

**TITLE 4, DIVISION 13, ARTICLE 4  
OF THE CALIFORNIA CODE OF REGULATIONS**

**NOTICE OF PROPOSED RULEMAKING**

The California Alternative Energy and Advanced Transportation Financing Authority (the Authority or CAEATFA), organized and operating pursuant to Division 16 (commencing with Section 26000) of the California Public Resources Code – pursuant to the authority vested in it by the Public Resources Code Section 26009 to promulgate regulations and Public Resources Code Section 26060 to establish the PACE Loss Reserve Program – proposes to amend and adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The Authority proposes to adopt Title 4, Division 13, Article 4, Sections 10080 through 10087 of the California Code of Regulations (the Regulations) concerning the implementation of the PACE Loss Reserve Program (the Program). These regulations were initially adopted under the emergency rulemaking process on March 10, 2014 (OAL File No. 2014-0227-03E), pursuant to Public Resources Code 26009. These proposed regulations are similar to those enacted on March 10, 2014, under the emergency rulemaking process. The current rulemaking action would make those regulations permanent.

**PUBLIC HEARING**

A public hearing regarding the regulations has been scheduled from 10 a.m. until business is concluded on October 14, 2014 at 915 Capitol Mall, Room 587, Sacramento, California 95814. Any additional public hearings will be publicized on the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the regulations to the Authority. **The written comment period on the regulations ends at 5:00 p.m. on October 14, 2014.** All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Article 2, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

#### AUTHORITY AND REFERENCE

Authority: Public Resources Code Sections 26009 and 26060. Public Resources Code 26009 authorizes CAEATFA to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code 26060 provides the authority to develop and implement the PACE Loss Reserve Program.

Reference: Public Resources Code Division 16, Chapter 4. This regulation will implement, interpret, and make specific sections 26050 through 26082 of the Public Resources Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to develop and administer a PACE risk mitigation program known as the PACE Loss Reserve Program (the Program) for PACE programs (as defined in Public Resources Code Section 26055) to increase the acceptance of PACE loans in the marketplace and protect against the risk of default and foreclosure. See Public Resources Code Sections 26050 through 26064 (as modified by Senate Bill 96, Chapter 356, Statutes of 2013). The proposed regulations will allow the Authority to administer the Program pursuant to Public Resources Code Section 26060, *et seq.*

Authority staff (Staff) published an initial draft of the regulations on January 16, 2014, and held a public workshop on January 24, 2014, to receive comments from stakeholders. After receiving extensive comments, Staff published revisions to the initial draft of the regulations on February 4, 2014, and requested additional written comments from the public. The regulations were also provided at a publicly noticed meeting of the Authority's Board on February 18, 2014. The regulations were adopted through the emergency rulemaking process on March 10, 2014.

The proposed regulations establish application, claim, and participation withdrawal procedures and criteria; specify Program coverage; and establish reporting, certification, and fee requirements for the Program in accordance with Public Resources Code Section 26060, *et seq.* These regulations will enable the Authority to assist residential PACE programs in California by addressing some of the

concerns raised by the Federal Housing Finance Agency (FHFA) regarding the risk to mortgage lenders from PACE financing, and by collecting data on the financial performance of PACE assessments over time. With this assistance from the Authority, these PACE programs should be able to offer expanded financing for residential energy efficiency and renewable energy retrofit projects. By promoting residential PACE financing, the Program promotes California-based jobs, the reduction of greenhouse gases, and the reduction of air and water pollution and energy consumption.

Article 4. Establishes the PACE Loss Reserve Program.

Section 10080. Definitions. The proposed regulation establishes the specific meaning of several terms that are a prerequisite for interpreting the other proposed regulations necessary for the implementation of Public Resources Code Section 26060, *et seq.*

Section 10081. Application by PACE Program to the PACE Loss Reserve. This section outlines the Program's minimum underwriting criteria and the documentation required for an application to be considered complete, including: formation documents; proof of meeting the minimum underwriting criteria; a description transactional activities, quality assurance requirements, any credit enhancements associated with the financing; a summary of the financing portfolio; and a statement consenting to an audit by the Authority. This section also establishes the time limit for reviewing an application.

Section 10082. Coverage of PACE Loan Portfolios. This section establishes which Loans will be covered under the Program upon enrollment and how to enroll Loans originated after initial Program enrollment. This section has been amended to specify the effective date of the regulations as the original effective date of the emergency regulations on March 10, 2014.

Section 10083. Claims Against the Loss Reserve Pool. This section establishes the types of losses PACE programs may claim from the Program's loss reserve.

Section 10084. Claims Procedure. This section establishes the procedure and required documentation for making claim from the Program's loss reserve.

Section 10085. PACE Program Reporting and Administrative Fee. This section establishes the reporting requirement under the Program and outlines how administrative fees will be calculated. This section also specifies when the Authority may review the administrative fees and the consequences of a PACE Program's failure to comply with the reporting requirements. This section has been amended to specify on which date the Authority will begin reviewing the fee.

Section 10086. Termination and Withdrawal from the Program. This section establishes the procedure by which a PACE Program may withdraw from participation in the Program and the

procedure and grounds for terminating a PACE Program's participation in the Program. This section also clarifies portfolio coverage in the event a PACE Program withdraws or is terminated from the Program.

Section 10087. Certification of Reports and Claims. This section establishes the certifications required for all applications, reports, and claims submitted to the Authority.

The Authority's legal counsel reviewed the California Code of Regulations and found no existing regulations dealing with this issue. Therefore, CAEATFA believes that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. The proposed regulations, their purpose, and alternatives considered by the Authority are discussed in detail in the Initial Statement of Reasons.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effects of the regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** The Budget Act of 2013 appropriated \$810,000 for the initial administrative costs of implementing the Program.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561:** None.

**Other non-discretionary cost or savings imposed on local agencies:** None.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None.

**Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:** The Authority has made the determination that the regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Cost impact on a representative private person or business:** The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Small business:** The regulation will not have an adverse impact on small business in California and will not affect small businesses since they do not impose additional restrictions or cost on small businesses.

## RESULTS OF ECONOMIC IMPACT ANALYSIS

The Authority anticipates that the proposed regulations will have little to no effect on (1) the creation or elimination of jobs within the state; (2) the creation of new businesses or the elimination of existing businesses within the state; and (3) the expansion of businesses currently doing business within the state; and (4) may have an indirect, non-monetary benefit on the health and welfare of California residents and the state's environment.

By assisting PACE Programs, the Program may facilitate investment in home retrofits that will create jobs for contractors in California; however, these benefits are not quantifiable at this time. The Program will also have non-monetary benefits from reduced energy consumption, air pollution and greenhouse gas emissions resulting from residential PACE retrofits.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested persons to present statements with respect to alternatives to the regulations during the written comment period.

#### AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the regulations shall be submitted or directed to:

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#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF THE PROPOSED REGULATIONS

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, and the Economic Impact Statement. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the public hearing and the written comment period ends, the Authority may adopt the regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and request for copies of any changed or modified regulations should be addressed to the Agency Contact Person

identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

#### AVAILABILITY OF MATERIALS ON THE INTERNET

Materials prepared for this rulemaking, including this Notice, the Initial Statement of Reasons, the text of the proposed regulations, and the Economic Impact Analysis may be accessed on the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.