communications regarding a PACE assessment application or contract could easily stray into matters relating to the terms or characteristics of a PACE assessment, the Consumer Coalition believes that such communications should be limited to employees of program administrators or enrolled solicitors or solicitor agents. Accordingly, the Consumer Coalition recommends the following revisions to this provision:

> *(b) "Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of an assessment contract, or an application for an assessment contract, under a PACE program, and includes communication with a property owner ~~to~~ solely for the purpose of obtaining information necessary for the processing of an application for an assessment contract, or for an assessment contract, ~~when performed by an individual under the supervision and direction of an enrolled PACE solicitor, an enrolled PACE solicitor agent, or a program administrator.~~ "Administrative or clerical tasks" also means customer and back-end technical support on the electronic, web-based or database elements of PACE applications. "Administrative or clerical tasks" do not include any of the activities described in paragraph (a)(1) of this rule.*

Response No. 3.1620.02.02: The Department has considered the comments but does not believe additional changes are necessary. Subdivision (b) defines "administrative or clerical tasks" for purposes of the exclusion from the PACE solicitor and PACE solicitor agent definitions in paragraph (b)(3) of Financial Code section 22017, which excludes "a person who performs purely administrative or clerical tasks." As noted earlier, limiting the provision to employees of program administrators is not consistent with section 22017 because employees of program administrators have a separate exclusion under paragraph (b)(1) of Financial Code section 22017. In addition, the Department believes that since "administrative or clerical tasks" do not include the activities described in

paragraph (a)(1) of section 1620.02 of the rules, a person relying on the “administrative or clerical” exclusion would be subject to enrollment for engaging in acts captured under the definition of “to solicit a property owner to enter into an assessment contract.” Therefore, the proposed amendments are not necessary.

Comment No. 3.1620.02.03: The Consumer Coalition provides that in this most recent round of modifications, the Department removed subparagraph 1620.02(n), which had provided a definition for “PACE-authorized improvement” and replaced the term “PACE-authorized improvement” throughout the proposed rules with the undefined term “efficiency improvement”. The Consumer Coalition believes use of the term “efficiency improvement” in this manner could create unnecessary confusion because (1) the term “efficiency improvement” is defined and/or used in a variety of ways in the various statutes governing PACE activities, (2) not all purported “efficiency” products are in fact energy efficient or eligible for PACE financing; and (3) not all improvements eligible for PACE financing involve energy efficiency. The Consumer Coalition believes that this term should be defined in the regulations, and that it would be preferable to use wording other than “efficiency improvement” for this purpose. The Consumer Coalition recommends that the Department either restore the defined term and definition in prior subparagraph 1620.02(n), which exactly tracks the types of improvements made eligible by statute for PACE financing, or specify and define another term, such as “authorized improvement” by reference to the improvements listed in Streets and Highways Code section 5902(a), which are: section 5898.20(a)(2) [installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property pursuant to this chapter], 5899 [seismic strengthening improvements], 5899.3 [electric vehicle charging infrastructure] and 5899.4 [wildfire safety improvements]. Streets and Highways Code section 5898.20(c)(1) defines “efficiency improvements” as “permanent improvements fixed to residential, commercial, industrial, agricultural, or other real property”. Streets and Highways Code section 5902(c) defines “efficiency improvement” as “one or more permanent improvements fixed to real property”. Finance Code section 22019 defines “efficiency improvement” as “one or more permanent improvements fixed to real property financed through a PACE assessment”. The term is also used in a somewhat circular fashion in other relevant statutory provisions.

Response No. 3.1620.02.03: The Department agrees with the ambiguity but is not persuaded that introducing a new term in the regulations solves the ambiguity. To the contrary, it exacerbates it, given the manner that “efficiency improvement” is weaved throughout the law. Therefore, the Department is retaining the phrase defined in the CFL, and stakeholders can consider whether a statutory fix is necessary.

Section 1620.05. Advertising Standards

Comment No. 3.1620.05.01: The Consumer Coalition thanks the Department for clarifying in the regulations 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.

Response No. 3.1620.05.1: The comment is noted.

Section 1620.06. Assessment Contracts and Disclosures

Comment No. 3.1620.06.01: The Consumer Coalition appreciates the Department's proposed changes to subdivision (a). The Consumer Coalition believes the Department's requirement in section 1620.06(a)(2) that property owners opt out of printed paper copies of Financing Estimates and Disclosures by signing a printed paper document will reduce the amount of fraud and misunderstanding in the PACE program. The Consumer Coalition recommends that the Department also include this requirement—that property owners opt out of printed paper copies only by signing a printed paper document—to the provisions concerning the Right to Cancel disclosures and the assessment contract. The Consumer Coalition further recommends that the Department require the printed paper opt out to be on a separate page from any other agreement or document and state clearly in large font that the property owner is not required to transact electronically to participate in the program.

Response No. 3.1620.06.01: The Department has considered the recommendations and does not believe changes are necessary at this time.

Comment No. 3.1620.06.02: The Consumer Coalition applauds the Department for its proposed changes to this provision. The Consumer Coalition believes the Department's requirement that program administrators take reasonable steps, and that those steps include at least photo ID or two-step authentication and one more measure, will prevent many (but not all) of the electronic signature fraud practices that our clients have encountered. However, the Consumer Coalition is concerned that this provision is ambiguous. Although the Consumer Coalition reads the provision as requiring "reasonable steps," and then articulating a necessary minimum requirement that may or may not suffice as "reasonable steps" depending on the circumstances, the Consumer Coalition is concerned that the construction may lead some program administrators to believe that taking the minimum steps outlined is sufficient in all cases. The Consumer Coalition does not believe this is the Department's intent, and it recommends modifying this provision to make clear that the required steps are necessary but not sufficient for having taken reasonable steps. The Consumer Coalition recommends the following alternative structure: *(d)(1) The program administrator shall take reasonable steps to ensure the signature belongs to the property owner. (2) If a signature is not notarized, the program administrator shall confirm the signature of the property owner through the process identified in paragraph (A) of this subdivision in addition to one or more of the processes identified in paragraphs (B) through (D) of this subdivision. (A) Confirming the identity of the property owner through photo or other unique identification presented by the property owner or a two-step authentication process. (B) Tracking IP geolocation information. (C) Sending a confirmation letter by postal mail. (D) Confirming the identity of the property owner and that the property owner will be the person signing the assessment contract during the oral confirmation of key terms.*

Response No. 3.1620.06.02: The Department has made the requested change.

Comment No. 3.1620.06.03: The Consumer Coalition appreciates the Department's efforts to ensure that property owners consent to a PACE solicitor agent's presence on the oral confirmation of key terms calls before proceeding. The Consumer Coalition also appreciates the Department's inclusion of the requirement that program administrators inform the homeowner that they cannot confirm the property owner understands the terms unless the property owner can respond without the assistance of the solicitor agent. However, the Department's proposed rule still allows PACE solicitors and solicitor agents to participate in the key terms calls. Because of this, the proposed rule does not go far enough to protect homeowners from PACE solicitors or solicitor agents coaching homeowners through the calls, which is a common form of abuse that has been seen time and time again. Practically speaking, very few if any property owners will ever object to the presence of PACE solicitor agents on the calls. In many cases the PACE solicitor or their agent is already in the room with the property owner and asking them to leave would create an uncomfortable situation. Based on experience, PACE solicitors often ingratiate themselves as the property owner's friend and someone just trying to help, rather than disclosing that they are a beneficiary and counterparty to a serious financial transaction. PACE solicitors tell the property owners to trust them, and not to worry too much about what is said on the call. Most property owners initially have no reason to be skeptical of what PACE solicitors or their agents are telling them about PACE, and there are dozens of stories of property owners being coached through these calls by PACE solicitor agents to "just say yes" so they can qualify for what often turns out to have been misrepresented as a "free" product. It is therefore unlikely that a property owner would object to the PACE solicitor agent's presence, even though it is almost always in their best interest to do so. In the Consumer Coalition's view, the most practical solution to this problem is to forbid PACE solicitors and PACE solicitor agents from participating in the oral confirmation of key terms calls altogether. Property owners may authorize the inclusion of others, such as family members, in these calls, but allowing PACE solicitors or their agents to participate creates the perception that they are acting in the property owners' interests regarding PACE financing. Property owners frequently believe that the PACE solicitors and PACE solicitor agents are on their team, helping them understand and evaluate the terms of the program without self-interest. This is a harmful and incorrect perception. To ensure the best chance for property owners to receive and comprehend the important information disclosed on the oral confirmation of key terms calls, PACE solicitors and PACE solicitor agents must be prohibited from participating. Since part of the reason for the confirmation of key terms call is to ensure that a property owner understands the true terms regardless of what they may have gleaned from the solicitor or solicitor agent, there is no legitimate purpose to be served by solicitors and solicitor agents being present on these calls. For these reasons, the Consumer Coalition again recommends that the section 1620(e)(3) and (e)(4) be combined and revised to read as follows: *A program administrator may*

not proceed with the oral confirmation of key terms if the PACE solicitor or PACE solicitor agent is present.

Response No. 3.1620.06.03: These comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response Nos. 1620.03.03 and 1620.03.04, above.

Section 1620.07. Books and Records

Comment No. 3.1620.07.01: The Consumer Coalition appreciates the additional requirements placed on program administrators to retain records. In addition, the Consumer Coalition asserts the records maintained pursuant to sections 1620.07(b)(1)(B) and (C) should be publicly available on the Department of Financial Protection and Innovation website through a searchable database. The Consumer Coalition believes these records are important to have publicly available as they define the relationships between the various PACE entities and identify each entity's role and responsibility within the program. As public agencies are parties to the assessment agreements and must approve their content in public meetings and/or adopt them for use through processes subject to the Public Records Act, there cannot be any valid concerns regarding confidentiality or proprietary information in making the agreements publicly available. Furthermore, though the program administrators, PACE solicitors and solicitor agents are now listed on the Department website, information on whether a program administrator, PACE solicitor, solicitor agent has been suspended, terminated, or placed on probation should also be made publicly available. Financial Code section 22690.5(b) already requires the Department to "maintain on its Internet Web site the identities of PACE solicitors and PACE solicitor agents ordered to discontinue engaging in the business of soliciting property owners to enter into assessment contracts." Creating a publicly available database of these records is valuable because it would allow consumers and consumer advocates to better assess how program administrators have deceived consumers and how responsive program administrators have been to past complaints. Similar to the CFPB's consumer complaint database, a searchable database would allow the public to know what is being complained about and why. The Consumer Coalition recommends the database contain the type of complaint, the date of submission, the consumer's zip code, and the company that the complaint concerns. The database should also include information about the actions taken on a complaint – whether the company's response was timely, how the company responded, and whether the consumer disputed the company's response. Much like the CFPB's consumer complaint database, the database does not need to include confidential information about a consumer's identity. This type of database would not only help to inform consumers before they obtain a PACE Assessment, but it would also provide the Department with insight on issues associated with PACE while improving the transparency of PACE financing. The Consumer Coalition appreciates the requirement for the program administrator to retain the audit trail of the electronic signatures used in

the PACE transaction. However, the Consumer Coalition asserts that all records required by section 1620.06 should also be included in light of the extensive evidence that exists showing the creation of email addresses to be used for PACE transactions, as referenced in its previous comment letter. The Consumer Coalition also asserts program administrators should retain information on the quality of work done using PACE financing including home improvement contracts, invoices, and descriptions of work associated with each assessment, and all permits and inspection reports. As reflected in the stories collected by the National Consumer Law Center and the Los Angeles Times, many PACE borrowers have complained about incomplete or shoddy work. Accordingly, program administrators should retain the aforementioned documents. Although section 1620.07(b)(2)(C) states program administrators should retain documentation aimed to determine whether a homeowner can afford the PACE loan, it fails to state with specificity the documentation needed to assess a property owner's ability to pay including: mortgage-related debt used in determining the amount of financing and program eligibility; verification the property does not have a reverse mortgage/home equity conversion mortgage recorded against the property; all notices and correspondence sent to or from a mortgage lender; and any credit reports used in determining eligibility. The legislature has made clear the paramount importance of determining whether a borrower can afford a loan. For instance, Financial Code section 22684 lists criteria a borrower must satisfy to qualify for a PACE assessment. The criteria include whether there have been any late payments on property taxes, an absence of any outstanding liens in excess of $1000.00, no notices of default recorded on the property, and nine other criteria. Despite the requirement to assess whether a property owner can afford a PACE assessment, a common complaint among PACE borrowers is that they were persuaded into taking a loan they did not understand and could not afford. Therefore, requiring program administrators to retain these records is both necessary and justified. With regard to paragraph (c)(2), the Consumer Coalition again recommends that all relevant records be maintained for five years so they remain available for the entirety of the statute of limitations for any possible actions. Additionally, it generally takes a long time for people to realize they have been defrauded and have a PACE assessment, seek assistance, and initiate action.

Response No. 3.1620.07.01: These comments regarding making documents and information available on the Department's website have been taken under consideration by the Department. The request for a database similar to the CFPB's Consumer Complaint Database appears to be a new request conflated with the request for a database of disciplinary actions, which the Department already maintains on its website, but which is not linked or linkable to the PACE solicitor and PACE solicitor agent searches. The request for a database similar to the CFPB's Consumer Complaint Database has been taken under consideration and does not require an amendment to the rules. The comments, as a whole, are not related to changes proposed during this comment period, and the Department refers to Response Nos. 1620.07.02, 1620.07.04,

2.1620.07.03, 2.1620.07.04, 2.1620.07.05, and 1620.07.14 for prior discussions of the comments.

Section 1620.08. Complaint Processes and Procedures

Comment No. 3.1620.08.01: The Consumer Coalition provides the following comments. PACE regulations should promote accountability and make it possible for property owners to obtain redress for problems quickly and easily. To date, when property owners have problems with PACE-financed improvements and/or PACE assessment contracts, they frequently have trouble finding someone to complain to and getting that party to act to address the problem(s). The Consumer Coalition appreciates the Department's effort in the current proposed rule to ensure property owners will be able to rely on definite timelines and will be able to request reconsideration of a final decision regarding their complaint. However, the Consumer Coalition remains concerned that the proposed rules still do not adequately delineate the scope of program administrators' responsibilities, particularly as they relate to the actions of PACE solicitors and solicitor agents, and do not provide a sufficiently clear and enforceable set of procedures for how complaints should be handled. Although the Department has made clear that use of the complaint process does not restrict property owners' other legal avenues, the new draft rules continue to place too much discretion with the program administrators to determine how complaints are resolved. Further, without an option to escalate complaints directly to the Department, property owners will be forced to restart their complaints completely if the program administrators fail to resolve them. This is an unnecessary burden. In addition, the Consumer Coalition is concerned about the absence of any independent oversight of the complaint process. Section 1620.08(a)(1) and (a)(2): A previous version of the proposed rule provided for "resolution" of property owner complaints. In the Consumer Coalition's comments on the last two proposed modifications, it emphasized that any "resolution" must involve agreement from property owners that their issue has been resolved or must include an automatic escalation to the Department for circumstances in which the property owner remains unsatisfied with the program administrator's decision. The Consumer Coalition is dismayed that, rather than providing for meaningful requirements and processes for the resolution of complaints, the current draft rules still place even more discretion at the hands of program administrators and further burdens on property owners. The current rules no longer require "resolution" of complaints, but only a "final decision" from program administrators. There are no enforceable requirements as to when a substantiated complaint must result in cancellation of the contract, nor is there automatic escalation for property owners who remain unsatisfied. Rather, the burden is placed on property owners to restate their complaint to the Department if they receive a final decision that does not resolve their issue. The Consumer Coalition again recommends that the Department require program administrators to report all final decisions to the Department within thirty days of the decision, and to include a statement obtained from the property owner, if they wish to give such a statement, regarding whether the property owner is satisfied with the final decision and why or why not.

Response No. 3.1620.08.01: These comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period and the Department refers to Response Nos. 1620.08.01, 1620.08.02, 1620.08.06, and 1.1620.08.04, above.

Comment No. 3.1620.08.02: Section 1620.08(a)(3): The Consumer Coalition recognizes and appreciates the Department's continuing efforts to clarify what constitutes a complaint. However, the changes in the third modifications may unduly restrict full consideration of relevant complaints. The Consumer Coalition remains concerned that conditioning whether a communication counts as a complaint on what steps the program administrators must take to resolve the issues raised will create unpredictability for homeowners and difficulties for regulators. Further, the addition of the phrase "related to PACE financing" in section 1620.08(a)(3)(D) introduces an unnecessary requirement that may prevent the full consideration of issues relating to solicitor and solicitor agent wrongdoing. In addition to causing difficulty and uncertainty for complaining homeowners, these standards, which leave complaint designation largely up to the discretion of the administrators, will create difficulties for regulators in attempting to apply consistent standards across administrators. The Consumer Coalition again strongly recommends adopting a positive definition of "complaint" to make clear that all communications from dissatisfied property owners must be handled through the complaint resolution process. The Consumer Coalition recommends that the Department follow the definition of "consumer complaint" used by the CFPB, and alter the proposed section 1620.08(a)(3) to read: Inquiries, questions, requests, criticisms, and correspondence not constituting a complaint requiring resolution need not be included within the complaint process. Complaints include all submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a property owner's personal experience with a PACE program or PACE assessment, including program administrators, solicitors, solicitor agents, advertisers, and all related entities.

Response No. 3.1620.08.02: The Department has considered these comments and is keeping the proposed language. The phrase "related to PACE financing" is reasonable because that is a program administrator's licensed activity. Regarding the definition of "complaint," please see Response No. 1620.08.06, above.

Comment No. 3.1620.08.03: Section 1620.08(b)(3): As the Consumer Coalition noted in its September 18, 2020 comments, the Consumer Coalition recognizes and appreciates the Department's continued effort in section 1620.08(b) to ensure that property owners have adequate access to information about submitting a complaint. However, the revisions to section 1620.08(b)(3) may still fail to ensure language access for all property owners. This provision still requires program administrators to make the complaint process available to complainants "in the language used to solicit the property owner to enter into the assessment contract, the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred

language.” This presents several concerns. For example, how can administrators know what language was used to solicit the property owner before making the complaint process available in that language? The Consumer Coalition understands that the Department may be reluctant to burden the program administrators with making the complaint process available in every conceivable language. However, tying the complaint process language options to the language of the transaction will be difficult to administer, and will risk shutting out homeowners who have suffered the most serious fraud. For this reason, we recommend that the Department require program administrators to make the complaint process available in at least the five most commonly spoken languages in each county where the program administrator operates.

Response No. 3.1620.08.03: The comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response No. 2.1620.08.03, above.

Comment No. 3.1620.08.04: Section 1620.08(d)(4): The Consumer Coalition is dismayed that the Department removed the provision requiring expedited processing for complaints where homeowners are at risk of having the PACE assessments at issue paid by a third-party lender or servicer. In the Department’s second modifications to its proposed regulations, it added a provision requiring expedited review of complaints where a third-party lienholder has the right to advance payments for property taxes. As the Consumer Coalition noted in its September 18, 2020 comments, this was a correct and necessary addition because homeowners face substantially more burdens in resolving PACE issues with their mortgage servicers after the property tax payments have been advanced. Homeowners incur extra escrow charges once the amounts are advanced, and it can take several months and a significant amount of coordination to correct mortgage payments that have increased as the result of an invalid or erroneous PACE assessment. Expedited review of complaints in these cases is necessary to ensure that problems are addressed before the other lienholders get involved, and the costs and difficulty for homeowners increase. In the Department’s third modifications, it removed this essential provision. The current proposed regulation requires expedited review of complaints where a third-party lender or servicer has already advanced payments for property taxes, but not before they do so. Although it is essential that homeowners whose taxes have already been advanced get expedited review of complaints, it is no less essential that homeowners at risk of having their taxes advanced similarly get expedited review of complaints. Failing to require expedited review of complaints in these cases will result in more burdens and costs for homeowners and may lead to unnecessary foreclosures due to correctable errors. The Consumer Coalition recommends that the Department return to the language in its second modifications for this provision.

Response No. 3.1620.08.04: The Department has heard concerns from program administrators that the language is so broad, it could be read to apply to any assessment contract on a home that is subject to a mortgage. The Department has

considered both positions and is persuaded that the over inclusiveness of the expedited complaint process in the language advocated by the Consumer Coalition will mean no one has an expedited complaint. The purpose of the expedited complaint process is to provide a means to triage the most urgent complaints, and that cannot happen when every complaint falls under the expediated complaint process. Therefore, the Department declines to make the change.

Comment No. 3.1620.08.05: Section 1620.08(e)(1): As the Consumer Coalition noted in its September 18, 2020 comments, the Consumer Coalition supports program administrators being required to correct “errors” identified in the complaint process. However, the Consumer Coalition wishes to reiterate that not all “errors” between parties to a contract can be corrected, so these regulations should also specify errors which, if substantiated, require program administrators to cancel or otherwise release property owners from their obligations. For example, if a property owner is complaining that their PACE solicitor agent did not disclose the true terms of their PACE assessment, sending the property owner a packet of disclosures to “correct” that error does not address the underlying defect in the transaction. As another example, as PACE assessments require voluntary agreement by property owners, errors due to fraud or forgery of signatures or other aspects of the agreement cannot be “corrected” other than by voiding the assessment contract.

Response No. 3.1620.08.05: The comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response No. 1.1620.08.11, above.

Comment No. 3.1620.08.06: PACE Funding provides as follows. When a lawsuit or other formal legal action has been filed involving a PACE assessment, and the property owner and the program administrator are parties to the action, communication should take place within the legal action under rules and timelines that are set forth by the courts, the Code of Civil Procedure, and rules specific to other actions such as arbitration or other alternative dispute resolution procedures. In some instances, these disputes may also be governed by an already existing settlement agreement. Therefore, an exception is needed to cover these circumstances and PACE Funding would recommend that the following language be added to section1620.08(a)(3)(A): "(3)(A) Inquiries, questions, requests, criticisms, and correspondence not constituting a complaint requiring resolution need not be included within the complaint process. Inquiries, questions, requests, criticisms, correspondence, and complaints made by persons or representatives thereof who are plaintiffs in active litigation against a program administrator need not be included within the complaint process.” FortiFi makes the same request.

Response No. 3.1620.08.06: This request is not related to changes proposed during this comment period. However, the Department agrees with the change and has added similar language to the rules.

Comment No. 3.1620.08.07: PACE Funding provides as follows. Paragraph (b)(3) of the proposed rules now require that program administrators make the complaint process available to the property owner in the language used to solicit the property owner to enter into the assessment contract. This is problematic in that it assumes that the solicitor or solicitor agent used the property owners preferred language. Additionally, the program administrator would not know what language was used during solicitation without being told by the property owner. PACE Funding already asks the property owner what language they prefer and then conducts calls using that language. That process of honoring the property owner's language request, rather than trying to match the language of a conversation where the program administrator was not a party, is a much more reliable process that delivers the result of conducting the complaint process in the language that the property owner is most comfortable with. FortiFi requests the same change and argues that changing the requirement is in line with what the Legislature required. FortiFi suggests that for consistency with statute, the Department should revise the proposed rules as follows: "The program administrator shall make the complaint process available to a complainant in the language ~~used to solicit the property owner to enter into~~ of the assessment contract, used by the program administrator in the oral confirmation as required by section 5913(d) of the Streets and Highways Code, and, if supported by the program administrator, the property owner's preferred language." Ygrene recommends revising proposed section 1620.08(b)(3) to read as follows: "The program administrator shall make the complaint process available to a complainant in the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language."

Response No. 3.1620.08.07: The comments are not related to changes proposed during this comment period. However, the Department is persuaded that it should follow section 5913(d) of the Streets and Highways Code and has incorporated the concepts suggested into revised text.

Section 1620.10. Dishonest Dealings and Misleading Statements

Comment No. 3.1620.10.01: The Consumer Coalition provides as follows. The Consumer Coalition appreciates the Department's decision to strengthen protections for consumers by adopting the changes the Consumer Coalition previously recommended to sections 1620.10(a) and 1620.10(b)(9). Deleting the safe harbor provision throughout section 1620.10(a) should help keep program administrators from claiming legal protection for knowingly paying for underperformed work or for uninstalled or materially different products. Likewise, adding the "knew or should have known" standard in section 1620.10(a)(4) prevents program administrators from willfully hiding their heads in the sand by failing to request copies of the home improvement contracts and failing to require proof of work performed, products installed, and materials used. Additionally, clarifying section 1620.10(b)(9) removes confusion and avoids allowing PACE solicitors to assess whether a homeowner would be liable to make payments for efficiency improvements when they do not have the expertise to do so. The inclusion of these

changes improves homeowner protections from dishonest practices. The Consumer Coalition remains concerned, however, about other issues in this rule and recommends the following changes to strengthen the standards to which program administrators must adhere and ensure that their enrolled PACE solicitors and solicitor agents follow.

Section 1620.10(b)(6): After the first sentence, the Consumer Coalition again recommends adding the phrase: “A copy of the written representation, statement, or opinion of the Internal Revenue Service or applicable state tax agency about the tax treatment of a PACE assessment be provided to the property owner.” This will allow the homeowner to be able to review the actual text of the IRS’s or state tax authority’s statement to verify the veracity of the PACE solicitor’s claims regarding tax relief.

Section 1620.10(b)(11): The Consumer Coalition appreciates the addition of the requirement that the representation must be “otherwise lawful”, as it offers additional protections under the proposed regulations as currently written. However, the Consumer Coalition thinks that deleting both that phrase and the phrase “unless evidence supports the representation” is necessary to protect homeowners. A home improvement contractor’s door-to-door sales agent is neither qualified nor experienced in assessing whether a particular improvement will increase the market value of a home and removing the exceptions to subparagraph (b)(11) recognizes this reality. Moreover, the provision as currently drafted lacks a standard for evaluating and verifying whether evidence actually exists that supports the representation.

[Former section1620.10(b)(14)]: This protection was included in an early draft of the proposed regulations as section 1620.10(b)(14) but is not in the current version. The Consumer Coalition renews its recommendation to restore this provision to prohibit a contractor from “[i]nflating the price of an efficiency improvement above the market price range for such improvement because the improvement is financed through a PACE assessment.” Price gouging is a serious and frequent problem in the home improvement contracts/PACE assessments. Furthermore, PACE advertising includes promises of fair market pricing, but fair market pricing guidelines are not being enforced. This provision would simply require the enforcement of fair market pricing guidelines that administrators claim are already in place already.

Response No. 3.1620.10.01: Regarding paragraphs (b)(6) and (11), see Response Nos. 1620.10.13 and 1.1620.10.08. Regarding former section 1620.10(b)(14), the Department received valid concerns about the provision, set forth in Comment Nos. 1620.10.10 and 1620.10.17, and agreed with the concerns. Therefore, the Department removed the provision.

Comment No. 3.1620.10.02: According to Ygrene, proposed sections 1620.10(a)(2), (a)(3), and (a)(4) previously provided for more clarity regarding program administrators’ ability to rely on property owner statements. By removing this clarity, the “should have known” standard may place undue and arbitrary burdens on program administrators because it appears that they can no longer rely on property owner representations; but

they are also not at the property where they “should have known” that the work was “underperformed,” “uninstalled,” or is “materially higher in price from the product the PACE solicitor installs.” For clarity, Ygrene recommends two alternative approaches. First, revising proposed sections 1620.10(a)(2)-(4) to read as follows: “For purposes of this paragraph, the program administrator may rely on the representation of a property owner . . . if the representation is made directly to the program administrator through its portals, systems or by use of forms generated by the program administrator and not through a PACE solicitor or PACE solicitor agent.” Or second, revising proposed sections 1620.10(a)(2)-(4) to delete the “should have known” standard.

PACE Funding provides that a "should have known" standard raises more questions than it answers and leaves program administrators in the dark, never being entirely sure if they have complied with the regulation. For this reason, the "should have known" standard should be deleted, and the language should revert to the language of the second modifications to proposed text.

FortiFi suggests the “should have known” standard used in section 1620.10, subsections (a)(2), (3)(C) and (4) of the third modifications to proposed text is unreasonably broad and ambiguous. This language fails to give program administrators guidance as to when they will be deemed to have known that work was unperformed, products were uninstalled or that products installed were of lower value than those specified in the assessment contract. FortiFi suggests reinstating one example of a safe harbor that program administrators could use, but this time adding additional property owner signature or other identity verification measures similar to those the Department is proposing in section 1620.06(d). FortiFi thus suggests adding the following language to the end of sections 1620.10(a)(2), (3)(C) and (4): “For purposes of this paragraph, the program administrator may rely on a signed attestation by a property owner that the work is performed if 1) the attestation is provided directly to the program administrator and not through a PACE solicitor or PACE solicitor agent and 2) the program administrator confirms the signature of the property owner through the process identified in paragraph (i) of this subdivision in addition to one or more of the processes identified in paragraphs (ii) through (iv) of this subdivision. (i) Confirming the identity of the property owner through photo or other unique identification presented by the property owner or a two-step authentication process. (ii) Tracking IP geolocation information. (iii) Sending a confirming letter by postal mail. (iv) Confirming the identity of the property owner and that the property owner is the person who signed the attestation on a live, recorded phone call or videoconference.” Alternatively, the Department could delete “should have known.”

PACENation indicates the second modifications to proposed text provided more clarity around program administrators’ ability to rely on statements by the property owner made directly to the program administrator (and not through a PACE solicitor or PACE solicitor agent) that the project was completed, that a product was installed or that pricing in the assessment contract matches the product installed or the work performed.

PACENation suggests DFPI revert to the language included in these subsections of the second modifications to proposed text.

Response No. 3.1620.10.02: The Department has considered these suggestions but is not persuaded that the consumer harm being reported to the Department will be abated by any of the suggested approaches. Therefore, the Department declines to amend the rule.

Section 1620.11. PACE Solicitor Enrollment Standards and Processes

Comment No. 3.1620.1.01: Section 1620.11(a)(2): The Consumer Coalition reiterates its recommendation to delete the sub-clause that states program administrators can fund home improvement contracts solicited by persons not required to be enrolled.

Response No. 3.1620.11.01: The comment is noted and has been previously addressed. The comment is not related to changes proposed during this comment period, and the Department refers to Response No. 1.1620.11.02, above.

Comment No. 3.1620.11.02: Section 1620.11(b)(3): The Consumer Coalition reiterates its prior objections to sub-part (B). With regard to sub-part (C), the Consumer Coalition objects to the caveat that PACE solicitors should not start work on a home improvement contract “financed by an assessment contract” unless the property owner waives his or her right to cancel under Streets and Highways Code section 5940. The Consumer Coalition has seen a number of clients dealing with liens placed by home improvement contractors when financing is denied for work, they could not possibly afford and, in some cases, contractors attempt to get financing with a patchwork of PACE and private loans. The reality is the Consumer Coalition’s clients generally do not understand how these contracts are going to be financed, and the Consumer Coalition continues to receive reports of contractors fraudulently misrepresenting that work will be done for free. PACE solicitors should not be allowed to start work at all on the home where any part of the work contemplated might be financed through PACE and, again, there should be no provision for the consumer to waive their three-day right to cancel save for the most exigent of circumstances (e.g., the installation of an air conditioner in a heat wave).

Response No. 3.1620.11.02: The Department understands the concern about consumers but does not see how this language is being interpreted to evade the consumer protections in the codes. The Department believes this provision protects property owners and therefore is retaining the language. With respect to the comment regarding subparagraph (b)(3)(B), the comment has been addressed in Response No. 1620.11.07, above.

Comment No. 3.1620.11.03: Section 1620.11(b)(3): The Consumer Coalition disagrees with the change in language under sub-part (D) and urges the Department to restore the stronger language stating that program administrators are not relieved of their responsibility for the acts of solicitors or agents.

Response No. 3.1620.11.03: The Department has considered all the comments and believes no further changes are needed. The Department believes the provision as amended captures the Department's meaning.

Comment No. 3.1620.11.04: Section 1620.11(b)(3): The Consumer Coalition reiterates its view that sub-part (A)(3) should require program administrators, through their solicitors/agents, to actively seek out whether the homeowner is considering financing by other program administrators. Section 1620.11(c): Once again, as an overarching matter, this sub-part again does not contain any guidance as to how frequently program administrators should review publicly available information about their solicitors; the Consumer Coalition submits this exercise should be done at least annually. Additionally, these reviews should include tracking of consumer complaints against PACE solicitors and their agents. The Consumer Coalition asks again that the rules be changed at sub-part (3)(A) such that the review of past civil and criminal actions, license discipline and consumer complaints not be cabined to those "related to the functions of a PACE solicitor." Section 1620.11(d) and (e): The Consumer Coalition maintains that no PACE solicitor should be enrolled without an active CSLB License and asks that the Department amend sub-part (d)(1)(D) accordingly. Similarly, no PACE solicitor agent should be allowed to operate if not registered as a home improvement salesperson with the CSLB (sub-part (d)(3)(C)(2)). Further, allowing for a category of "conditional enrollment" does nothing to protect consumers, and the rule is silent about the validity of loans solicited by someone "conditionally enrolled" who later does not get through the fingerprint background check required by the CSLB.

Response No. 3.1620.11.04: The comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response Nos. 1.1620.11.05, 1.1620.11.08, 1620.11.16, and 1.1620.11.11, above.

Section 1620.12. PACE Solicitor Agent Enrollment Standards and Processes

Comment No. 3.1620.12.01: The Consumer Coalition provides as follows. As an overall comment, the Consumer Coalition reiterates that solicitor agents should undergo re-enrollment, and program administrators should update background checks at least annually. Section 1620.12(c): The Consumer Coalition again asks the Department to review its recommendation to assess the number and nature of all lawsuits filed against the PACE solicitor agent, along with their engagement in any act that would constitute grounds for license revocation. Section 1620.12(d): The Consumer Coalition again reiterates that consumers would be better protected by the Department if it included within the regulations a detailed rubric covering topics to be covered in the solicitor agent test (sub-part (d)(2)), the expected level of knowledge to be demonstrated in order to pass, and detailed procedures to ensure tests are properly administered.

Response No. 3.1620.12.01: The comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment

period, and the Department refers to Response No. 1.1620.12.01, 1.1620.12.03, and 1620.12.06, above.

Section 1620.13. Enrollment Denial

Comment No. 3.1620.13.01: The Consumer Coalition provides as follows. As noted three times previously, the Consumer Coalition sees no reason to restrict enrollment denials only to those PACE solicitors that demonstrate a “high” likelihood of soliciting assessment contracts in a manner that does not comply with the law; in the Consumer Coalition’s view, evidence that would show any likelihood of substantial non-compliance with the law should be enough to deny enrollment.

Section 1620.13(b): The Consumer Coalition again recommends expanding the types of wrongdoing in this sub-part (currently “deception, misrepresentation, or omission”) to include other forms of recurring complaints of the type consumer advocates see every day in relation to PACE, such as shoddy workmanship, price gouging, or any other practice that could result in civil or criminal prosecution or license suspension.

In sub-part (b)(2), and again in sub-part (d)(2), the Department allows program administrators to enroll solicitors despite evidence of a clear pattern of consumer complaints about the PACE solicitor for dishonesty, misrepresentations, or omissions, as long as the administrator documents its rationale. Again, the Consumer Coalition implores the Department to remove this caveat: if consumers are to be protected, no enrollment should ever happen where there is evidence of a pattern of past misconduct.

Response No. 3.1620.13.01: The comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response No. 1.1620.13.02, 1.1620.13.03, and 1.1620.13.04, above.

Comment No. 3.1620.13.02: Section 1620.13(d): The Consumer Coalition does not agree with the most recent changes made to sub-paragraph (4), which now allows longer time periods for PACE solicitors to respond to and resolve complaints. Three business days to acknowledge a complaint is appropriate no matter the size of the business, length of time in business, products provided or the nature of the complaint; and thirty days is ample time for the resolution of most complaints. The Consumer Coalition notes that the rule already states that “a program administrator may presume that complaint responses are timely if the PACE solicitor ordinarily acknowledges complaints within three business days…” etc., and, as such, it already provides a caveat for exceptional circumstances.

Response No. 3.1620.13.02: As background, section 1620.13 is only applicable to enrollment denials. When evaluating whether to enroll a PACE solicitor, the program administrator must determine, based on readily and publicly available information regarding the PACE solicitor, whether the information uncovered suggests that the PACE solicitor has a clear pattern of failing to timely receive and respond to property

owner complaints. Paragraph (d)(4) provides guidance on how to evaluate the PACE solicitor's responses to complaints. It does not set forth a time frame for complaints about PACE financing that are subject to the requirements of section 1620.08 of the rules. Consequently, the Department has considered the comments and determined no change is needed.

Section 1620.14. Monitoring Compliance

Comment No. 3.1620.14.01: The Consumer Coalition reiterates that, in the Consumer Coalition's view, monitoring compliance should include annual monitoring and testing that should include updating background checks, reviewing assessment contracts solicited against the underlying home improvement contracts, and making sure solicitors and their agents are complying with the Code of Conduct and PACE solicitor agreements. Section 1620.14(b)(1) (formerly (a)(1)(A)): Again, the Consumer Coalition requests that the use of data from samples of homeowners with PACE contracts be made mandatory, and that it specifically include elders, mono-lingual Spanish, and other non-English speakers. Section 1620.14(b)(2): Again, the Consumer Coalition recommends that the testing through questioning and calls to homeowners be expressly limited to circumstances when the PACE solicitor or agent is not present with the homeowner. PACE solicitors or agents are not philanthropists helping the vulnerable; the Consumer Coalition has seen numerous examples of PACE solicitors and agents accompanying homeowners on calls expressly to coach them into providing the answers program administrators want to hear, regardless of the reality of the situation. They should not be allowed to participate in these calls under any circumstances. Section 1620.14(c): The Department has removed the word "regularly" from this sub-part that now requires monitoring as to whether PACE solicitors are maintaining minimum qualifications with no indication at all as to how often this monitoring should occur. The Consumer Coalition maintains that monitoring should be done annually. As such, the Consumer Coalition requests this provision specify annual monitoring or that the word "regularly" be reinstated and be defined as annually elsewhere. With regard to sub-part (c)(1) the Consumer Coalition reiterates that the program administrators should not only "track and review" complaints containing allegations of misconduct, but also that program administrators be directed to investigate such claims. Only then will program administrators be able to determine whether the solicitor has committed any of the acts that do not comply with the law described in sub-part (c)(2). Further, the Consumer Coalition again objects to the use of the word "clear" used in various places when discussing patterns of consumer complaints: the point of monitoring is to identify *any* patterns of consumer complaints as those should prompt further tracking, reviewing and investigation by the program administrators. With regard to sub-part (c)(3), again the Consumer Coalition does not see why such a pattern has to be "clear" nor why failing to respond to multiple complainants should be cabined only to those situations "over a sustained period of time." Any pattern of failing to respond to complaints should prompt investigation with a view to de-enrollment. Section 1620.14(d): The Consumer Coalition again recommends expanding the list of PACE solicitor compliance items to

be monitored to include other key areas of concern including, but not limited to: price-gouging (not just whether the contractor charges a different price for PACE funded projects than if paid in cash); lien stacking; identifying where the assessment and home improvement contracts materially differ; and contractors who do not complete work or who fail to get work passed through code inspection. Section 1620.14(e): This part of the rule states that program administrators who have a process to routinely monitor licenses or registration status of solicitor/agents every quarter do not need to check the status of the solicitor/agent when they receive an application for financing. A prior iteration only gave this benefit to program administrators that routinely checked every month. Given that the Consumer Coalition has seen real damage wrought by a number of repeat bad actors within a very short space of time, and that dishonest salespeople who may work across various companies are routinely being identified by consumer advocates, the CSLB and law enforcement, the Consumer Coalition once again asks the Department to proceed with the original iteration of this rule.

Response No. 3.1620.14.01: These comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response Nos. 1620.14.05, 1.1620.14.04, 2.1620.14.02, 2.1620.14.03, 1.1620.14.07, 1.1620.14.10, and 1.1620.14.13, above.

Comment No. 3.1620.14.02: Section 1620.14(d): According to PACE Funding, subdivision (d) continues to require program administrators to monitor whether PACE solicitors are charging a higher price for PACE-funded projects as compared to non-PACE projects. PACE Funding reiterates its statement that these requirements go beyond the requirements of statute, and it would be commercially unreasonable to comply. For this reason, PACE Funding requests that the requirement be removed. Every property is unique, and there are so many variables to consider, that it would be impossible to make an "apples to apples" comparison of two similar projects on two different properties. Program administrators do not have access to the level of information needed to conduct a relevant analysis, nor does a program administrator have the power to require that information from contractors that would validly refuse on the basis of confidentiality and protected business information.

FortiFi states that these requirements go well beyond the requirements of statute, and compliance with such rules is neither feasible nor commercially reasonable. FortiFi requires all PACE solicitors enrolled it its program to comply with SB 242’s prohibitions on charging a higher price for projects funded via PACE than for projects paid in cash and commencing work on a project if the property owner has exercised the property owner’s right to cancel the assessment contract. As FortiFi previously stressed in response to the proposed rules, however, program administrators do not have the authority to require PACE solicitors to provide the pricing for their non-PACE funded projects in order to make this comparison and monitor compliance. Requiring home improvement contractors to disclose their non-PACE pricing data is highly likely to be met with valid resistance regarding confidentiality and protected business information. It

is impractical and commercially unreasonable to require this kind of monitoring and subject program administrators to potential liability, penalties, or discipline for failure to comply. The risk associated with potential noncompliance could drive program administrators and capital sources away from providing PACE capital to Californians, reducing access to needed home resiliency and efficiency financing.

PACENation indicates that section 1620.14(d) of the proposed rules requires program administrators to monitor whether PACE solicitors are charging a higher price for PACE-funded projects as compared to other home improvement projects performed by that PACE solicitor that are not funded with PACE. These requirements go beyond the legislative requirements for program administrators in AB 1284 and SB 242, and compliance with such rules is not feasible. While it is important to prevent contractors from violating SB 242 and charging a higher price for PACE-funded projects, program administrators do not have the authority to require home improvement contractors to provide the pricing for their non-PACE funded projects. This data is highly guarded confidential business information. Program administrators therefore have no way to comply with this requirement. Moreover, each home improvement is unique based on the specific products, materials and contractor selected by the property owner for a project. There is no realistic way for program administrators to make true apples-to-apples comparisons to comply with these requirements. The liability associated with noncompliance could drive program administrators and capital sources away from providing PACE capital to California homeowners, reducing access to needed home resiliency and efficiency financing.

Ygrene states that proposed section 1620.14(d)(1) places an undue burden on program administrators to monitor solicitor pricing. Specifically, section 1620(d)(1) requires the program administrator to determine “[w]hether 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.” Program administrators do not have access into a solicitor’s pricing for non-PACE improvements because that data is highly protected, confidential business information that contractors understandably want to protect. Without access to such pricing, a program administrator cannot compare pricing nor could it “use commercially available cost guides for guidance” to compare against an unknown number. Ygrene recommends that proposed section 1620.14(d)(1) be deleted.

Response No. 3.1620.14.02: The comments are noted and were previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response Nos. 1620.15.06 and 1.1620.14.01, above.

Comment No. 3.1620.14.03: Section 1620.14(d)(2): According to PACE Funding, the proposed rules continue to require that program administrators monitor whether PACE solicitors are beginning work prior to the expiration of the 3-day or 5-day right to cancel. There is no known legal, practical, or commercially reasonable way to comply with this requirement by monitoring a property owner's home 24 hours a day. Furthermore,

PACE is often a safety-net financing that is brought in after another form of financing has fallen through; this often occurs after the construction has started and sometimes even after construction has finished. It is for these reasons that PACE Funding requests section 1620.14(d) be deleted in its entirety.

FortiFi states the proposed rules also continue to require program administrators to "monitor" whether PACE solicitors are beginning work prior to the expiration of the 3-day (or 5-day) right to cancel for assessment contracts. As FortiFi previously commented: "Short of setting up video cameras outside the homes of all property owners who have signed assessment contracts (which would obviously violate privacy laws), there is no commercially reasonable way to comply with this rule." Again, the liability associated with these infeasible requirements could reduce access to this form of capital for California homeowners. These requirements were not envisioned by the Legislature. It is fair to require program administrators to provide in their PACE solicitor training programs and written agreements with PACE solicitors that PACE solicitors comply with Streets and Highways Code sections 5926 and 5940, and, if program administrators have knowledge of violations of such statutory provisions, they should cancel the enrollment of solicitors who fail to comply. There is no feasible or commercially reasonable way, however, for program administrators to "monitor" or police compliance with these requirements.

PACENation provides that the proposed rules continue to require program administrators to "monitor" whether PACE solicitors are beginning work prior to the expiration of the 3-day (or, for seniors, 5-day) right to cancel period for assessment contracts. While, of course, program administrators should require PACE solicitors to wait until the right to cancel period is complete before working as part of their written agreements with such contractors, there is no legal, practical, or commercially reasonable means to physically monitor a property owner's private home 24 hours a day in order to comply with this proposed requirement. The requirements included in section 1620.14(d) of the proposed rules go well beyond the framework set out by the Legislature for PACE transactions and consumer protections. Again, the liability associated with these infeasible requirements could reduce access to this form of capital for California homeowners. For these reasons, the Department should delete section1620.14(d) of the proposed rules.

Response No. 3.1620.14.03: The comments are noted and were previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response Nos. 1620.15.16 and 1.1620.14.09, above.

Section 1620.16. Cancelling Enrollment

Comment No. 3.1620.16.01: The Consumer Coalition reiterates that the Consumer Coalition would like to see the Department play a more active role in approving procedures for cancelling enrollment or reviewing their adequacy. In setting at least minimum standards, the Department could ensure greater uniformity amongst

administrators while still allowing discretion in creating procedures unique to them. In addition, in the Consumer Coalition's view, sub-part (a) unnecessarily limits the written policy for cancellation of enrollment to solicitor/agents who fail to maintain minimum qualifications, or who violate a provision of the California Financing Law limits.

Response No. 3.1620.16.01: The comments are noted and were previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response No. 1.1620.16.01, above.

Section 1620.17. Training Program

Comment No. 3.1620.17.01: The Consumer Coalition appreciates the modification to require the PACE solicitor agents to pass a test prior to soliciting homeowners and that the prohibition on assessment contracts on property subject to a reverse mortgage is now a required training topic. The Consumer Coalition remains concerned that there is nothing in section1620.17(c)(2)(A) saying that the certificate may only be given after a person completes the training and passes the test. The Consumer Coalition appreciates the Department's decision to change "elder financial abuse" in section 1620.17(e)(2)(A)(7) to "elder and dependent adult financial abuse", but the Consumer Coalition still remains concerned that this section does not include specific language clearly stating that soliciting owners of properties subject to reverse mortgages constitutes elder and dependent adult financial abuse. The Consumer Coalition recommends that the Department include a statement to that effect. Further, the Consumer Coalition repeats its recommendation of an additional sub-part to restrict PACE solicitors or their agents from arranging PACE financing for property owners with reverse mortgages; a practice that program administrators have already recognized needs to end and which is now unlawful under AB 1551. The new paragraph could read: *"A PACE solicitor must undertake to verify the types(s) of mortgage, if any, outstanding on the property. Where a property owner is found to have a reverse mortgage, the PACE solicitor must immediately stop all efforts to solicit the property owner and inform the program administrator that the property owner has a reverse mortgage."*

Response No. 3.1620.17.01: The comments are noted and have been previously addressed. The comments are not related to changes proposed during this comment period, and the Department refers to Response Nos. 2.1620.17.01, 2.1620.17.05, and 2.1620.17.04, above.

Section 1620.22. Property Owner Income

Comment No. 3.1620.22.01: Section 1620.22(b)(3): The Consumer Coalition appreciates the Department's decision to restore the requirement that certain rental/boarder income be verified by both a rental agreement and reasonably reliable third-party records demonstrating the property owner's receipt of that income. The Consumer Coalition is concerned, however that the sentence addressing requirements when there is no rental agreement available could be misinterpreted to mean that the

boarder's written statement and evidence of occupancy for at least the prior six months are the only items required to verify the income. To clarify that those options are only permissible to replace the (otherwise required) rental agreement, the Consumer Coalition suggests that this sentence be revised as follows: *If a written rental agreement is unavailable, the rental ~~an~~ agreement requirement may be satis~~veri~~fied with a ~~through the~~ written statement of the individual renting or boarding from the property owner and reasonably reliable third-party records demonstrating ~~evidence~~ that the renter or boarder has resided in the property owner's household for at least the prior six months.*

Response No. 3.1620.22.01: The Department has considered the suggestions and agrees that "written" is a necessary change. However, the Department believes that the remainder of the rule does not need to be amended.

Comment No. 3.1620.22.02: PACE Funding indicates that paragraph (b)(3) of the proposed rules put additional burdens on multi-generational families living together, and also property owners with renters or boarders. The reality of California real estate is that these situations are often necessary to afford home ownership and the additional sources of income in these situations is needed in order to afford much needed home repairs and efficiency upgrades. For this reason, PACE Funding would request the implementation of the less burdensome language for this section as advocated by PACENation: "(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 rental agreement and reasonably reliable third-party records that demonstrate the property owner's receipt of such income for at least the prior three months. If a 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 three months."

FortiFi supports sound underwriting policies in PACE to safeguard such that property owners can afford contractual assessment obligations. Yet, the restrictions on sources of rental income in paragraph (b)(3) of the proposed rules could restrict access to capital to homeowners who derive a portion of their income from renters or family members who contribute to monthly housing expenses. The prior language in the second modifications to proposed text provided that if non-title holders are paying rent or board to the property owner, this income had to be verified through a rental agreement or reasonably reliable third-party records. The language now requires that income be established through a rental agreement and third-party records that establish the property owner's receipt of that income for the prior six months. While the third modifications to proposed text allows verification through a written statement of the individual renting or boarding from the property owner if a rental agreement is not available, the proposed rules now also require evidence that the renter or boarder has resided in the property owner's household for at least the prior six months. This revision

turns a blind eye to the reality of multigenerational and extended family households in California. Many property owners that apply for PACE financing rely on income from other family members living in the home that are not on title. Contributions to monthly or annual living expenses from family members are not typically documented via a rental agreement or even in a third-party record, but rather are paid in cash. Given the extremely high price of housing in California and housing shortages that have risen to a crisis level, contributions to income are frequently made by individuals residing in the home who are not on title to the property. This six-month evidentiary requirement will restrict access to PACE for multigenerational and other households where more than one family member contributes to the monthly expenses. It will also reduce access to PACE for many property owners who receive income from renters of their primary residence amidst a pandemic and climate crisis, where many Californians lack up front capital to make needed home resiliency and energy savings improvements.

To better ensure consumers can afford PACE assessments, while balancing the risk of excluding demographic categories of customers from PACE eligibility, FortiFi suggests the following revision: “(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 rental agreement and reasonably reliable third-party records that demonstrate the property owner’s receipt of such income for at least the prior ~~six~~ three months. If a 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~~ three months.”

Response No. 3.1620.22.02: The Department has considered these comments. In light of the Legislature’s clear intent in subdivision (a) of Financial Code section 22687 to ensure that the income used to qualify for PACE financing is limited to the property owners and their spouses or domestic partners, the Department believes that including other members of the household’s income is only appropriate when the income is paid to the property owner as bona fide rental income to the property owner. The Department concludes that such income may be established with a written rental agreement and third-party records demonstrating six months of past rental income. The Department does not agree that three months is sufficient.

Section 1620.25. Emergency

Comment No. 3.1620.25.01: The Consumer Coalition appreciates the Department’s addition of language clarifying that that the list of products not constituting an emergency is not exhaustive.

Response No. 3.1620.25.01: The comment is noted.

Comments Received During the Fourth Notice of Modifications from December 29, 2020 through January 13, 2021

The following persons submitted comments to the Department during the 15-day comment period from December 29, 2020 through January 13, 2021:

1. Legacy Finance Group, Brian Schwindt - by email received January 11, 2021.
2. Buckley, Clinton Rockwell – by letter dated January 13, 2021, received via email.
3. Law Offices of Paul Soter, R. Paul Soter Jr. - by letter dated January 13, 2021, received via email.
4. PACE Funding Group and FortiFi Financial, Inc., Robert Giles, Chief Executive Officer and Christopher Nard, Chief Executive Officer – by letter dated January 13, 2021, received via email ("PACE Funding and FortiFi")
5. California Low-Income Consumer Coalition, Bet Tzedek, Legal Aid Society of San Diego, Inc., East Bay Community Law Center, National Housing Law Project, Public Counsel, Riverside Legal Aid, Public Law Center, and UCI Law Consumer Law Clinic, on behalf of their clients – by letter dated January 13, 2021, received via email.
6. Law Office of David Valdez Jr., David Valzez Jr., Esq.- by letter dated December 20, 2020, received via email ("David Valdez")
7. California Financial Service Providers Association, Thomas Leonard, Executive Director – by letter dated January 13, 2021, received via email.

General Comments

Comment No. 4.1.01: Brian Schwindt, Legacy Finance Group, indicates the comment is regarding the proposed changes requiring CFL licensees having to transition to a NMLS license. He expresses concern that California is forcing the company to get a license in 49 other states.

Response No. 4.1.01: While NMLS is a nationwide depository, the CFL license is only for California and will remain solely a California license after license records are transitioned onto the nationwide database. The purpose of the rule is to provide for the electronic submission and updating of licenses, through a nationwide centralized depository for license information. The Department has considered the comment and determined no changes are necessary.

Comment No. 4.2.01: Buckley supports the Department's proposal to amend existing rules to transition all licensees under the CFL onto the NMLS, and to require license applicants to apply for certain CFL licenses through the NMLS rather than in paper form directly with the Department, as is currently the process.

Response No. 4.2.01: This comment is noted.

Comment No. 4.3.01: The Law Offices of Paul Soter indicate that with regard to the substance of his comments as to the fourth proposal, reference is made to the

comments set forth in the CFSP letter. In addition, the Law Offices of Paul Soter reiterate CFSP's previous comments to the third proposal in this area as those comments relate both to the substance of the proposal and to the procedural shortcomings of the proposal and the manner in which the Department has failed to engage with stakeholders.

Response No. 4.3.01: The comment is noted.

Comment No. 4.4.01: PACE Funding and FortiFi provide the following comment with regard to the timing for timing for implementation of the rulemaking. With another round of modifications and comments, PACE Funding and FortiFi see the need for delaying the effective date of the new regulations as even more pressing. Operationalizing these changes will impact many facets of their business, both internally, and in their business practices with third parties. These changes would include, but not be limited to, changes in call scripts, advertising, background checks, and documentation. These changes will require extensive work with hundreds of PACE solicitors. These changes will also require engaging with outside developers to make changes to their technology, which will require at least one round of testing and feedback before implementation. The current timeline appears to have a deadline of February 14, 2021 to announce finalized regulations, at which point PACE Funding and FortiFi might only have until April 1, 2021 to implement changes. PACE Funding and FortiFi have heard that this date might be pushed to July 1, 2021, but that is still not a practical timeline in which to accomplish all that these regulations would require, and PACE Funding and FortiFi would want to make sure that they had enough time to be fully compliant. PACE Funding and FortiFi are asking for a more reasonable implementation deadline of January 1, 2022.

Response No. 4.4.01: See Response No. 3.0.01, above.

Section 1422. Application for License under the California Financing Law: Form

Comment No. 4.1422.01: CFSP makes the following comment regarding the Statement of Identity and Questionnaire ("SIQ") in the CFL application. Item 10 of the SIQ reads: "Have you ever done business under a fictitious form name or in any form of business, e.g., partnership, limited liability company, corporation or other?" What exactly does this mean? A literal reading of this item would lead to the conclusion that this item merely asks the person submitting the SIQ whether he or she has ever done business as a sole proprietor with a fictitious business name; a general partnership; a single-member LLC; or a close corporation 100 percent owned by the person submitting the SIQ. However, as noted above, absolute perfection in these filings is now more important than has historically been the case. Thus, the Department should clarify whether this question is intended to apply to any other form of business enterprise in which the person submitting the SIQ may have been employed or had either a majority or minority ownership interest. Does it apply to either employment or ownership interest in a limited partnership? Multiple-member LLC? Close corporation with multiple shareholders? Publicly traded corporation? Other form of business? And to what

ownership percentage? If the Department intends to use this question as a basis for enforcement actions, as it is current doing, then it is incumbent upon the Department to fully clarify the meaning of this question.

Response No. 4.1422.01: The Department has not amended that provision, and the questions relate to an existing rule. Upon filing through NMLS, an SIQ will no longer be applicable. Under NMLS, Form MU2 replaces the SIQ. Therefore, the Department has determined no change is necessary.

Section 1422.5. License Application through NMLS

Comment No. 4.1422.5.01: Buckley indicates that as part of the licensing process, among other requirements, proposed section 1422.5(a)(7)(A) would require applicants to upload to the NMLS organizational charts identifying subsidiaries and affiliated entities upon request. However, there may be instances when obtaining such information and/or providing such information to the Department may be unduly burdensome. To that end, the following are Buckley's comments regarding this requirement in the proposed regulations: "Upon Request": As noted above, the proposed regulations provide that a license applicant must provide the Department with a chart identifying subsidiaries and affiliated entities "upon request." However, the proposed regulations do not provide any guidance regarding the instances when the Department may request such a chart. Further, it is Buckley's understanding that license applicants will already be required to submit information regarding certain subsidiaries and affiliates through the Form MU1 on the NMLS, and therefore, the Department should already have access to the information that it needs. In addition, in Buckley's experience, the Department does not grant Requests for Confidential Treatment of a license applicant's organizational chart and, as such, there is a greater likelihood that such information may be accessed by the public and is subject to public disclosure under a California Public Records Act request, which may negatively impact a license applicant's business because, in some cases, such information is considered confidential business information, the release of which would be damaging or prejudicial to the business concerned. As such, Buckley respectfully requests that the Department qualify the phrase "upon request" to specifically list circumstances when applicants would need to provide organizational charts of their subsidiaries and affiliated entities. For example, the Department may limit such requests to when the license applicant fails to respond to that section of the Form MU1 that requests information regarding subsidiaries and affiliates. In addition, when the Department requests such an organizational chart from a license applicant, the Department should consider expanding the circumstances when it will grant Requests for Confidential Treatment. This will provide license applicants and related affiliates and subsidiaries with certainty that their business relationships remain confidential.

Response No. 4.1422.5.01: The Department has amended subparagraph (a)(7)(A) to provide that the chart identifying subsidiaries and affiliated entities will only be requested where such additional information is necessary to investigate the applicant or

owners, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting reasons for denial are present.

Comment No. 4.1422.5.02: Buckley submits the following comment regarding the definition of “affiliate”: Under the proposed regulations, a license applicant will be required to provide organizational charts of affiliated entities, regardless of if those entities engage in business as financial service providers or in any other activity regulated by the CFL, which is a departure from the NMLS definition of affiliates and subsidiaries. Specifically, the NMLS requires a license applicant to identify “each entity under common ownership (affiliate) and each entity under control (subsidiary) that provides financial services or settlement services.” Requiring applicants to supply information regarding affiliates and subsidiaries engaged in financial services or settlement services through the MU1 and then separately provide an organizational chart with information regarding all affiliates and subsidiaries, as defined by the proposed regulations, will create confusion, impose a great administrative burden on applicants, and hinder the Department’s goal of efficient CFL license application processing because many applicants have numerous affiliates with complex organizational structures. Further, in some instances, a license applicant may not have information regarding its affiliates in other ownership arms and likely would have significant difficulty accessing such information from its parent. To limit confusion and unnecessary burden, Buckley requests that the Department align the definition of “affiliates” and “subsidiaries” with those that provide financial services or settlement services, in line with the NMLS requirements.

Response No. 4.1422.5.02: The Department has considered this concern but determined no amendment is necessary. The Department is not requiring the information be filed through NMLS as part of the application. Generally, the information on affiliates may be requested if the Department has questions about the ownership of the applicant or the proposed activities of the applicant that remain unanswered after the review of the other documents provided during licensure. The Department notes that Exhibit M of the paper form sets forth a definition of “affiliate,” but as the Department transitions to NMLS, that form will no longer be applicable.

Comment No. 4.1422.5.03: Buckley submits the following comment regarding state certified documents. As part of the licensing process, among other requirements, proposed section 1422.5(a)(11)(F) will require the applicant to, upon request, “upload to NMLS a *state-certified* copy of its formation documents, including, if requested, any subsequent amendments, relevant resolutions, and a list of any name changes.” However, this requirement could place an unnecessary burden on applicants. For example, it is Buckley’s understanding that many states do not provide consumers with electronic access to state-certified copies of formation documents. By way of illustration, to obtain a state-certified copy of formation documents from the state of New York, an applicant would need to submit a written request by mail or in person to the New York State Department. Thus, in some instances, a license applicant may not be able to

expeditiously satisfy the Department's request for certain formation documents. In other instances, some license applicants were formed decades ago and a request for state-certified formation documents and amendments could be tremendously difficult, costly, and time consuming to address. Further, the Department may rely on online business entity records databases to confirm whether business entities are in good standing in their state of formation and in other states where they do business. For example, checking the California Secretary of State ("SOS") Business Search tool is an efficient and time-saving method for the Department to confirm if an applicant is authorized to engage in business in California, rather than waiting on the SOS to issue a physical certified certificate. Moreover, requiring applicants to provide state-certified copies of formation documents will be a significant deviation from the current CFL paper form application, which requires all applicants to submit an original certificate of good standing or qualification executed by the Secretary of State of their state of formation, and for all foreign applicants to also provide an original certificate of good standing or qualification executed by the California SOS showing that the applicant is qualified to do business in California. Based on the foregoing, Buckley requests that the Department strike the provision requiring applicants to provide state-certified copies of formation documents, as well as amendments, resolutions, and list of name changes. Instead, Buckley suggests that as the Department transitions the CFL application to NMLS, that it maintains the requirement for applicants to provide evidence of legal existence and good standing from the various Secretary of State websites, in lieu of physical state-certified documents. In the alternative, Buckley requests that the Department qualify the phrase "upon request" to specifically list circumstances when applicants would need to provide a state-certified copy of its formation documents, including, if requested, any subsequent amendments, relevant resolutions, and a list of any name changes.

Response No. 4.1422.5.03: The Department has amended subparagraph (a)(11)(F) to remove the requirement that the formation documents be state-certified and has amended the language to clarify that documents will only be required when such additional information is necessary to investigate the applicant, including to demonstrate that the applicant satisfies the California Financing Law and no facts constituting a reason for denial are present.

Comment No. 4.1422.5.04: CFSP observes that the revisions to rule 1422.5 pertaining to the disclosure of ownership interests of applicants' owners are welcome. However, CFSP notes that the fourth proposal fails to make corresponding changes to the application instructions, which also have the force of regulation. Specifically, the instructions for Exhibit M at pages 28 and 40 still require names and titles of directors, officers, managing members, and partners for entities owning 10 percent of the applicant. Therefore, under the fourth proposal, there is a contradiction between the actual rule and the actual application requirements for applicants. This should be resolved.

Response No. 4.1422.5.04: The Department notes your concern but upon the effective date of this rulemaking action, new applicants will file through the NMLS under the provisions in section 1422.5 of the regulations. Therefore, no change is necessary.

Comment No. 4.1422.5.05: CFSP notes that rule 1422.5 references “a management chart.” This is a new requirement. It is not an unreasonable requirement, but CFSP reiterates our disappointment that it is not identified as a new requirement in the description of changes for the fourth modification. The revised language of this section seems to assume that all licensees have previously submitted such a management chart, which is not the case. This disconnect will lead to confusion and inadvertent noncompliance by licensees, which is particularly concerning in the new environment in which allegations of filing deficiencies are being used as a basis by the Department for enforcement actions long after the filings have been made by applicants or licensees and, presumably, reviewed by the Department.

Response No. 4.1422.5.05: This change has been in the rules since first published on October 25, 2019 and is described in the initial statement of reasons. The notice was sent to over 5000 interested parties, including every CFL licensee. The item is not described in the Notice of fourth modifications because it was not modified at that time.

Comment No. 4.1422.5.06: CFSP notes some confusion as to the interplay between sections 1423 and 1424, pertaining to short-form branch office license applications. Section 1423 states that, except as provided in rule 1424, a branch short-form application should be filed in “typewritten” form accompanied by a paper check. This is, of course, inimical to the entire concept of the NMLS. So, guidance is requested as to when rule 1423 will apply, and when rule 1424 will apply. Then, again, the language of section 1424 does not match the short-form application instructions, which seem to describe only a typewritten form submitted physically with a paper check. Again, this should be fully reviewed and sorted out.

Response No. 4.1422.5.06: Section 1424 is applicable to a licensee who is on NMLS and seeking to engage in business at an additional location. The section was adopted in 2010 when licensure through NMLS was required for mortgage lenders and brokers. As the remaining CFL licensees transition to NMLS, the section will be applicable to all licensees seeking to engage in business at an additional location, and section 1423 will no longer be applicable. The Department has considered the comment, and no change is necessary.

Section 1620.07 Books and Records

Comment No. 4.1620.07.01: David Valdez indicates he has been representing homeowners with respect to photovoltaic systems for nine years and with respect to PACE financing for approximately four years. In these cases, advertisements are often a key piece of evidence to support homeowner’s allegations of misrepresentations in the sales process. He therefore suggests changing rule 1620.07(c)(4) to require program administrators to keep copies of their advertising for a minimum of four years,

but ideally five years. The statute of limitations for the Consumer Legal Remedies Act and for fraud is three years. For Business and Professions Code section 17200, it is four years. The Discovery Rule applies (Code Civ. Proc., § 338, subd. (d)). A four-year time period would be sufficient to cover the statute of limitations in most situations and provide some time to conduct discovery as to the applicable advertisements.

Response No. 4.1620.07.01: The time period is statutory under Financial Code section 22166. Therefore, a statutory change is necessary to increase the retention time.

Section 1620.08 Complaint Processes and Procedures

Comment No. 4.1620.08.01: Section 1620.08(a)(3)(A): Complaint Process Exception for Active Litigation: PACE Funding and FortiFi are very appreciative of the most recent change which exempts active litigation from the complaint process. The latest definition defines that exemption as applying at the point a lawsuit is filed and not merely by retaining counsel. PACE Funding and FortiFi suggest that an even better point of differentiation would be to also include the point in time where a legal demand letter was sent to a program administrator. PACE Funding and FortiFi see this as the beginning of the litigation process and from a practical standpoint, this is the time when insurance and outside counsel may become involved, adding complication to complying with the complaint process while also responding to legal demands put forth at that time.

Response No. 4.1620.08.01: The Department has considered this request but notes that a demand letter is not active litigation. The complaint process should still be available to the property owner.

Comment No. 4.1620.08.02: The Consumer Coalition indicates PACE regulations should promote accountability and make it possible for property owners to obtain redress for problems quickly and easily. To date, when property owners have problems with PACE-financed improvements and/or PACE assessment contracts, they frequently have trouble finding someone to complain to and getting that party to act promptly—or at all—to address the problem(s). The Consumer Coalition appreciates the Department's effort in the current proposed rule to add protections for property owners. However, the Consumer Coalition remains concerned that the proposed rules still do not adequately delineate the scope of program administrators' responsibilities, particularly as they relate to the actions of PACE solicitors and solicitor agents, and do not provide a sufficiently clear and enforceable set of procedures for how complaints should be handled.

Response No. 4.1620.08.02: The Department believes that the complaint processes set forth in rule will provide property owners with meaningful access to program administrators for the consideration of their complaints.

Comment No. 4.1620.08.03: Sections 1620.08(a)(1) and (a)(2): The Consumer Coalition remains concerned about several provisions in the current proposed rule. A previous version of the proposed rule provided for "resolution" of property owner

complaints. In the Consumer Coalition's comments on the last three proposed modifications, the undersigned emphasized that any "resolution" must involve agreement from property owners that their issue has been resolved or must include an automatic escalation to the Department for circumstances in which the property owner remains unsatisfied with the program administrator's decision. The Consumer Coalition is dismayed that, rather than providing for meaningful requirements and processes for the resolution of complaints, the current draft rules still place even more discretion at the hand of program administrators and further burdens on property owners. The current rules no longer require "resolution" of complaints, but only a "final decision" from program administrators. There are no enforceable requirements as to when a substantiated complaint must result in cancellation of the contract, nor is there automatic escalation for property owners who remain unsatisfied. Rather, the burden is placed on property owners to restate their complaint to the Department if they receive a final decision that does not resolve their issue. The Consumer Coalition again recommends that the Department require program administrators to report all final decisions to the Department within thirty days of the decision, and to include a statement obtained from the property owner, if they wish to give such a statement, regarding whether the property owner is satisfied with the final decision and why or why not.

Response No. 4.1620.08.03: The comments have been previously addressed. Please see Response Nos. 1620.08.01 and 1620.08.02, above.

Comment No. 4.1620.08.04: Section 1620.08(a)(3): The Consumer Coalition recognizes and appreciates the Department's continuing efforts to clarify what constitutes a complaint. However, the changes in the third and fourth modifications may unduly restrict full consideration of relevant complaints. The Consumer Coalition remains concerned that conditioning whether a communication counts as a complaint on what steps the program administrators must take to resolve the issues raised will create unpredictability for homeowners and difficulties for regulators. The change to section 1620.08(a)(3)(A) introduces an unnecessary rule that complaints by a homeowner involving a matter in an active lawsuit need not be included in the complaint process. It is not clear to the Consumer Coalition why complaints related to active lawsuits should not be able to also go through the normal complaint process. Further, the addition of the phrase "related to PACE financing" in section 1620.08(a)(3)(D) introduces an unnecessary requirement that may prevent the full consideration of issues relating to solicitor and solicitor agent wrongdoing. In addition to causing difficulty and uncertainty for complaining homeowners, these standards, which leave complaint designation largely up to the discretion of the administrators, will create difficulties for regulators in attempting to apply consistent standards across administrators.

Response No. 4.1620.08.04: The Department has removed active litigation from the complaint process because those complaints are currently before another tribunal with its own rules for resolving disputes. With regard to limiting the complaint process to only

complaints involving PACE financing, these complaints would be the only complaints under the scope of the Department's oversight. See Response No. 3.1620.08.02, above.

Comment No. 4.1620.08.05: The Consumer Coalition strongly recommends adopting a positive definition of "complaint" to make clear that all communications from dissatisfied property owners must be handled through the complaint resolution process. The Consumer Coalition recommends that the Department follow the definition of "consumer complaint" used by the CFPB.

Response No. 4.1620.08.05: The comment has been previously addressed. Please see Response No. 1620.08.06, above.

Comment No. 4.1620.08.06: Section 1620.08(b)(3): As the Consumer Coalition noted in its December 3, 2020, comments, the Consumer Coalition recognizes and appreciates the Department's continued effort in section 1620.08(b) to ensure that property owners have adequate access to information about submitting a complaint. The Consumer Coalition also commends the Department for recognizing the concerns inherent in allowing administrators to simply provide the complaint process in the language used to solicit the property owner to enter into the assessment contract. However, the revisions to section 1620.08(b)(3) may still fail to ensure language access for all property owners. This provision still requires program administrators to make the complaint process available to complainants "in the language used to communicate during the oral confirmation under subdivision (d) of Streets and Highways Code section 5913, the language of the assessment contract, and, if supported by the program administrator, the property owner's preferred language." This approach presents several concerns. For example, the Consumer Coalition has seen many cases in which property administrators do not perform the required welcome call at all. Additionally, if an administrator performs a welcome call in a language that the property owner does not speak or understand well, the current provision will not add extra protection. The Consumer Coalition understands that the Department may be reluctant to burden program administrators with making the complaint process available in every conceivable language. However, tying the complaint process language options to the language of the transaction will be difficult to administer, and will risk shutting out homeowners who have suffered the most serious fraud. For this reason, the Consumer Coalition recommends that the Department require program administrators to make the complaint process available in at least the five most commonly spoken languages in each county where the program administrator operates.

Response No. 4.1620.08.06: This comment has been previously addressed. Please see Response No. 2.1620.08.03, above.

Comment No. 4.1620.08.07: Section 1620.08(d)(4): In the Department's second modifications to its proposed regulations, it added a provision requiring expedited review of complaints where a third-party lienholder has the right to advance payments

for property taxes. As the Consumer Coalition noted in its September 18, 2020, and December 3, 2020, comments, this was a correct and necessary addition because homeowners face substantially more burdens in resolving PACE issues with their mortgage servicers *after* the property tax payments have been advanced. Homeowners incur extra escrow charges once the amounts are advanced, and it can take several months and a significant amount of coordination by various departments and parties to correct mortgage payments that have increased as the result of an invalid or erroneous PACE assessment. Expedited review of complaints in these cases is necessary to ensure that problems are addressed before the other lienholders get involved and the costs and difficulties for homeowners increase. In the Department's third modifications, it removed this essential provision, and it has not restored it in the current version. The current proposed regulation requires expedited review of complaints where a third-party lender or servicer has already advanced payments for property taxes, but not before they do so. Although it is essential that homeowners whose taxes have already been advanced get expedited review of complaints, it is no less essential that homeowners at risk of having their taxes advanced similarly get expedited review of complaints. Failing to require expedited review of complaints in these cases will result in more burdens and costs for homeowners and may lead to unnecessary foreclosures due to correctable errors. The Consumer Coalition recommends that the Department return to the language in its second modification for this provision.

Response No. 4.1620.08.07: This comment has been previously addressed. Please see Response No. 3.1620.08.04, above.

Comment No. 4.1620.08.08: Section 1620.08(e)(1): As noted in the Consumer Coalition's September 18, 2020, and December 3, 2020, comments, the Consumer Coalition supports program administrators being required to correct "errors" identified in the complaint process. However, the Consumer Coalition wishes to reiterate that not all "errors" between parties to a contract can be corrected, so these regulations should also specify errors which, if substantiated, require program administrators to cancel or otherwise release property owners from their obligations. For example, if a property owner is complaining that their PACE solicitor agent did not disclose the true terms of their PACE assessment, sending the property owner a packet of disclosures to "correct" that error does not address the underlying defect in the transaction. As another example, as PACE assessments require voluntary agreement by property owners, errors due to fraud or forgery of signatures or other aspects of the agreement cannot be "corrected" other than by voiding the assessment contract.

Response No. 4.1620.08.08: This comment has been previously addressed. Please see Response No. 1620.08.02, above.

Section 1620.10. Dishonest Dealings and Misleading Statements

Comment No. 4.1620.10.01: Sections 1620.10(a)(2), (3) and (4): Deletion of Language on Property Owner Statements as to Project Completion, Performance of Work, and

Products Installed: PACE Funding and FortiFi indicate the current version of this section still creates uncertainty when program administrators rely on the direct statements and representations of property owners and contains language creating a “should have known” standard, effectively eliminating an objective standard which can be clearly understood and relied upon, and replaces it with a subjective one to be re- argued, and potentially re-litigated, based on the individual circumstances of every unique situation. A “should have known” standard raises more questions than it answers and leaves program administrators in the dark, never being entirely sure if they have complied with the regulation. For this reason, PACE Funding and FortiFi re-submit their request that the “should have known” standard should be deleted, and the language should revert to the language of the second modifications.

Response No. 4.1620.10.01: The Department notes this comment has been previously addressed. Please see Response No. 1.1620.10.01, above.

Section 1620.14. Monitoring Compliance

Comment No. 4.1620.14.01: Section 1620.14(d): Monitoring Solicitor Pricing and Commencement of Work: PACE Funding and FortiFi continue to see this section as one that creates a commercially impracticable standard from the perspective of a program administrator. Section1620.14(d) continues to require program administrators to monitor whether PACE solicitors are charging a higher price for PACE-funded projects as compared to non-PACE projects. PACE Funding and FortiFi reiterate their statement that these requirements go beyond the requirements of statute, and it would be commercially unreasonable to comply. For this reason, PACE Funding and FortiFi request that the requirement be removed. Every property is unique, and there are so many variables to consider, that it would be impossible to make an “apples to apples” comparison of two similar projects on two different properties. Program administrators do not have access to the level of information needed to conduct a relevant analysis, nor do they have the power to require that information from contractors who would validly refuse to provide such information on the basis of confidentiality and protected business information.

Additionally, the proposed rules continue to require that program administrators monitor whether PACE solicitors are beginning work prior to the expiration of the 3-day or 5-day right to cancel. There is no known legal, practical, or commercially reasonable way to comply with this requirement by monitoring a property owner’s home 24 hours a day. Furthermore, PACE is often a safety-net financing that is brought in after another form of financing has fallen through; this often occurs after the construction has started and sometimes even after construction has finished. It is for these reasons that PACE Funding and FortiFi request section 1620.14(d) be deleted in its entirety. If these requested changes are not made, PACE Funding and FortiFi request that the Department provide guidance as to how this section could be complied with in a commercially reasonable way.

Response No. 4.1620.14.01: The Department notes the comments and refers to Response Nos. 1620.15.06, 1620.15.16, 1.1620.14.01, and 1.1620.14.09, above, where the comments were previously addressed. With respect to the request for guidance, paragraphs (b)(1) and (2) of section 1620.14 of these rules set forth commercially reasonable examples of monitoring compliance.

Comments Received During the Fifth Notice of Modifications from July 7, 2021 through July 22, 2021

The following person submitted comments to the Department during the 15-day comment period from July 7, 2021 through July 22, 2021:

1. Quadra & Coll LLP, Rebecca Coll - by letter dated July 22, 2021, received via email.

Section 1422.5. License Application through NMLS

Comment No. 5.1422.5.01: Quadra & Coll indicates the proposed regulations do not require existing licensees transitioning to NMLS to re-submit certain documentation already in the possession of the Department. However, there is no suggested way to determine what documentation may already be in the Department's possession. Given that many licensees originally submitted their documentation for licensure many years ago, it may be unclear what documentation is already in the Department's possession. To ease the transition for existing licensees, Quadra & Coll suggests a modification to the regulation to state that licensing will not be suspended or denied without notice to the licensee of any missing documentation and an opportunity to submit it. We also suggest that the Department provide guidance on its website as to the Department's preferred way for a licensee to obtain a copy of its own previously submitted documents that are in the Department's possession.

Response No. 5.1422.5.01: The Department has considered this recommendation but determined a change to the language is not necessary. Procedures for actions against a license, such as a suspension or denial, are already set forth in statute. Further, the Department does not intend to suspend or revoke licenses without notifying licensees of missing documentation and providing licensees the opportunity to submit it. NMLS allows the Department to notify licensees of missing documentation by setting a deficiency, so licensees will be able to access their NMLS account at any time to see what additional information is necessary to successfully transition onto NMLS. Finally, the Department has provided FAQs on NMLS that provide guidance to licensees on how to contact the Department for transition assistance, which would include confirmation of previously submitted documents in the Department's possession.

Documents Relied Upon

In the Notice of Second Modifications to Proposed Regulations, the Department added the transcript from the PACE Regulations Stakeholder Meeting held at 1515 K St., 5th Floor, Suite 550, Sacramento, California on Friday, December 1, 2017 to the rulemaking file. 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. The document was made available for public inspection for at least 15 days before the adoption of this proposed action. No written comments on the document were received. The Department complied with the requirements of Government Code section 11347.1 and notice was mailed to interested parties on September 2, 2020.

Alternatives Determination

The Department has not identified an alternative that would be more effective in carrying out the purpose for which the regulation is proposed; would be less burdensome to affected private persons than the adopted regulation; or would be more cost effective to affected private persons and equally effective in implementing the statutory provision or other provision of law.

The Department has received may comments and balanced the interests of licensees and consumer advocates. No alternatives were identified that would achieve the same level of property owner protection with a lesser burden.

Alternatives to Lessen Impact on Small Business

Program administrators and finance lenders and brokers are not small businesses. However, enrolled PACE solicitors and enrolled PACE solicitor agents can be small businesses. The Department rejected an alternative to amend subparagraph (b)(3)(F) of section 1620.11, which requires a PACE solicitor to agree to notify the program administrator of complaints regarding the assessment contract and home improvement contact that are unresolved to the property owner's satisfaction for a month or more. This alternative was rejected because it did not achieve the benefit of alerting the program administrator to a potential problem related to PACE financing on a property. To protect property owners who have entered into an assessment contract to finance a home efficiency improvement, a program administrator must learn about unresolved property owner complaints to the PACE solicitor. 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. These benefits are advanced by requiring the notification of complaints.

Mandate on Local Agencies or School Districts

The Department has determined that this rulemaking action does not impose a mandate on local agencies or school districts.

Update to Description of All Cost impacts

A finance lender or broker not currently on NMLS will incur a fee of $100 per main office and fee of $20 per branch office license to transition to NMLS, and an annual fee of $100 per main office and $20 per branch office to be on NMLS. A licensee will also incur the time of establishing a form MU1 on NMLS. A licensee filing an amendment to its application or bond, or paying its annual fee, will incur a savings from filing online because of the simplification of the process. The savings may offset the annual fee.

A program administrator complying with the rules will incur initial costs of upwards of $41,000 and ongoing costs of upwards of $30,000.

A PACE solicitor will incur a one-time cost of $100 to update agreements and contact information with a program administrator. A PACE solicitor will incur an ongoing cost of $25 per year per PACE solicitor agent for the time reviewing training updates. If the PACE solicitor agent is self-employed, that PACE solicitor agent will incur the cost. In some instances, a PACE solicitor may incur costs for notifying a program administrator about an aging complaint on a PACE financed efficiency improvement. In some instances, a PACE solicitor may incur increased costs related to heightened ability to pay documentation. If the PACE solicitor agent is self-employed, the PACE solicitor agent will incur this cost.

Revised Estimate of Cost or Savings on State Agency

The Department has considered the costs of the program administrator regulations on its regulatory and enforcement programs. The Department does not anticipate the provisions will have a fiscal impact on its regulatory examinations of licensees or enforcement actions. Examination protocols are established, and the Department does not anticipate new costs or savings directly attributable to the regulations. For complaint resolution and enforcement activity, the new requirements will not impose costs or savings. The receipt of new applications through NMLS is not anticipated to change workload or require training. The transition of existing licensees to NMLS will not involve the re-licensure of existing licensees and will replace the function of process existing amendments, which will be absorbed as licensees establish NMLS records with current information. The Department anticipates the transition will result in a diversion of resources and will not result in costs or savings.

Revised Economic Impact Assessment

This proposed rulemaking action sets forth processes for implementing AB 1284 for the licensure of program administrators under the California Financing Law and allows for the Commissioner to transition existing licensees and new applicants onto NMLS. The regulatory requirements of this rulemaking action that have an economic impact include the following.

Transition to NMLS

The anticipated transition of existing licensees onto NMLS, which will require existing licensees not currently on NMLS to transfer their information onto NMLS. NMLS requires a fee of $100 per license record to establish an account and an annual fee of $100. Each branch office costs $20. The Department estimates 2,551 main licensees and 2,013 branch licensees will transition to NMLS. The transfer will require licensees not already on NMLS to complete a form MU1, which will require time to complete.

Offsetting these costs, NMLS provides a licensee the ability to continually review a license record and to update information and submit updates to the Department electronically. As the Department transitions annual renewal fees onto NMLS, NMLS will allow licensees to receive notices of annual state licensing assessments and pay fees through NMLS. As the Department transitions surety bond functions onto NMLS, NMLS allows licensees to establish, renew, and sign surety bonds through NMLS. Paper filings and notarized signatures will no longer be required, since both the surety and the licensee will have established accounts on NMLS. A licensee with a record on NMLS from another state or another license program on NMLS in this state will benefit from the single license record in NMLS. The Department's records indicate approximately 3,800 amendments were filed in 2019 and 2,500 amendments were filed in 2020. The Department estimates that licensees will save thousands of hours of time filing amendments, including surety bond amendments, electronically.

Program Administrators

a. Impact of Regulatory Action on PACE Solicitors and PACE Solicitor Agents

The regulations restrict the enrollment or continued enrollment of PACE solicitors and PACE solicitor agents making misrepresentations regarding PACE financing either in advertising or directly to property owners. With respect to the agreement between the program administrator and PACE solicitor, the regulations will require updates to some provisions and therefore require the PACE solicitor to review and agree to the revised agreement. If the PACE solicitor has not previously provided the program administrator with contact information required to be submitted to the Department, a PACE solicitor will be required to provide this information for both the PACE solicitor and its PACE solicitor agents. If a PACE solicitor does not currently notify the program administrator about complaints on PACE financed projects outstanding for a month or longer, a PACE solicitor will need to provide these notifications. If a PACE solicitor does not have a process for responding to complaints about PACE financing, the PACE solicitor will need to implement a process. If the PACE solicitor or PACE solicitor agent coordinates with the property owner to provide documentation establishing the property owner's ability to pay for the assessment contract, the regulations may require additional time to gather documentation, depending on the property owner's sources of income. A PACE

solicitor agent will annually receive updates on training from a program administrator for review.

For the requirements related to updating the agreement, providing contact information, and establishing a process for PACE complaints, the Department estimates that the time for a PACE solicitor to complete these requirements is one hour or less. This estimate assumes that since PACE solicitors are existing licensed businesses, they already have an established business practice for responding to property owner complaints. The Department estimates the cost of time for a PACE solicitor to complete these requirements will be $100 in a one-time cost. For ongoing requirements regarding notifying program administrators of aging PACE-related complaints and gathering additional documentation for ability to pay determinations, the requirements only are applicable in narrow circumstances and will not impose a one-time or a continuing cost on all PACE solicitors or PACE solicitor agents. The Department estimates that a PACE solicitor may incur an annual cost of $25 for each PACE solicitor agent to review the annual training update.

b. Impact of Regulatory Action on Program Administrators

This regulatory program will impose costs on program administrators in the following areas:

- Requirements for disclosures in advertising under section 1620.05.
- Requirements for ensuring the receipt of agreements, confirming information with property owners, verifying signatures, and maintaining documentation under section 1620.06.
- Recordkeeping requirements under section 1620.07.
- Requirements for processing complaints, including implementing processes for responding to or updating property owners in specified periods, making the process available in the language of the agreement, providing an expedited review for urgent matters, providing the reconsideration of a decision, and providing the decision in writing when required under section 1620.08.
- Requirements requiring the updating agreements with PACE solicitors, expanding the review of readily and publicly available information for a PACE solicitor or background check for a PACE solicitor agent, documenting the review of publicly available information or background check, gathering contact, licensure, and registration information for PACE solicitors and PACE solicitor agents, and transmitting data to the Department on enrolled solicitors and solicitor agents under sections 1620.11 and 1620.12.
- Requirements for monitoring and testing compliance of PACE solicitors, which may require implementing revised and expanded processes to monitor and test compliance and ensure licensure or registration in good standing, conducting a periodic review, and maintaining documentation under sections 1620.14 and 1620.15.

- Requirements for including areas in the training program, and maintaining documentation of training, under section 1620.17.
- Requirements for maintaining and reporting annually under section 1620.18.
- Requirements for determining a property owner's ability to pay the annual payment obligations for the PACE assessment, which may require revising procedures and implementing revised procedures, maintaining documentation, and gathering additional documentation from property owners, under sections 1620. 21 and 1620.22.
- Requirements for maintaining documentation related to the use of automated valuation models and the disclosure of market values to property owners under section 1620.27.
- Requirements for maintaining documentation regarding the useful life of an improvement under section 1620.08.
- Requirements for maintaining documentation on sources for the verification of criteria under Financial Code section 22684, including confirming with the PACE solicitor regarding knowledge of other PACE assessments under section 1620.29.

The Department estimates compliance costs for the regulations of upwards of $41,000 in initial costs and $30,000 ongoing annual costs for each of its five program administrator licensees.

The Department's assessment of the effect of this rulemaking action on the creation of new businesses or elimination of existing businesses, the expansion of businesses currently doing business within this state, and the benefits of the regulation to the health and welfare of California residents remain unchanged.

Revised Estimate of Creation or Elimination of Jobs

The Department has reassessed 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 will not 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.

Material 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;

▪ “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; and

▪ “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.

It would be cumbersome, burdensome, and impractical to publish these documents in the California Code of Regulations because the forms are long with specific formatting, requirements. The forms are uniform for every licensing law that requires the use of NMLS, so it is further impractical to include the same uniform forms within each licensing law’s regulations. The application forms are the basis for an interactive electronic filing of the information contained in the forms, and the publishing of the forms in the California Code of Regulations may confuse an applicant or licensee and result in the applicant or licensee attempting to file the form rather than submitting the information electronically. Further, NMLS provides extensive information to an applicant or licensee on how to navigate the system and provide the requested information and publishing the forms may confuse an applicant or licensee seeking information on how to submit the information.

The forms are readily available to the public through the NMLS website. Live links to the form are provided within the notice of rulemaking and in various other places on the Department’s website. Finally, both the Department and NMLS maintain call centers to assist applicants and licensees and can assist any applicant of licensee in accessing the uniform forms.