

**INITIAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CALIFORNIA FINANCING LAW:
PACE PROGRAM ADMINISTRATORS AND NMLS
PRO 02/17**

I. Background

a. PACE Program Administrators

A public agency¹ may authorize public agency officials² and property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.³ These arrangements are commonly known as Property Assessed Clean Energy (PACE) programs. Existing law authorizes a private entity to administer a PACE program on behalf of, and with the written consent of, a public agency. The Assembly Committee on Local Government describes the history of PACE programs as follows.

History and Statutory Authorization. Utilizing the authority to create a financing district as a charter city, the City of Berkeley, in 2007, established a citywide voluntary program to allow residential and commercial property owners to install solar energy systems and make energy efficiency improvements to their buildings and to repay the cost over 20 years via an assessment on the property tax bill. In 2008, the Legislature granted the statutory authority to cities and counties to provide upfront financing to property owners to install renewable energy sources or energy efficiency improvements that are permanently fixed to their properties, which is repaid through the property tax bill.

¹Subdivision (c) of Streets and Highways Code section 5898.20 provides that for the purpose of financing the installation of water efficiency improvements, “public agency” means a city, county, city and county, municipal utility district, community services district, sanitary district, sanitation district, or water district, as defined in section 20200 of the Water Code. For the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements, “public agency” means a county, city, city and county, or a municipal utility district, an irrigation district, or public utility district that owns and operates an electric distribution system. For the purpose of financing the public improvements, “public agency” means a city as defined in section 5005 of the Streets and Highways Code.

² Sts. & Hy. Code, § 5898.20, subd. (a)(2).

³ A voluntary contractual assessment on property may be authorized pursuant to paragraph (2) of subdivision (a) of section 5898.20 of the Streets and Highways Code; a voluntary contractual assessment or a voluntary special tax on property may be levied to finance the installation of distributed general renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements pursuant to a chartered city’s constitutional authority under section 5 of article XI of the California Constitution; and a special tax on property may be authorized pursuant to subdivision (b) of section 53328.1 of the Government Code. For simplicity, the reference to “contractual assessments” includes all of these.

Most PACE programs are implemented and administered under two statutory frameworks: AB 811 (Levine), Chapter 159, Statutes of 2008, which amended the Improvement Act of 1911, to allow for voluntary contractual assessments to finance PACE projects, and SB 555 (Hancock), Chapter 493, Statutes of 2011, which amended the Mello-Roos Community Facilities District Act to allow for Mello-Roos special taxes (parcel taxes) to finance PACE projects.

The Legislature has expanded PACE for residential and commercial property owners as an option to pay for renewable energy upgrades, energy and water efficiency retrofits, seismic improvements, and other specified improvements for their homes or buildings. Local agencies create PACE assessment districts under AB 811 or establish a Community Facilities District (CFD) under SB 555, allowing the local agency to issue bonds to finance the up-front costs of improvements. In turn, property owners enter into a voluntary contractual assessment agreement with the local agency or agree to annex their property into a CFD to re-pay the bonds via an assessment or special tax, secured by a priority lien, on their property tax bill. The intent of the program is that the assessment or parcel tax remains with the property even if it is sold or transferred, and the improvements must be permanently fixed to the property.

PACE Models. In California, there are several models available to local governments in administering a PACE program. Only the counties of Sonoma and Placer administer their own PACE programs. The majority of local governments contract with a private third party or join a [joint powers authority], which contracts with a private third party to carry out their PACE programs. The cost of third-party administration is not borne by the local agency but is built into PACE loan financing. Some of these programs focus on residential projects, others target commercial projects, and some handle both residential and commercial portfolios.⁴

On October 4, 2017, the Governor signed into law AB 1284 (Dababneh, Chapter 475, Statutes of 2017), which renamed the “California Finance Lenders Law” the “California Financing Law,” effective immediately, and which generally requires a private entity that administers a PACE program on behalf of a public agency to be licensed by the Commissioner of Business Oversight (Commissioner) under the renamed California Financing Law, beginning January 1, 2019. The private entities are defined as “program administrators.” AB 1284 amended the California Financing Law to establish licensing requirements and standards for program administrators. The California Financing Law is administered by the Department of Business Oversight (Department).

AB 1284 was enacted to enhance consumer protections and government oversight in the PACE market. According to the Senate Committee on Insurance, Banking and

⁴ Assem. Com. on Local Government, Analysis of Assem. Bill No. 1284 (2017-2018 Reg. Sess.) as amended September 12, 2017, p. 7.

Financial Institution's analysis of the bill, the bill was enacted to address recent reports that indicate the default rates for PACE assessments are rising and property owners may be pressured into signing a PACE assessment contract by unscrupulous contractors. The analysis quotes the bill's author, former Assembly member Dababneh, who stated: "Defaulting on a PACE assessment can lead to foreclosure or a county tax sale that causes property owners to lose their homes. Currently, no state agency has regulatory authority over PACE program administrators, and the few consumer protections that exist are not enforced by any government agency or department. A lack of oversight in this fast-growing industry puts thousands of Californians at risk of signing assessment contract that they do not have the ability to repay and potentially losing their homes. There is an urgent need to get underwriting standards and DBO oversight into the market as soon as possible to protect California homeowners."⁵

In considering AB 1284, the Assembly Committee on Local Government described the need for greater oversight of PACE programs as follows:

Evolution of PACE. It is clear that there is an immediate need to provide additional parameters around the PACE program to ensure consumer protections. Local control of the PACE program has come at a cost. This bill seeks to provide a statewide regulatory body for PACE oversight. At the inception of the PACE program, the presence of third party administrators and the accompanying complex financing structures were not contemplated by the Legislature. Nearly all local governments utilize the [joint powers authority] and program administrator model for PACE programs, and as PACE continues to evolve, the realities are very different than those imagined at the outset of legislative authorization. For example, one of the key features of the PACE program is that not only does the efficiency improvement remain with the property, but so does the obligation to repay the contractual assessment. Homeowners, mortgage and realtor industry stakeholders, PACE administrators, local governments, including tax collectors, and now consumer groups, have seen the consequences when homeowners are forced to repay the entire PACE assessment in order to sell or refinance their homes or cannot afford to make the payments on their property tax bills. The Legislature continues to grapple with laws which govern local government assessments, including lien priority, unpaid payments, foreclosure, and noticing requirements, and lending practices in determining which requirements PACE should be subject to in light of the current realities of the program.

According to a Wall Street Journal article published August 15, 2017 ("More Borrowers Are Defaulting on Their Green PACE Loans"), a Wall Street Journal analysis using tax data from 40 California counties found the number PACE assessment delinquencies has grown by nearly 450% in the last year.

⁵ Sen. Com. on Insurance, Banking and Financial Institutions, Analysis of Assem. Bill No. 1284 (2017-2018 Reg. Sess) as amended September 12, 2017, pp. 6-7.

Approximately 1,100 California borrowers with PACE assessments missed two consecutive payments through the tax year that ended June 30th, 2017, compared with 245 the previous year. Furthermore, because they are placed on a homeowner's property tax bill, delinquent PACE assessments accrue additional interest rapidly, at a rate of 18% annually, making delinquencies, once incurred, that much harder for property owners to cure. PACE assessments totaling nearly \$3.7 million are past due across California through the 2016-17 tax year, up from about \$520,000 in the 2015-16 tax year.⁶

AB 1284 was enacted to ameliorate some of the consumer risks associated with PACE programs administered by third parties. AB 1284 requires a program administrator to comply with licensure requirements that are the same as those for a finance lender or broker already subject to licensure under the California Financing Law, such as requiring licensure of business locations, the maintenance and preservation of records, and annual reporting, including filing an annual report under oath; and prohibiting making false or misleading statements and unfair business practices.

In the conduct of their business, program administrators typically make PACE financing available to property owners through general contractors and other third parties who are arranging to perform the energy and water upgrades for property owners. AB 1284 defines these third parties as "PACE solicitors" when they are soliciting property owners to enter into contracts for PACE financing (defined as "assessment contracts"). The individuals who act on behalf of the PACE solicitors and solicit property owners are defined as "PACE solicitor agents." Operative January 1, 2019, AB 1284 requires a program administrator to establish and maintain a process to enroll a PACE solicitor and a PACE solicitor agent, including requiring a PACE solicitor or a PACE solicitor agent to meet specified minimum background checks, and prohibits a program administrator from enrolling a PACE solicitor or a PACE solicitor agent if the program administrator makes specified findings. The bill requires a program administrator to establish and maintain a process to promote and evaluate the compliance of a PACE solicitor and a PACE solicitor agent with applicable law, and to establish and maintain a process to cancel the enrollment of a PACE solicitor or PACE solicitor agent who fails to meet minimum qualifications. AB 1284 also requires a program administrator to establish and maintain a training program for PACE solicitor agents, in accordance with certain requirements.

In addition to the licensing and oversight provisions in AB 1284, commencing on April 1, 2018, the bill prohibits a program administrator from approving an assessment contract for funding and recording by a public agency unless the program administrator makes a

⁶ Assem. Com. on Local Government, Analysis of Assem. Bill No. 1284 (2017-2018 Reg. Sess.) as amended September 12, 2017, p. 8.

reasonable, good faith determination that the property owner has a reasonable ability to pay the “PACE assessments,” subject to specified requirements and procedures.⁷

This rulemaking action proposes amending and enacting rules to implement AB 1284 and address the practices in the marketplace that were the impetus for the bill.

b. Transition onto the Nationwide Multistate Licensing System (NMLS)

NMLS is an online licensing system that was developed and is operated by State Regulatory Registry LLC, a nonprofit affiliate of the Conference of State Bank Supervisors. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008⁸ required all state-licensed and federally registered mortgage loan originators to be registered with the system. Since development, the system has expanded and now serves as a multistate licensing system for many industries. Currently, the Department licenses mortgage lenders, mortgage brokers, mortgage servicers, mortgage loan originators, student loan servicers, and program administrators through NMLS. Under the California Financing Law, some licensees are licensed through NMLS, including mortgage lenders, mortgage brokers, mortgage loan originators, and program administrators, while other lenders and brokers not engaged in the business of making or brokering loans secured with residential real property are not on NMLS. The licensees not on NMLS make filings directly with the Department, which may result in paper filings. Some of these licensees may already participate in NMLS in other states, making maintenance of a California license outside of NMLS inefficient. Subdivision (i) of Financial Code section 22101 sets forth the Legislature’s declaration encouraging the Department to continue to expand its use of electronic filings, and this rulemaking action furthers this goal. Through this rulemaking action, the Department proposes to adopt provisions that facilitate transitioning all licensees under the California Financing Law onto NMLS. The purpose of this part of the proposed rulemaking action is to modernize the licensing process.

II. Statement of Specific Purpose

a. Amendments to Existing Regulations

AB 1284 changed the name of the California Finance Lenders Law to the California Financing Law. Financial Code section 22000 provides that division 9 of the Financial Code is known and may be cited as the “California Financing Law.” This rulemaking action proposes changing the name of the law throughout the applicable regulations. The purpose is for consistency with the licensing law, and the change is necessary for

⁷ A “PACE assessment” is defined as a voluntary contractual assessment, voluntary special tax, or special tax, as described in subdivisions (a), (b), and (c) of section 26054 of the Public Resources Code.

⁸ 12 U.S.C. § 5101 et seq.

this same reason. This rulemaking action also proposes making additional technical and nonsubstantive changes to existing rules. The benefits of these changes include clarity and consistency.

Subchapter 6: This rulemaking action proposes changing the title of Subchapter 6 in Chapter 3 of Title 10 of the California Code of Regulations to “California Financing Law.”

Section 1404 – Definitions: The current definition of “finance company” in subdivision (d) of section 1404 of the regulations defines the phrase to mean a company subject to the California Finance Lenders Law and provides that the phrase has the same meaning as “licensee.” The proposed amendments instead change the term to mean only a finance lender or broker under the California Financing Law. Wherever the phrase “finance company” is used throughout subchapter 6, the regulations are proposed to be amended to ensure the new definition does not change the meaning of the section. This change is necessary to accommodate the new licensing structure for program administrators under the California Financing Law.

This rulemaking action also proposes to update the definitions of “NMLS,” “Form MU1,” “Form MU2,” and “Form MU3” in subdivisions (g), (h), (i), and (k) of section 1404. The changes proposed in this rulemaking action update the name of NMLS and the names of the forms to incorporate changes that have occurred as NMLS has expanded from a mortgage licensing system to include other types of activities and industries. The definitions in the existing regulations for NMLS and its forms predate changes made by NMLS to the name of the system and the name of the uniform license forms. The name of the system has changed from the Nationwide Mortgage Licensing System to the Nationwide *Multistate* Licensing System. This proposed rulemaking action updates the name of NMLS. In addition, this proposed rulemaking action updates the names of the uniform forms. Form MU1, previously titled, “Uniform Mortgage Lender/Mortgage Broker Form,” is now titled, “NMLS Company Form.” Form MU2, previously titled, “Uniform Mortgage Biographical Statement & Consent Form,” is now titled, “NMLS Individual Form.” Form MU3, previously titled, “Uniform Mortgage Branch Office Form, is now titled, “NMLS Branch Form.” In addition to revising the form names, the proposed changes amend the definitions of the forms to reflect the current use of the forms by removing references to mortgage lending, servicing, and brokering activity. These proposed changes to definitions are necessary to incorporate changes made by NMLS, and to allow the Department to expand the licensees that may transition onto NMLS.

In addition to revising the names of the forms, this rulemaking action incorporates the three forms into the regulations by reference. While the NMLS forms are currently mandated for use in the licensing of mortgage loan originators under Financial Code section 22105.1 and residential mortgage lenders under existing rules, the Department is proposing to expand the use of NMLS for the licensing of all licensees under the

California Financing Law through amendments to sections 1422, 1424, and 1425 of these rules.

Form MU1 requests information like that required in the existing application previously adopted in section 1422 of these rules. The information requested from the applicant in Form MU1 is necessary to provide the Department with information needed to determine whether an applicant meets the requirements for licensure under the California Financing Law. Section 1 of the form requires the applicant to identify the specific business activities in which it wishes to engage and be licensed. This information is necessary to identify the type of license that the applicant is seeking. Sections 2 through 13 of the form request basic information about the applicant, including identifying information, primary company contacts, company legal status/structure, trade names, web addresses, books and records custodian information, and information regarding subsidiaries and affiliates. This information is necessary to assist the Department in the investigation of the applicant required under Financial Code section 22105 and to provide the Department with basic information about the entity seeking licensure. Section 14 requires the applicant to list the criminal, civil, regulatory, and financial history of the applicant and any affiliates controlling or controlled by the applicant. This information is necessary for the Department to investigate the applicant under Financial Code section 22105 and to determine whether a reason exists to deny the application under Financial Code section 22109. Sections 15 and 16 require the applicant to list information identifying direct and indirect owners, and executive officers. This information is necessary for the Department to investigate the applicant under section 22105.

Form MU2, entitled "NMLS Individual Form," is the form used for obtaining identifying and background information on specified individuals, and the form is substantially the equivalent of the Department's "Statement of Identity and Questionnaire" in exhibit C of the previously adopted application in section 1422 of the rules. Sections 1, 2 and 7 of Form MU2 requests individual identifying information including fingerprints, section 3 requests residential history, section 4 requests employment history, and section 5 requests other business activity. Section 6 requires disclosure of information regarding past bankruptcies, foreclosure actions, bonding, unsatisfied judgments or liens, child support delinquency, felonies and specified misdemeanors, financial services-related civil actions, regulatory actions, and terminations. This information is necessary for the Department to investigate the background of the principals, owners, and key personnel of the applicant as provided in Financial Code section 22105, to determine whether licensure may be granted. Section 1422.5 of the rules is proposed to be amended to provide that section 8 of Form MU2, requiring a credit check, is not required. Section 9 requires a representation that the applicant reviewed and approved the individual's information on Form MU2. This information is necessary to ensure that the applicant is

aware of any disqualifying information related to principals, owners and key personnel. Section 10 requires an acknowledgement and consent by the individual who is the subject of Form MU2. This provision is necessary to ensure the information is true and complete.

Form MU3, entitled “NMLS Branch Form,” is the form necessary for an applicant or licensee filing through NMLS to obtain an additional branch license under Financial Code section 22102. Section 1423 of the rules sets forth a short form application for applicants and licensees not filing through NMLS to request an additional branch license. Form MU3 requests information from NMLS filers that is similar to existing section 1423 of these rules for non-NMLS filers. Section 1 requires the applicant to designate the business activities to be conducted at the location. Section 2 requests identifying information for the branch location. Section 3 requests other trade names to be used at the location. Section 4 requests the identity of the branch manager, who must also complete Form MU2. Section 5 requests website addresses. Section 6 requests books and records information. Section 7 requests information on the relationship between the branch office and the main office, the authority of the branch office, and whether anyone is responsible for the expenses or has a financial ownership/liability interest in the branch office. Section 8 requests contact information about any party responsible for expenses or with a financial ownership/liability in the branch office, requests information on whether such party is separately licensed, and requests an explanation regarding the party’s responsibility. The execution section requires an officer or control person to represent that the information is current, true and complete. The information in the form is necessary to obtain information regarding the branch office for the oversight of the licensee, and to determine whether the activities of the branch are permissible for licensure.

Section 1408 – Waivers Prohibited: Existing section 1408 prohibits a finance company from requiring or permitting a borrower to waive any statutory provision, a notice, or a mandatory provision, intended for the benefit of the borrower. The proposed amendments extend this prohibition to program administrators, prohibiting waivers in the same manner, unless the law or regulation expressly authorizes a waiver. This change is necessary to provide property owners the same protections as borrowers in a financing transaction.

Section 1409 – Officers, Directors, Partners: This rulemaking action proposes changing the phrase “finance company” to “licensee” to incorporate program administrators in the existing rule requiring ownership and management changes to be reported to the Commissioner. The change is necessary to incorporate program administrators into the general licensing requirements for California Financing Law licensees, pursuant to AB 1284.

Section 1409.1 – Notices of Changes by Licensee on NMLS: Among other things, existing section 1409.1 requires a mortgage lender, mortgage broker, and mortgage loan originator to make changes to its license record through NMLS. Through this rulemaking action, the Department is requiring program administrators to be on NMLS and setting forth a process to transition all licensees under the California Financing Law onto NMLS. Therefore, this rulemaking action proposes to amend section 1409.1 to require each licensee on NMLS to make changes to its license information through NMLS. This change is necessary to accommodate expanding the use of NMLS to all licensees under the California Financing Law. The proposed amended language specifically identifies mortgage loan originator licensees because Financial Code section 22007 does not include mortgage loan originators in the definition of the term “licensee,” but the proposed amendments do not change the existing obligations for these licensees under section 1409.1 of the rules.

Section 1411 – Criminal Actions: Existing section 1411 requires a finance lender to immediately report to the Commissioner any criminal action filed against the company or its directors, officers or management personnel. This rulemaking action proposes changing “finance lender” to “licensee” so that all licensees are subject to the same reporting requirement. The change is necessary to incorporate program administrators into the general licensing requirements for California Financing Law licensees. The existing section requires mortgage lenders, mortgage brokers, mortgage lender and brokers, and mortgage loan originators whose records are maintained in NMLS to report the criminal action through the NMLS. This rulemaking action substitutes “licensee” for the list of individual license types and is necessary to accommodate any type of licensee reporting through NMLS, including program administrators. The proposed amended language specifically identifies mortgage loan originator licensees because Financial Code section 22007 does not include mortgage loan originators in the definition of the term “licensee,” but the proposed amendments do not change the existing obligations for these licensees under section 1411 of the rules.

Section 1422 – Application: Financial Code section 22101 provides that an application for a license as a finance lender, broker, or program administrator shall be in the form and contain the information that the Commissioner may by rule or order request. Existing section 1422 sets forth the application for a license as a finance lender or broker under the California Financing Law. This rulemaking action proposes changing references from the “California Finance Lenders Law” to the “California Financing Law,” changing legal citations to be consistent with the California Style Manual, changing the acronym “CFLL” to “CFL,” and making nonsubstantive, grammatical corrections. This rulemaking action also proposes additional changes as follows.

Subdivision (f) of Financial Code section 22101 provides that the Commissioner may by rule require an application to be made through NMLS. Financial Code section 331

provides that the Commissioner may adopt and implement any method of accepting electronic filings of applications, reports, or other matters. This rulemaking action proposes amending the application process to require an applicant to apply for a license through NMLS in accordance with its procedures, and as provided in section 1422.5 of the rules. Section 1422.5 sets forth the procedures for filing an application through NMLS. This change is necessary to allow the Commissioner to transition all California Financing Law applicants and licensees onto NMLS, and conforming changes are made throughout the application. The proposed amendments further provide that if a finance lender or broker applicant is unable to file an application through NMLS, the applicant must file the existing application set forth in section 1422 of the rules. The purpose of this provision is to provide an alternative for filing through NMLS, and the provision is necessary to accommodate applicants unable to file through NMLS for reasons such as the unavailability of NMLS.

Financial Code section 22105 provides that if the Commissioner determines that the applicant has satisfied the CFL and does not find facts constituting reasons for denying a license, the Commissioner shall issue and deliver a license to the applicant. The existing instructions for a license application in section 1422 of the rules provide that within 60 calendar days of the filing of a completed application, the Commissioner shall reach a decision on the license. The proposed amendments clarify that the Commissioner determines whether an application is complete. The purpose of this change is to provide an applicant guidance on when an application is complete, and the change is necessary to inform an applicant that an application is not complete when the Commissioner has requested clarification or additional information related to an application.

The existing instructions for a license application describe who must obtain a lender or broker license under the California Financing Law. The proposed amendments redraft the heading to add the term “broker” to more accurately reflect the content of the paragraphs below the header. The proposed amendments also redraft the paragraph describing the authority to broker loans under a lenders license, in accordance with Financial Code section 22059, in order to provide clarity on the type of brokering that may be engaged in under the authority of the California Financing Law, and the types of brokering that may require licensure under the Real Estate Law. Similarly, the language in the Execution Section of the application requires an applicant to declare as true and correct a statement regarding the limitation of the brokering authority. This proposed rulemaking action recasts the language to more accurately reflect the law and is necessary to provide clarity on brokering authority under the California Financing Law. The existing language requires applicants to confirm that loans would only be brokered to lenders licensed pursuant to the CFL, but a licensee may broker a loan to any lender, provided that the licensee has the required license. Therefore, the proposed revised

language instead requires the applicant to confirm that the applicant will maintain any license necessary to broker loans to a lender not licensed as a finance lender.

This rulemaking action eliminates the statement in the application that all signatures must be original and not a copy. This change is intended to facilitate electronic filings of applications and is necessary to provide for electronic signatures.

Financial Code section 22105 requires the Commissioner to investigate the applicant and related persons prior to the issuance of a license. The existing application instructions in section 1422 of the rules identify the information an applicant must provide for this purpose. The instructions for Items 5.d., 5.e., 6.d., 6.e., and Exhibit M of the application require an applicant to provide an organizational chart for the applicant identifying the owners, subsidiaries, and affiliates, and their related ownership percentages. The corresponding sections on the application request the same information. The proposed amendments to section 1422 recast these instructions and requests to provide clarity on the information requested. The proposed changes clarify that the Commissioner requests the applicant identify any entity or individual who is an affiliate of or affiliated with the applicant. The proposed changes further clarify that 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 clarify that “affiliate” includes subsidiaries of the applicant. These changes are necessary to instruct applicants on the information being sought by the Commissioner regarding affiliates of an applicant, and the information is necessary to investigate the applicant as required by statute. The definition of “affiliate” was derived from Corporations Code section 150.

Financial Code section 22109 authorizes the Commissioner to deny an application for a license if the applicant or other specified persons have been convicted of a crime or engaged in other enumerated acts. The application and instructions in existing section 1422 of the rules request information on past convictions and acts of the applicant. The proposed amendments clarify in Item 7 of the instructions and application that the applicant must disclose information on past convictions and enumerated acts for all of the specified persons whose acts may result in the Commissioner denying an application under Financial Code section 22109 and persons who are affiliated with the applicant, and not solely the applicant. This information is necessary to investigate the applicant and protect the public, and to allow the Commissioner to obtain the necessary information to determine whether an application should be approved or denied.

Financial Code section 22154 prohibits a licensee from conducting the business of making loans within any office, room, or place of business in which any other business is solicited or engaged in, except as authorized in writing by the Commissioner, upon a finding that the character of the other business is such that the granting of authority

would not facilitate evasions of the CFL. Item 8 of the application and instructions for a CFL license in existing section 1422 of the rules requires an applicant indicate whether the applicant will engage in other business at a licensed location, and to describe the other business. The proposed amendment expands the instructions to request the applicant describe the other business in sufficient detail to allow the Commissioner to make the finding required by law. The purpose of the proposed change is to provide an applicant with guidance on the information requested and to inform the applicant of the finding required for approval of other business at a licensed location. The amendments are necessary to facilitate the disclosure of other business necessary to allow the Commissioner to make the finding required by law.

Item 10 of the existing instructions and application in section 1422 of the rules requires an applicant to provide a short description of the applicant's business plan. The proposed amendments recast the request to require the applicant to provide its business plan. The purpose of this change is to ensure the Department obtains adequate information to understand the applicant's proposed plan of business, and the amendments are necessary to ensure that the Commissioner obtains adequate information from the applicant on its proposed activities so that the Commissioner may evaluate the application for licensure.

In 2018, SB 1361 (Bradford, Chapter 699, Statutes of 2018) added Financial Code section 331.5 to require each licensee to establish and maintain a designated email address for communications from the Commissioner. This rulemaking action proposes requiring each applicant provide in the application and maintain a designated email account for communications with the Department. The proposed addition to the application requires an applicant to register online and designate the dedicated email address through the DBO Self Service Portal at <https://docqnet.dbo.ca.gov/>. The dedicated email account is necessary to provide an efficient means of communication from the Department to the applicant and licensees and to comply with Financial Code section 331.5. The requirement to register online and submit the dedicated email address is necessary to ensure each applicant establishes an account through the DBO Self Service Portal, and to ensure that the applicant provides the designated email account in a way that allows the Department's electronic communications system to capture the address.

The proposed amendment to the application requires the email account meet the following parameters: (1) it must be a generic address and not an individual's email; (2) it must allow the receipt of all "@govdelivery.com" emails; (3) the security settings of the account must allow for the receipt of attachments; (4) the account must allow for the distribution of emails to the appropriate individuals within the applicant; and (5) the account must be continuously maintained. The generic address is necessary to ensure that regulatory messages are not dependent on a single individual within the

organization. The condition on the security settings is necessary to allow the Department to send attachments. The ability to distribute emails is necessary to ensure that the appropriate individuals within an organization receive communications. The continuous maintenance requirement is necessary to ensure that the organization receives communications from the Department.

This rulemaking action proposes amending a provision in the Execution Section of the application that requires an applicant to confirm that it will comply with the additional disclosure and consumer protection requirements of the Covered Loan Law and higher-price mortgage loans. The proposed change more accurately reflects federal law by clarifying that the lender's obligations apply to a high-cost mortgage and a higher-priced mortgage loan under the Truth in Lending Act (TILA). Financial Code section 22346, subdivision (b), provides that a violation of TILA is a violation of the California Financing Law. Regulation Z, the regulation implementing TILA, defines a high-cost mortgage, and sets forth requirements related to these loans.⁹ Additionally, Regulation Z defines a higher-priced mortgage loan, and sets for requirements related to these loans.¹⁰ The proposed changes incorporate these definitions into the applicant's commitment in the Execution Section of the application. The proposed changes are necessary to accurately describe the laws on high-cost mortgages and higher-priced mortgage loans, to alert the applicant of its obligation to comply with these laws, and to facilitate compliance by obtaining the applicant's agreement to comply with these laws.

In Exhibit C to the application, the Statement of Identity and Questionnaire, the application asks whether the individual has ever changed his or her name, including a woman's maiden name. The rulemaking action proposes eliminating the reference to a woman's maiden name and instead referencing name changes subsequent to marriage, as an explanation of the type of name change that must be reported. This change is necessary to recognize that marriage name changes are not limited to women and may occur for any gender.

Section 1422.4 – Electronic Filings: Existing subdivision (a) of section 1422.4 designates NMLS to receive and store filings, obtain fingerprints, obtain credit reports, and collect related fees from applicants and state-licensed mortgage lenders, mortgage brokers, mortgage lenders and brokers, and mortgage loan originators on behalf of the Commissioner. This rulemaking action proposes expanding the types of applicants and state-licensed entities making filings through NMLS to include all licensees under the California Financing Law: program administrators, finance lenders and brokers (defined as finance companies under section 1404 of these rules), and mortgage loan

⁹ 12 C.F.R. § 1026.32.

¹⁰ 12 C.F.R. § 1026.35.

originators. The changes are necessary to expand the use of NMLS to all licensees under the California Financing Law.

Existing subdivision (b) of section 1422.4 requires certain applicants and licensees to make filings and pay fees through NMLS. This rulemaking action proposes expanding the subdivision to add new paragraphs requiring all licensees under the California Financing Law to make filings and pay fees through NMLS. Existing subdivision (b) is proposed to be renumbered as paragraph (b)(1) and to include program administrators in the list of licensees that must currently make filings and pay fees through NMLS. These changes are necessary to identify program administrators as one of the types of licensees currently filing through NMLS, to set forth the obligation for program administrators to file through NMLS. Proposed paragraph (b)(2) requires all finance lender and broker applicants to make filings and pay fees through NMLS on or after January 1, 2021. This provision is necessary as a means of transitioning all licensees under the California Financing Law onto NMLS. This January 1, 2021 date is necessary to provide the Department with sufficient time to prepare for the change. Proposed paragraph (b)(3) requires all remaining lenders and brokers to transition onto NMLS on or before July 1, 2021. This provision is necessary to have all California Financing Law licensees licensed through the same uniform, national database, and the July 1, 2021 time period is necessary to provide both the Department and licensees sufficient time to prepare for the transition of records onto NMLS. Existing paragraphs (b)(1) through (b)(4) are renumbered as paragraphs (c)(1) through (c)(4). This renumbering is necessary to accommodate the other changes to the section.

Section 1422.4.5 – Request for Confidential Treatment: Existing section 1422.4.5 allows licensees to request confidential treatment of certain documents filed with the Commissioner. This rulemaking action proposes adding program administrators to the list of licensees. The change is necessary to incorporate program administrators into the general licensing requirements for California Financing Law licensees.

Section 1422.5 – License Application Through NMLS: Existing section 1422.5 is titled, “License Application for Mortgage Lenders, Mortgage Brokers, and Mortgage Lenders and Brokers.” This rulemaking action proposes changing the name to “License Application Through NMLS,” and proposes amending the procedures and requirements within the section to accommodate filings in NMLS by applicants and licensees that are not mortgage lenders or mortgage brokers. The proposed changes add program administrators required to be licensed under Financial Code section 22100.5, and any other applicant or licensee required to use NMLS under section 1422.4 of the rules. The proposed changes provide that a person filing through NMLS need not file the application in section 1422 of the rules. These changes are necessary to accommodate program administrators currently filing through NMLS, and to accommodate

transitioning all applicants and licensees under the California Financing Law onto NMLS.

In subdivision (a) and paragraphs (a)(3), (a)(6), (a)(10), and (a)(12) of section 1422.5, the proposed changes update the name of the Form MU1, revise the name of sections in Form MU2, and delete instructions no longer applicable to Form MU1, to incorporate the form name change, section name changes, and other changes made by NMLS. These changes are necessary to incorporate changes made by NMLS. Proposed subparagraph (a)(3)(C) clarifies that individuals filing Form MU2 do not need to complete section 8 of the form, which requires an applicant consent to a credit check. This change is necessary because the Department does not impose a credit check requirement on principals, owners and key personnel of licensees under the California Financing Law, and these are the individuals required to file Form MU2. The proposed changes in paragraph (a)(6) of section 1422.5 require the business plan submitted by applicants to identify intended sources of capital. This change is necessary to provide the Department with an understanding of an applicant's source of capital to fund its business plan, so the Department can evaluate an applicant's ability to meet commitments to consumers.

In paragraph (a)(7) of section 1422.5, the proposed changes clarify that the organizational chart is necessary if the applicant is owned by another entity or individual and must identify each entity or individual and its percentage ownership of the applicant. This change is necessary to incorporate the instruction from the application in section 1422 into the filing proposed to be made through NMLS.

The proposed change in paragraph (a)(8) requires the applicant to submit a management chart displaying the applicant's directors, officers, and managers, including individual names and titles. This change is necessary to provide the Department with a visual aide to understanding the responsibility of key management within an organization.

Proposed paragraph (a)(15) of section 1422.5 requires an applicant to submit the Execution Section from the application in section 1422 of the rules. This change is necessary to ensure that an applicant filing through NMLS commits to the compliance requirements set forth in section 1422.

Proposed paragraph (a)(16) of section 1422.5 requires an applicant to establish a designated email address by registering for a DBO Self-Service Portal Account through the Department's website. The paragraph further requires an applicant to establish and monitor the email account in accordance with the requirements in Item Number 12 of the California Financing Law Application in subdivision (c) of section 1422 of these rules, which sets forth minimum requirements for the email account. This proposed

requirement is necessary for the applicant to establish and monitor an email account for communication from the Department, in accordance with Financial Code section 331.5.

Section 1422.5.1 – License Application Requirements for Program

Administrators: This rulemaking action proposes to add section 1422.5.1 to the rules, setting forth additional requirements for applicants for a program administrator license filing through NMLS. Paragraph (a)(1) requires an applicant to submit a copy of each central administration agreement between the applicant and a public agency that authorizes the applicant to administer a PACE program on its behalf. This information is necessary for the Department to have a record of the agreement between the applicant and a public agency, and for the Department to have the terms of the agreement.

Financial Code section 22680, paragraph (b)(1) requires the process for a program administrator to enroll a PACE solicitor to include a written agreement between the program administrator and the PACE solicitor that sets forth the obligations of the PACE solicitor and its PACE solicitor agents. Proposed paragraph (a)(2) of section 1422.5.1 requires an applicant to submit a copy of the standard agreement template for agreements with PACE solicitors and PACE solicitor agents, which the Department will receive in confidence under paragraph (d)(4) of Government Code section 6254. The agreement is necessary for the Department to ensure the applicant complies with Financial Code section 22680. The agreement is maintained in confidence to ensure that an applicant may maintain any proprietary business information including trade secrets in the agreement.

Proposed paragraph (a)(3) of section 1422.5.1 requires an applicant to submit a Request for Information form as proposed in that section. The proposed form requests an applicant confirm whether the applicant will comply with the various requirements of AB 1284 and requires the applicant to certify that the statements provided are true and correct. These provisions are necessary to obtain the applicant's assurance that the law will be followed. The proposed Request for Information form also provides that the training required under Financial Code section 22681 must be submitted to the Commissioner upon request and will be received in confidence under Government Code section 6254. Receipt of the training upon request is necessary to confirm the applicant maintains a program as required by Financial Code section 22681. The confidentiality provision is necessary so that a proprietary training program does not become a public record if requested by the Commissioner, to allow a licensee to protect its trade secrets and intellectual property.

The proposed Request for Information form provides that a program administrator may use a training program containing the elements required by statute and regulation unless the Commissioner determines that the program fails to contain the elements required by statute and regulation and disapproves the continued use of the training

program. The form further provides that the disapproval of a training program shall not affect the enrollment status of a PACE solicitor agent who has already completed the training program, but the Commissioner may require revised training materials be provided to PACE solicitor agents for any segment of training determined to be materially deficient because it fails to comply with the law, is misleading, or is inaccurate. This rule is necessary to address deficient training programs, and to clarify the status of a PACE solicitor agent if a training program is disapproved after use.

The proposed Request for Information form further requires an officer with authority to sign for the applicant to sign the exhibit certifying he or she has read the information request, and certifying that statements are true and correct. This representation and signature are necessary provide assurance that the representations regarding the administration of a PACE program were reviewed by an officer of the applicant and were expressly acknowledged, to further evidence a commitment to comply with the law.

Proposed subdivision (b) of section 1422.5.1 provides that an applicant or licensee shall provide the Commissioner with the original of any document uploaded to NMLS upon request and shall maintain the original signed document in its books and records as provided in section 1620.07 of the rules. This provision is necessary to inform the applicant or licensee that the Department may request the original document uploaded into NMLS as part of the applicant or licensee's record, and that the original documents that constitute the application must be keep in the licensee's books and records, including original signatures.

Sections 1422.6.2, 1422.7.1, 1422.12, 1426, and 1437: This rulemaking action proposes changing references from the "California Finance Lenders Law" to the "California Financing Law," changing a reference from the "Department of Corporations" to the "Department of Business Oversight," changing legal citations to be consistent with the California Style Manual, changing the acronym "CFLL" to "CFL," making nonsubstantive grammatical corrections, adding "administering a PACE program" to a description of activities performed by licensees, changing the term "finance company" to "licensee" in instances where all licensees are included in the regulatory requirement, and changing "licensee" to "finance company" in instances where regulatory requirements are only applicable to finance lenders and brokers. The changes are necessary to make technical changes to the rules because of AB 1284. In general, the changes in these sections are nonsubstantive. However, changing the phrase "finance company" to "licensee" will have the substantive impact of making program administrators subject to the regulatory section. The purpose of these changes is to make program administrators subject to all the general regulatory requirements for licensees. The changes are necessary to uniformly apply the same general licensing provisions to program administrators as apply to other businesses licensed under the

California Financing Law, to effectuate the intent of the Legislature in licensing program administrators under this law.

Section 1422.10 – Surrender of License Through NMLS: This rulemaking action proposes amending section 1422.10 of these rules to make the section applicable to all licensees filing through NMLS. The change is necessary to accommodate the Department’s efforts to move all licensees under the California Financing Law onto NMLS. The proposed amendments also recast the existing directive that a licensee subject to the section terminate the sponsorship of all mortgage loan originators upon surrender of a license. Since the proposed amendments to the section make the surrender process applicable to all licensees on NMLS, but only some licensees sponsor mortgage loan originators, the language is recast to clarify that the obligation to terminate the sponsorship of mortgage loan originators upon surrender of a license is only applicable to licensees that sponsor one or more mortgage loan originators. The purpose of these amendments is to clarify the license surrender process for all licensees on NMLS, including those licensees that sponsor mortgage loan originators. The changes are necessary to facilitate moving all licensees under the California Financing Law onto NMLS.

Section 1423: Section 1423 of the rules sets forth a process for licensees to apply for licenses at additional business locations. Section 1424 of the rules sets forth procedures for licensees seeking an additional license location through NMLS. The proposed amendments to section 1423 clarify that licensees on NMLS should follow the procedures in section 1424 to apply for a license at an additional business location. The purpose of this proposed amendment is to direct licensees seeking a license for an additional business location to the correct rule that explains the process for filing an application with the Commissioner. If a licensee is filing through NMLS, then the licensee is directed to follow section 1424 of the rules, whereas if the licensee is not yet filing through NMLS, the licensee must follow existing section 1423 of the rules. This proposed change is necessary to guide licensees in identifying the rule applicable to their filing situation. In addition to this proposed amendment, the proposed amendments also make nonsubstantive grammatical changes, change references from the “California Finance Lenders Law” to the “California Financing Law,” change legal citations to be more consistent with the California Style Manual, change the acronym “CFL” to “CFL,” and correct website references. The purposes of all of these changes are to clarify the rule and to incorporate the changes made by AB 1284. The changes are necessary for the same reasons.

Section 1424 – Branch Office License Instructions for Licensees and Applicants Filing Through NMLS: Existing section 1424 of the rules sets forth procedures for seeking an additional location license through NMLS. This rulemaking action proposes amending section 1424 to accommodate program administrators and other licensees

beyond mortgage lenders and brokers that may be filing through NMLS. The proposed changes update the names of the NMLS forms and clarify that an applicant or licensee filing through NMLS must follow the procedure in section 1424 for an additional license location, and not the procedure in section 1423 of the rules. The purpose of the proposed changes is to require all licensees that file through NMLS to follow the existing procedures in the rules for seeking to engage in business at an additional location. These changes are necessary to set forth a process for licensees other than mortgage lenders and brokers to seek additional licensed locations through NMLS, and the requirement that all licensees follow the same procedures that currently exist for mortgage lenders and brokers is necessary for the expedient administration of the law.

Section 1425 – Books and Records: During regulatory compliance examinations, the Department reviews a licensee’s books and records to determine whether the licensee complies with the requirements of the law. This rulemaking action proposes adding a subdivision to the books and records regulation providing that a program administrator shall maintain its books and records in accordance with the requirements in article 15 of this subchapter 6. The amendments further clarify that the existing rule remains applicable to the same licensees currently subject to the rule: finance companies under subdivision (d) of section 1404 of these rules. These provisions are necessary to direct program administrators to the books and records rules applicable to them and clarify that the existing books and records rule remains applicable to licensees that are not program administrators.

Section 1550 - Advertising: This rulemaking action proposes to amend the title to the section by removing the “submission for examination” text. The purpose of this change is to match the title of the section to the content of the section, which does not require advertising to be submitted to the Department for examination prior to use. The change is necessary to correct a misleading title. This rulemaking action also proposes to amend section 1550 to update the reference to the California Financing Law and to require all licensees on NMLS provide their NMLS numbers in advertising. The provision separately includes mortgage loan originator licensees because these licensees are not within the definition of “licensee” in Financial Code section 22007. The requirement that all licensees on NMLS provide their NMLS numbers in advertising is necessary to provide consumers with a way to look up online the license status of a licensee advertising a financial product or service. The proposed amendments further provide that a written advertisement on an advertising platform that is limited to 500 or fewer characters need not contain the licensing law and NMLS unique identifier disclosure, provided that any link in the advertising links to the information required by this section. The purpose of this amendment is to modernize the advertising rule by allowing licensees greater flexibility in advertising through social media or any advertising platform that limits characters. The proposed amendment provides an

alternative method of complying with the NMLS unique identifier disclosure requirement in instances where the advertising platform has a limited number of characters. The Department has determined that this alternative disclosure process advances the needs of licensees to utilize emerging advertising options while continuing to protect the public from blind advertising. These changes are necessary to incorporate the change to the law's name, to apply the same NMLS number disclosure requirements to all licensees on NMLS, and to allow advertising on some social media platforms that limit characters.

Section 1552 – Maintenance of Advertising Copy: This rulemaking action proposes adding a subdivision to the advertising regulations providing that a program administrator shall comply with the advertising requirements in the article applicable to program administrators, instead of section 1552. The amendments further clarify that the existing rule remains applicable to the same licensees currently subject to the rule: finance companies under subdivision (d) of section 1404 of these rules. These provisions are necessary to direct program administrators to the advertising rules applicable to them and to clarify that the existing advertising rules remain applicable to licensees that are not program administrators.

b. New Regulations for Program Administrators

Article 15 – PACE Program Administrators: The proposed regulations add article 15 to specifically cover PACE program administrators.

Section 1620.01 – General: Proposed section 1620.01 sets forth various articles within the regulations that are not applicable to program administrators. This provision is necessary to clarify that the regulations specifically related to regulating lending and the brokering of loans are not applicable to program administrators. PACE financings are in the form of contractual assessments and are not loans. The anticipated benefits include greater clarity regarding the applicability of the existing regulations to program administrators.

Section 1620.02 – Definitions: The purpose of proposed section 1620.02 is to clarify terms used in the licensing provisions related to program administrators. The clarifications are reasonably necessary to provide the public with guidance on compliance with the law and are intended to reflect meanings commonly understood by industry and other stakeholders. The provisions benefit the public by providing clarity regarding the meaning of terms and phrases used in law.

Section 1620.02(a)(1): Financial Code section 22686 prohibits a program administrator from approving an assessment contract for funding and recordation by a public agency unless the program administrator makes a reasonable, good faith determination that the property owner has a reasonable ability to pay the annual payment obligations of the PACE assessment. Financial Code section 22687 further provides that a program

administrator shall determine whether a property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment based on the property owner's income, assets, and current debt obligations. Paragraph (a)(4) of Financial Code section 22687 provides that in evaluating the income, assets, and current debt obligations of the property owner, the equity of the property that will secure the asset may not be considered. Proposed paragraph (a)(1) of section 1620.02 clarifies the meaning of the phrase "ability to pay." It provides that "ability to pay" 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, from the property owner's income or assets, taking into account the current debt obligations of the property owner, and without relying on the equity in a residential property owner's home.

The subdivision is reasonably necessary to clarify the timing of the property owner's ability to pay, and to clarify the income, assets, and debts that may be used to make the ability to pay determination. The Department has considered whether the assets should be limited to liquid assets but has concluded that the statutory language was not intended to be limited in such a manner. Thus, a property owner would have the option of liquidating non-liquid assets over time to meet the payment obligations of a PACE assessment to obtain efficiency improvements on the property owner's home.

While the program administrator must determine the ability of a property owner to pay every PACE assessment installment throughout the term of the assessment contract, this definition does not require the program administrator to confirm that the property owner's income will continue throughout this term. A program administrator may verify a property owner's income or assets through the non-exclusive examples provided in subdivision (b) of Financial Code section 22687, for example, for the time periods described in the examples, with the reasonable expectation that income will continue.

Section 1620.02(a)(2): Financial Code section 22017 provides that "PACE solicitor" means a person authorized by a program administrator to solicit a property owner to enter into an assessment contract, and defines a "PACE solicitor agent" as an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract. Financial Code section 22680 requires a program administrator to establish and maintain a process for enrolling both PACE solicitors and PACE solicitor agents. Proposed paragraph (a)(2) of section 1620.02 defines the meaning of the phrase "authorized by a program administrator" to mean that the PACE solicitor or PACE solicitor agent is enrolled with the program administrator. This provision is reasonably necessary to clarify the meaning of "authorized by a program administrator."

The proposed definition further provides that “authorized by a program administrator” means that the program administrator has implicitly or expressly consented to the person representing the program administrator in the marketing of an assessment contract to a property owner. This definition is intended to capture persons authorized by a program administrator to market an assessment contract to a property owner for purposes of defining a PACE solicitor or PACE solicitor agent. The definition is necessary to describe the persons that must be enrolled by the program administrator.

Section 1620.02(a)(3): The definitions of both “PACE solicitor” and “PACE solicitor agent” in Financial Code section 22017 both use the phrase “to solicit a property owner to enter into an assessment contract.” Proposed paragraph (a)(3) of section 1620.02 defines “to solicit a property owner” as asking, enticing, urging, or requesting a property owner to enter into an assessment contract, and sets forth a nonexclusive list of activities that constitute “soliciting a property owner.” The definition is reasonably necessary to assist the public in understanding when a person is engaged in the activity of a PACE solicitor or PACE solicitor agent. The definition of PACE solicitor in section 22017 requires the solicitor to be “authorized by a program administrator” to engage in the solicitation activities described in the proposed rule. Therefore, this authorization, combined with the solicitation conduct described in the rule, provides specificity to the conduct governed by the rule.

Section 1620.02(a)(4): Financial Code section 22017 provides that “PACE solicitor” and “PACE solicitor agent” do not include a person who performs purely administrative or clerical tasks. Proposed paragraph (a)(4) of section 1620.02 provides that “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. The rule further provides that “administrative or clerical tasks” do not include the activities described in paragraph (3) of the rule. Paragraph (3) of the rule describes specific activities of PACE solicitors and PACE solicitor agents that directly relate to soliciting property owners to enter into assessment contract. Defining “administrative or clerical tasks” is necessary to clarify the types of activities that are outside the scope of the definition of PACE solicitor and PACE solicitor agent.

Section 1620.02(a)(5): Subdivision (c) of Financial Code section 22017 provides that “PACE solicitor” and “PACE solicitor agent” do not include a person who obtains information regarding prospective applicants for PACE financing, or who provides to a program administrator information regarding prospective applicants for PACE financing, if such information was not obtained in connection with advertising or soliciting a PACE program. Proposed paragraph (a)(5) of section 1620.02 defines “obtained in connection

with advertising or soliciting a PACE program” to mean information that is received in response to the marketing of an efficiency improvement, where a PACE program is identified within the marketing of the efficiency improvement. The rule further provides that a PACE program may be identified by the name of a program administrator, the name of a program, or a description of PACE financing. This definition is necessary to clarify that the marketing of home improvements that include energy or water efficiency projects does not constitute the solicitation of PACE financing when the marketing does not in any manner reference a PACE program.

Section 1620.02(a)(6): Financial Code section 22680 prohibits a program administrator from enrolling a PACE solicitor or a PACE solicitor agent that does not satisfy one of three criteria, which include (1) maintaining in good standing a license from the Contractors’ State License Board, (2) maintaining a registration in good standing with the Contractors’ State License Board as a home improvement salesperson, or (3) being exempt from, or not subject to, licensure or registration. Proposed paragraph (a)(6) of section 1620.02 defines “maintain a license in good standing” and “maintain a registration in good standing” to mean that a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license or registration. This definition is necessary to clarify the meaning of “good standing,” for purposes of identifying a PACE solicitor or PACE solicitor agent qualified to be enrolled by a program administrator.

Section 1620.02(a)(7): Financial Code section 22157 provides that a program administrator must preserve its books, accounts, and records for at least three years after the extinguishment of a PACE assessment is recorded. Proposed paragraph (a)(7) of section 1620.02 defines “extinguishment of a PACE assessment” to mean that 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 annual secured property tax bill. This provision is necessary to define when a PACE assessment is extinguished for purposes of maintaining books and records.

Section 1620.02(a)(8) and (a)(9): Financial Code section 22689 provides that, among other things, a violation of any of the provision of chapter 29.1 of part 3 of division 7 of the Streets and Highways Code by a program administrator or a PACE solicitor constitutes a violation of the California Financing Law. Some of the specified provisions in the Streets and Highways Code use the terms “contractor” and “third party.” For purposes of clarifying the interplay between these terms and the terms used in the California Financing Law, proposed paragraph (a)(8) provides that “PACE solicitor” includes a “contractor” and proposed paragraph (a)(9) provides that “PACE solicitor agent” includes a “third party” under the Streets and Highways Code, when the contractor or third party otherwise meets the definition of PACE solicitor or PACE

solicitor agent. These provisions are necessary to provide guidance on the relationship between the laws, and the Department's enforcement authority over provisions in the Streets and Highways Code.

Section 1620.02(a)(10): Paragraph (c)(4) of Financial Code section 22017 provides that a person who advertises a PACE program is not a PACE solicitor or PACE solicitor agent where the advertising is created, prepared, or approved by a program administrator, and advertising is subject to, and in compliance with, the California Financing Law. Proposed paragraph (a)(10) further clarifies that a "person who advertises a PACE program" is a person primarily engaged in the business of advertising and not a contractor, a home improvement salesperson, or an individual when the contractor, home improvement salesperson, or individual is offering a property owner the option of financing a home improvement contract through a PACE assessment by electronic mail, telephone, mail, or in person. This provision is necessary to clarify that the exclusion from the definitions of PACE solicitor and PACE solicitor agent for advertisers does not include the contractors, home improvement salespersons and individuals who are directly soliciting property owners to enter into assessment contracts in the course of offering home improvement contracts, as these persons are the primary persons intended to be subject to the enrollment provisions for PACE solicitors and PACE solicitor agents.

Section 1620.02(a)(11): Proposed paragraph (a)(11) defines the acronym "CSLB" to mean the Contractors' State License Board. This definition is necessary to clarify the meaning of "CSLB" when used in the regulations.

Section 1620.02.1 – Exclusions: The purpose of proposed section 1620.02.1 is to clarify the persons who are not included in the definitions of program administrator, PACE solicitor, and PACE solicitor agent. The clarifications are reasonably necessary to provide the public with guidance on compliance with the law. The provisions benefit the public by providing clarity regarding the meaning of terms and phrases used in law.

Section 1620.02.1(a): Financial Code section 22018 defines a program administrator to mean a person administering a PACE program on behalf of, and with the written consent of, a public agency. Subdivision (a) of proposed section 1620.02.1 clarifies that other service providers do not constitute program administrators. The service providers include attorneys, financial advisors, assessment engineers or administrators, trustees or other paying agents, investors, accountants, trainers or other professionals providing services to program administrators, or staff of a public agency. The proposed rule provides that these persons do not meet the definition of program administrator unless, in addition to their roles as a service provider to a program administrator or a public agency, they also contract with a public agency to arrange PACE financing for property owners. This rule is necessary to ensure that certain professionals and staff who may

have the written consent of a public agency to perform tasks related to the administration of a PACE program, do not fall within the definition of “program administrator” unless they are contracting with the public agency to deliver the PACE financing directly to property owners.

Section 1620.02.1(b): Financial Code section 22017 provides that “PACE solicitor” means a person authorized by a program administrator to solicit a property owner to enter into an assessment contract, and defines a “PACE solicitor agent” as an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract. Subdivision (b) of proposed section 1620.02.1 sets forth persons who do not meet these definitions. The rule is necessary to provide clarity regarding the persons included within the definitions of PACE solicitor and PACE solicitor agent. Proposed paragraph (b)(1) provides that “PACE solicitor” and “PACE solicitor agent” do not include an employee or subcontractor of a contractor 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. The rule is necessary to ensure that casual conversations that may occur on a jobsite that are not authorized solicitations of property owners from being characterized as the solicitation of a property owner.

Proposed paragraph (b)(2) clarifies that a publisher of a bona fide newspaper, news magazine, or industry publication of general, regulation and paid circulation does not constitute a PACE solicitor or PACE solicitor agent. This rule, based on an exclusion from the definition of investment adviser in the Corporate Securities Law of 1968 (Corp. Code, § 25009), is necessary to allow program administrators to advertise through publishers without those publishers inadvertently meeting the definition of “PACE solicitor” or “PACE solicitor agent.”

Proposed paragraph (b)(3) clarifies that a general Internet search engine, and its employees, are not PACE solicitors or PACE solicitor agents when providing general search results to the public. The proposed rule clarifies that the search results may be based on paid advertising, and the search results or advertisements may be targeted based on traits of prospective consumers. This rule is necessary to allow program administrators and PACE solicitors to advertise PACE programs and financing availability through advertising on Internet search engines, without the Internet search engine inadvertently meeting the definition of “PACE solicitor” or “PACE solicitor agent.”

Proposed paragraph (b)(4) clarifies that other service providers do not constitute PACE solicitors or PACE solicitor agents. Like the exclusion from the definition of program administrators, the service providers include attorneys, financial advisors, assessment engineers or administrators, trustees or other paying agents, investors, accountants,

trainers or other professionals providing services to program administrators, or staff of a public agency. This rule is necessary to ensure that certain service providers related to a PACE program do not come within the definition of “PACE provider” or “PACE provider agent.”

Section 1620.03 – Obligations of a Program Administrator: Financial Code section 22001 provides, among other things, that the California Financing law is to be liberally construed and applied to promote its underlying purposes and policies, which include protecting property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs. Financial Code section 22161 further prohibits a person from making a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract. Financial Code section 22683 requires a program administrator to implement procedures for responding to questions and addressing complaints. Subdivisions (b) and (c) of Financial Code section 22689 further provide that a program administrator is subject to the Commissioner’s enforcement authority for violations of the California Financing Law and violations of certain provisions of the Streets and Highways Code that set forth consumer protections related to PACE obligations. Proposed section 1620.03 sets forth provisions intended to protect property owners from deceptive and misleading practices, and to facilitate compliance with the California Financing law and PACE requirements in the Streets and Highways Code. The purpose of the requirements is to protect property owners in PACE transactions, and the provisions are necessary to effectuate the underlying purposes of the licensing law. The anticipated benefits include the protection of property owners from deceptive and misleading practices through a program administrator’s compliance with the laws related to PACE financings. Subdivision (a) of section 1620.03 requires every program administrator to implement procedures to familiarize employees with the rules and regulations governing the administration of a PACE program applicable to the employee’s job description or job duties. This rule is necessary to facilitate compliance with the law.

Subdivision (d) of Streets and Highways Code section 5913 requires the oral confirmation to be in a language specified in Civil Code section 1632 (Spanish, Chinese, Tagalog, Vietnamese, or Korean), if the property owner indicates the property owner would prefer to communicate in that language and the language is supported by the program administrator. Subdivision (e) of that section requires a program administrator to deliver the PACE disclosures and assessment contract in the preferred language if the oral confirmation was conducted in the language. Subparagraph (a)(1)(A) of Streets and Highways Code section 5913 provides that a program administrator must make hard copies of the disclosures and the contract available upon request. Proposed subdivision (b) of section 1620.03 provides that if any the documents

are provided electronically, certain requirements must be met. Proposed paragraph (b)(1) requires the copy to be in a format that may be downloaded, saved, and printed. Paragraph (2) requires the program administrator to advise the property owner to print and save a physical copy, and save an electronic copy, for the property owner's records. Paragraph (3) requires the program administrator to advise the property owner that he or she may obtain a physical copy upon request. Paragraph (4) confirms the program administrator must provide a property owner with the physical copy upon request. These provisions are necessary to ensure that copies of the contract and disclosures are provided in a format that the property owner can access and save. Proposed paragraph (5) requires 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. The purpose of this provision is to ensure that the property owner has the ability to access a document provided electronically. This provision is necessary to prevent circumstances where a property owner without internet access, or without an existing email address, or without an understanding of how to access, save and print an electronic document, is provided a document electronically.

Proposed paragraph (c)(1) requires a program administrator to make a good faith effort to make the confirmation of key terms call required by Streets and Highways Code section 5913 during a time when neither the PACE solicitor nor the PACE solicitor agent is known by the program administrator to be present with the property owner. Consistent with the policy between the three-day right to cancel period in Streets and Highways Code section 5898.16, the purpose of having the confirmation call at a time when neither the PACE solicitor or the PACE solicitor agent is known to be present with the property owner is to allow the confirmation call to occur when the property owner isn't being offered a home improvement contract. The rule is necessary to provide the property owner with the disclosures in the confirmation call at a time where the property owner is not influenced to enter into the home improvement contract, to provide the property owner the disclosures without the distraction. The requirement to make a reasonable, good faith effort is necessary to define the scope of the requirement. The effort must be reasonable, which means that the program administrator need not commit endless resources to make a good faith effort to contact the property owner when the PACE solicitor or solicitor agent is not present. Also, the effort must be made in good faith, which means that the program administrator must attempt to make the call when it does not anticipate the property owner is with the PACE solicitor or PACE solicitor agent.

Proposed subparagraph (c)(2)(A) prohibits a program administrator from allowing a PACE solicitor or PACE solicitor agent to participate in the confirmation of key terms call with the property owner unless the property owner expressly requests such

participation. The purpose of this provision is to prevent a PACE solicitor or PACE solicitor agent from influencing a property owner into affirmatively acknowledging the information during a confirmation of key terms call. A property owner may expressly request the participation of a PACE solicitor or PACE solicitor agent in accordance with Streets and Highways Code section 5913, subparagraph (a)(2)(A), which provides a property owner with the right to have other persons present on the call. The proposed rule is necessary to allow the property owner to acknowledge the information in the key terms call without pressure from anyone soliciting a home improvement contract. Proposed subparagraph (c)(2)(B) requires a program administrator to terminate the confirmation of key terms call with the property owner if the program administrator finds the PACE solicitor or PACE solicitor agent is on the telephone line without the express request of the property owner. The purpose of this provision is to prevent the influence of a PACE solicitor or PACE solicitor agent during the confirmation of key terms call with the property owner. The provision is necessary to allow a property owner to acknowledge information in the confirmation of key terms call without influence from persons who may have an interest in property owner proceeding with the PACE financing. Proposed subparagraph (c)(2)(C) requires a program administrator who terminates a confirmation of key terms call with a property owner without obtaining an acknowledgement from the property owner for all of the information required by Streets and Highways Code section 5913 to initiate the call at a later time and obtain an acknowledgement for the remaining information prior to the property owner executing the assessment contract. The purpose of this provision is to clarify that the termination of a confirmation of key terms call prior to completion does not satisfy the obligation under Streets and Highways Code section 5913, and to clarify the steps necessary to complete the call. The provision is necessary to ensure that property owners acknowledge all of the information required by paragraph (a)(2) of Streets and Highways Code section 5913.

Proposed subdivision (d) requires 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 of Business Oversight. This provision is necessary to provide property owners with contact information in case questions or concerns arise regarding the assessment contract.

Section 1620.05 – Advertising Standards: Financial Code section 22161 prohibits a person subject to the California Financing Law from making a materially false or

misleading statement or representation to a property owner about the terms or conditions of an assessment contract. It further prohibits a person from knowingly misrepresenting, circumventing, or concealing, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party and prohibits a person from committing any act that constitutes fraud or dishonest dealings. Proposed section 1620.05 sets forth conditions on advertising intended to prohibit false, deceptive, and misleading representations to property owners intended to induce them to enter into a contractual assessment. The rule is necessary to protect property owners from being deceived during the solicitation of an assessment contract, and the benefits from the rule include a fair marketplace for PACE financing that protects property owners from being misled about an assessment contract.

Section 1620.05(a): Proposed subdivision (a) of section 1620.05 prohibits a program administrator from advertising PACE financing in a manner that is untrue, deceptive, or likely to mislead a consumer. This provision, while largely duplicative of existing law, is necessary for clarity, to introduce the acts that constitute untrue, deceptive, or misleading advertising. Proposed subdivision (a) also requires a program administrator to prohibit a PACE solicitor and PACE solicitor agent from such advertising as a condition to remaining enrolled as a PACE solicitor or PACE solicitor agent. Under Financial Code section 22680, a program administrator may not enroll a PACE solicitor if the PACE solicitor has a clear pattern of consumer complaints regarding dishonesty, misrepresentations, or omissions, or a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with the law, and the program administrator must implement a process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fails to maintain the minimum standards. Proposed section 1620.05(a) is necessary to describe the type of advertising that is prohibited, to protect property owners from being misled.

Section 1620.05(a)(1) through (10): Proposed paragraphs (a)(1) through (a)(10) identify the types of advertising that is untrue, deceptive, or likely to mislead a consumer. Streets and Highways Code section 5924 provides that a program administrator, contractor, or third party shall not make any representation as to the tax deductibility of an assessment contract unless that representation is consistent with the representations, statements, or opinions of the Internal Revenue Service or applicable state tax agency regarding the tax treatment of PACE assessments. Proposed paragraph (a)(1) provides that suggesting to a property owner that the full assessment payment may be deductible as a real estate tax is untrue, deceptive, and likely to mislead a property owner. In the marketing of PACE assessments, some property owners had allegedly been led to believe that the total amount of their PACE assessments was deductible on their income taxes as a state or local tax. On June 20, 2016 in Tax Topic 503, the Internal Revenue Service clarified the question of whether

all or a portion of a property owner's PACE payment may be deducted from income tax. The Internal Revenue Service clarified that the payments are not deductible real estate taxes, but the interest portion of a PACE payment may be deductible as home mortgage interest on personal income taxes. Proposed subdivision (a)(1) is necessary to prevent property owners from being misled about the tax deductibility of assessment payments.

Proposed paragraph (a)(2) provides that representing to a property owner that the PACE program is a free or subsidized government program is untrue, deceptive, and likely to mislead a property owner, unless the program is free or subsidized by the government. PACE financing is generally neither free nor subsidized by the government, and therefore proposed paragraph (a)(2) is necessary to ensure property owners are not misled about the terms of the financing.

Proposed paragraph (a)(3) provides that representing that the PACE program is a government program that provides a subsidy or benefit to a property owner because of the property owner's limited resources or income is untrue, deceptive, and likely to mislead a property owner, unless the PACE program includes a benefit or subsidy that is available to the property owner because of the property owner's limited resources or income. This provision is necessary to prevent property owners from being misled into believing that the PACE program is a government subsidy to which they are entitled based on their limited resources or income.

Proposed paragraph (a)(4) provides that representing that the property owner will not be obligated to pay the assessment obligations is untrue, deceptive, and likely to mislead a property owner, unless the property owner will not be contractually obligated to pay the assessment obligations. This provision is necessary to prevent property owners from being misled into believing that the PACE assessments do not need to be repaid.

Proposed paragraph (a)(5) provides that 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, is untrue, deceptive, and likely to mislead a property owner, in circumstances where the representations are 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. This provision is necessary to prevent a property owner from being misled about economic savings from efficiency improvements, while preserving the ability of program administrators, PACE solicitors, and PACE solicitor agents to provide truthful, evidence-based information about efficiency improvements.

Proposed paragraph (a)(6) provides that advertising PACE financing through a method that violates any state or federal “do not call” law, or anti-spam law, is untrue, deceptive, and likely to mislead a property owner. This provision is necessary to prevent a property owner from being misled by advertising that violates existing laws.

Proposed paragraph (a)(7) provides that representing that the advertisement of PACE financing is from a government entity is untrue, deceptive, and likely to mislead a property owner, unless the advertising is in fact from a government entity or the representation is authorized by a government entity. This provision is necessary to prevent a property owner from being misled into believing that advertising is from the government when it isn't.

Proposed paragraph (a)(8) provides that advertising that the program has an ending date, is available for a limited time, or is available to a limited number of property owners, is untrue, deceptive, and likely to mislead a property owner, unless the program has these characteristics. This provision is necessary to prevent untrue representations that may pressure a property owner to enter into an agreement without considering the financial consequences.

Proposed paragraph (a)(9) provides that engaging in blind advertising by failing to identify the program administrator or the PACE solicitor responsible for the advertisement is untrue, deceptive, and likely to mislead a property owner. This provision is necessary to prevent a property owner from being deceived about the identity of the person marketing the PACE financing.

Financial Code section 22161 prohibits a person subject to the California Financing Law from making a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract. It further prohibits a person from knowingly misrepresenting, circumventing, or concealing, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party and prohibits a person from committing any act that constitutes fraud or dishonest dealings. Proposed paragraph (a)(10) provides that making any written or oral communication in advertising that includes an untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading, constitutes advertising that is untrue, deceptive, or likely to mislead a property owner. This provision is necessary to prevent misleading advertising.

Section 1620.05(b): Financial Code section 22161 prohibits a person from knowingly misrepresenting, circumventing, or concealing, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party and prohibits a person from committing any act that constitutes fraud or dishonest dealings.

Proposed subdivision (b) of section 1620.05 requires 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. The proposed subdivision requires the procedures to address various practices that are misleading to property owners. The purpose of the rule is to prevent the deceptive practices, and the rule is necessary to provide a framework for program administrators to prevent these practices. The anticipated benefits include protecting property owners from misleading designations from PACE solicitors and PACE solicitor agents.

The various practices are identified in proposed paragraphs (1) through (4), and include (1) using a certification, credential, or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification, credential, or designation; (2) using of a nonexistent or self-conferred certification, credential, or professional designation; (3) using a certification, credential, or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification, credential, or professional designation does not have; and (4) using a certification, credential, or professional designation that was obtained from a designating, credentialing, or certifying organization where (1) the organization is primarily engaged in the business of instruction in sales marketing; (2) the organization does not have reasonable standards or procedures for assuring the competency of individuals to whom it grants a certification, credential, or professional designation; (3) the organization does not have reasonable standards or procedures for monitoring and disciplining individuals with a certification, credential, or professional designation for improper or unethical conduct; or (4) the organization does not have reasonable continuing education requirements for individuals with a certification, credential, or professional designation in order to maintain the certificate, credential, or professional designation. The procedures to prevent these misleading practices will benefit property owners by protecting them from misleading and deceptive designations.

Proposed subdivision (c) requires every written advertisement by a program administrator to disclose that the program administrator is not a government agency and requires the advertisement to disclose that the installation or construction of property improvements financed with a PACE assessment is provided through a home improvement contractor or other third-party provider, and not by the program administrator or a government entity. The purpose of these disclosures is to prevent misleading advertising under Financial Code section 22161, and these disclosures are necessary for the same purpose.

Proposed subdivision (d) prohibits a program administrator from advertising, on its website or otherwise, businesses or individuals approved by the program administrator to solicit property owners for PACE financing, unless the business or individual is enrolled by the program administrator as a PACE solicitor or PACE solicitor agent. This provision is necessary to ensure that businesses and individuals approved by a program administrator to solicit property owners for PACE financing are enrolled with the program administrator as required by Financial Code section 22680.

Proposed subdivision (e) requires a program administrator to include a reference to the Department in its written advertising. This rule is necessary to ensure that the public is informed about the licensure status of a program administrator advertising to the public. Program administrators may administer many programs with different names and identifying the program administrator's license number and a reference to the Department provides the public with a resource for confirming the program administrator's authority to administer PACE programs in this state.

Proposed subdivision (f) provide that a written advertisement on an advertising platform that is limited to 500 or fewer characters need not contain the disclosures in subdivisions (c) and (e) providing that the program administrator is not a government agency and including the program administrator's license number, provided that any link in the advertising links to the information required by this section. This provision is necessary to recognize the limitations of advertising on some social media platforms.

Section 1620.06 – Written Disclosures: Financial Code section 22001 provides, among other things, that the California Financing law is to be liberally construed and applied to promote its underlying purposes and policies, which include protecting property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs. Financial Code section 22161 further prohibits a person from making a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract.

Streets and Highways Code section 5898.16 requires that a property owner receive a right to cancel document set forth in that section, which provides property owners notice of their three day right to cancel a contract assessment transaction, and additional rights accompanying the cancellation right. Streets and Highways Code section 5898.17 requires that a property owner receive a Financing Estimate and Disclosure form that provides property owners with financial information related to their assessment contract and various other disclosures related to the transaction. Streets and Highways Code section 5913 requires a program administrator to make an oral confirmation of the key terms of an assessment contract with a property owner. The section sets forth the

required information that must be communicated to the property owner during the oral confirmation call.

Section 1620.06 requires a program administrator to provide a property owner with a written copy of the information required in the oral confirmation call, for any information that is not already provided to the property owner in the right to cancel disclosure or the financing estimate disclosure. The section also requires a program administrator to meet minimum requirements if the information, and the right to cancel disclosure or financing estimate disclosure, are provided electronically. The purpose of the proposed rule is to provide property owners with the information received during an oral confirmation call in written form, so the property owner has continuous access to the disclosed information. In addition, the purpose is to ensure that property owners receiving documents electronically understand their right to obtain physical documents, and that they are able to access the electronic documents. Proposed subdivision (a) requires a program administrator to provide a property owner a written copy of the oral confirmation information, to the extent it isn't already provided in a mandated disclosure. Proposed subdivision (b) clarifies that if the written information is provided electronically, including the disclosures required under the Streets and Highways Code, the property owner must be able to download, save, and print the information, and the information must be formatted to print on 8 ½ by 11 paper. These provisions are necessary to provide the property owner the ability to review information that may not have been absorbed during the oral confirmation call. The anticipated benefits include assisting property owners in understanding the assessment contract commitment.

Proposed paragraph (b)(1) of section 1620.06 requires a program administrator to advise a property owner who agrees to receive documents electronically to print, read, and save a physical copy of the documents, and to save an electronic copy of the documents, for the property owner's records. This provision is necessary to ensure that a property owner understands the need to access, read, and retain the documents. Proposed paragraph (b)(2) requires the program administrator to advise the property owner that the property owner may request a physical copy of the documents. The purpose of this provision is to ensure that a property owner understands that the property owner may request a physical copy of the documents. This provision is necessary to ensure that if a transaction is proceeding electronically, such as through a tablet, the property owner is nevertheless aware that the property owner may request physical documents from the provider. Proposed paragraph (b)(3) requires the program administrator to provide the physical documents upon request of the property owner. The purpose of this provision is to ensure that the owner's request for physical documents results in the program administrator providing these documents. The provision is necessary to ensure the owner receives a physical copy of the documents upon request and to decrease instances of property owners failing to receive the information.

Proposed paragraph (b)(4) requires the 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. The purpose of these requirements are to ensure that if a property owner is provided documents electronically, the property owner has the capability of accessing the documents, and understands how to access and save the documents, so that the property owner has access to the disclosures contained in the documents. The provision is necessary to decrease the instances of property owners lacking the capacity to receive documents electronically nevertheless having important disclosures sent to them electronically.

Proposed subdivision (c) provides that if the Financing Estimate and Disclosure document is provided to a property owner with other documents, the financing disclosure must be on the front page. The purpose of this provision is to ensure that a property owner can immediately see the cost of the financing. This provision is necessary to increase the likelihood that the property owner will read the Financing Estimate and Disclosure in time to consider whether the payments are affordable or whether the property owner should exercise the right to cancel the contract. Proposed subdivision (d) requires a property owner to maintain evidence of compliance with section 1620.06 of the rules in the program administrator's books and records, as provided in section 1620.07 of the rules. The purpose of this provision is to ensure that the program administrator maintains records establishing that the disclosures were provided to property owners, and if provided electronically, that the program administrator took steps to ensure the documents could be accessed by the property owner. The provision is necessary to document the steps taken to ensure that a property owner receives the disclosures, so that the property owner has the information necessary to make a decision regarding whether to proceed with the transaction.

Section 1620.07 – Books and Records: Financial Code section 22156 requires a program administrator to keep and use in its business, books, accounts, and records that will enable the Commissioner to determine if the licensee is complying with the provisions of the California Financing Law and regulations. Financial Code section 22157 provides that a program administrator must preserve its books, accounts, and records for at least three years after the extinguishment of a PACE assessment is recorded. Paragraph (b)(2) of Streets and Highways Code section 5913 provides that the oral confirmation of key terms must be retained by a program administrator for at least five years from the time of the recording. Financial Code section 22166 authorizes the Commissioner to require licensees to maintain advertising copy for two years from the date of its use. Proposed section 1620.07 sets forth the books and records that a program administrator must retain, and the time for the retention. The purpose of the

rule is to clarify the records that must be retained, and the rule is necessary to achieve this purpose. The anticipated benefits include accessibility to the program administrator's records when necessary for the administration of the California Financing Law, or to assist property owners.

Proposed subdivision (a) of section 1620.07 requires a program administrator to maintain its books, records, and accounts at its main licensed location in California. This rule is necessary to allow the Department the ability to access books and records without crossing state lines. Proposed subdivision (b) sets forth the records to be maintained. Proposed subparagraph (b)(1) identifies the specific records related to the business of a program administrator that must be maintained, including: (1) a program administrator's financial statements prepared in accordance with generally accepted accounting principles; (2) administration agreements with public agencies; (3) agreements with PACE solicitors and PACE solicitor agents; (4) enrollment records for PACE solicitors and PACE solicitor agents; (5) documentation of the background check of PACE solicitors and PACE solicitor agents; (6) documentation of monitoring PACE solicitor and PACE solicitor agent compliance; (7) reports summarizing results of periodic reviews; and (8) records of PACE solicitor agent training. These records are necessary to enable the Commissioner to determine whether a licensee is complying with the provisions of the California Financing Law and regulations.

Proposed subparagraph (b)(2) identifies records related to each assessment contract that must be maintained, including: (1) the assessment contract, and an accounting of any payments; (2) any complaints and resolutions; (3) documentation of ability to pay for each assessment contract, including verification of a property owner's eligibility for an assessment contract; (4) oral confirmation of key terms records; (5) disclosures required by Streets and Highways Code sections 5898.16 and 5898.17; and (6) evidence of compliance with the requirements of section 1620.06 of the rules regarding providing disclosures to a property owner. These records are necessary to enable the Commissioner to determine whether a licensee is complying with the provisions of the California Financing Law and regulations in individual transactions.

Proposed subparagraph (b)(3) identifies advertising records that must be maintained. These records are necessary to enable the Commissioner to determine whether a licensee is complying with the advertising requirements. Proposed subparagraph (b)(4) identifies various compliance procedures that must be maintained. These records are necessary to enable the Commissioner to determine whether a licensee is complying with the requirements in the program administrator chapter of the California Financing Law. Proposed subparagraph (b)(5) requires the maintenance of the original copies of documents uploaded to NMLS as part of the applicant's license application or uploaded for the purpose of maintaining licensure, if the document contains an original signature. The purpose is to ensure that the original signed documents are maintained, and the

provision is necessary to ensure the original documents are available if authentication of the documents is ever necessary.

Proposed subdivision (c) sets forth the time for records to be maintained. Proposed paragraph (1) provides that a program administrator must maintain financial statements for three years from the date of preparation. Proposed paragraph (2) provides that a program administrator must maintain the records related to the business of a program administrator for three years from the date of the record or three years after the subject of the record is complete, whichever is later. Proposed subparagraph (c)(3)(A) provides that a program administrator must maintain the assessment contract and payment records for at least three years after the extinguishment of a PACE assessment is recorded. Subparagraph (c)(3)(B) provides that a program administrator must maintain the records related to arranging the assessment contract at least three years after of the consummation a PACE assessment. Proposed paragraph (4) provides that a program administrator must keep advertising for two years, and proposed paragraph (5) provides a program administrator must maintain records documenting procedures during the period of licensure. These records are necessary to enable the Commissioner to determine whether a licensee is complying with the requirements for program administrators in the California Financing Law; and the retention periods are necessary to ensure the records remain reasonably available to the Commissioner in the enforcement of the law, while balancing the burden of records retention on licensees.

Section 1620.08: Financial Code section 22683 requires a program administrator to develop and implement policies and procedures for responding to questions and addressing complaints as soon as reasonably practicable. Proposed section 1620.08 sets forth standards for inclusion in the policies and procedures. The purpose is to provide standards that will facilitate the tracking and timely responding to questions and complaints from property owners, lead to the resolution of consumer complaints, and provide program administrators with a tool to timely identify harmful practices occurring in the delivery of PACE financing. The rule is necessary to achieve these purposes. The anticipated benefits include transparency, consumer protection, and public confidence in PACE financing, which may result in the advancement of clean energy and water efficiency.

Proposed subdivision (a) of section 1620.08 requires a program administrator to establish and maintain a complaint process under which a property owner may submit a complaint to the program administrator. The provision provides clarity to the rule. Proposed paragraph (a)(1) provides that the complaint process must provide for adequate consideration and appropriate resolution of property owner complaints. This provision is necessary to set forth the objective of the complaint process. Proposed paragraph (a)(2) defines “resolution” to mean that after due consideration and investigation, as necessary, of the issues raised in the complaint, the program

administrator has reached a conclusion about the complaint and any requests contained therein and has notified the property owner. The definition is necessary to define when a complaint has reached resolution, for purposes of the program administrator meeting its obligation to implement a complaint process. The rule further provides that the definition does not restrict in any way a property owner's right to pursue a complaint through additional means. The provision is necessary to address potential circumstances where a property owner is not satisfied with the program administrator's resolution of the complaint, and to confirm that the property owner may continue to pursue the complaint through other means, as applicable, such as to the public agency, the Department of Business Oversight, or the Contractors' State License Board, or by exercising other rights that may exist under the circumstances of the complaint.

Proposed 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. This provision is necessary to limit the scope of the complaint process to actual complaints in need of resolution.

Proposed paragraph (b) sets forth characteristics that must be included in the program administrator's complaint process. Proposed paragraph (b)(1) requires the complaint process to include a procedure to provide a property owner with notice of how to contact the program administrator with a complaint. This provision is necessary to provide a property owner with guidance on how to submit a complaint. Proposed subparagraph (b)(1)(A) requires the notice to be in a form that may be maintained physically or electronically by the property owner. This provision is necessary to provide the property owner with notice in a form that may be accessed later. Proposed subparagraph (b)(1)(B) requires the information regarding how to submit a complaint must be maintained on the program administrator's website. This provision is necessary to allow a property owner a common means of locating the information. Proposed subparagraph (b)(1)(C) requires the methods to contact the program administrator to be reasonable and available to property owners who do not have access to the Internet or electronic communication. The proposed rule allows the methods to include a toll-free telephone number, a customer service e-mail, postal mail, electronic submission, and other methods intended to make the complaint process widely accessible to property owners. These provisions are necessary to make the complaint process widely available to property owners, including property owners without access to the Internet or electronic communication.

Proposed paragraph (b)(2) requires the complaint process to include a procedure for communicating with a property owner regarding the status of the complaint. This provision is necessary to provide a property owner with updates on the status of a complaint so that the property owner has assurance that the complaint is being considered. Proposed subparagraph (b)(2)(A) requires the communication regarding a

complaint to include at a minimum, written communication confirming the receipt of the complaint and written communication upon resolution of the complaint. This provision is necessary to provide a property owner with a base level of communication regarding the complaint. Proposed 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. This provision is necessary to provide the property owner with guidance on why the complaint was resolved in the way the program administrator resolved it. However, in many instances a reason would not be necessary because it is self-explanatory: for example, if the property owner is referred to another party better able to assist with the issue, or the resolution results in the program administrator taking an action requested in the complaint. A program administrator is not required to provide a reason for every resolution in written correspondence to the property owner when the reason is clear from the action taken.

Proposed paragraph (b)(3) requires the complaint process to include a procedure for tracking open and closed complaints. This provision is necessary to facilitate compliance with the requirement that the program administrator respond to complaints. Proposed subparagraph (b)(3)(A) requires the procedure to include a process for recording the status of a complaint. This provision is necessary for accountability. Proposed subparagraph (b)(3)(B) requires the tracking to be in a format that is accessible to the Department upon request. This provision is necessary for the Department to be able to access information regarding complaints such as during regulatory examinations, for special reports, or when the Department is assisting property owners, among other instances.

Proposed subparagraph (b)(4)(A) requires the complaint process to include target dates for actions and resolution. This provision is necessary to ensure the procedures for addressing complaints has included parameters that will facilitate the expedient resolution of complaints. Proposed subparagraph (b)(4)(B) requires the complaint process to include a procedure for identifying and prioritizing aging complaints. This provision also is necessary to ensure the procedures for addressing complaints facilitates the expedient resolution of complaints.

Proposed paragraph (b)(5) requires 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. This provision is necessary to provide the opportunity to triage potential harm to property owners in cases where intervention may be able to prevent larger adverse impacts. Proposed subparagraph (b)(5)(A) requires the expedited review process to provide a property owner with the option of speaking

with a live representative. This provision is necessary to provide a process that may alleviate some anxiety experienced by a property owner facing potential harm and facilitate the resolution of the complaint.

Proposed paragraph (b)(6) requires the complaint process to include procedures intended to allow property owners with limited English proficiency to participate in the process. This provision is necessary to have program administrators accommodate complaints from property owners with limited English proficiency. A program administrator may design procedures that are economically feasible and reasonable for the program administrator.

Section 1620.10 – Dishonest Dealings and Misleading Statements: Financial Code section 22161 prohibits a person subject to the California Financing Law from making a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract. It further prohibits a person from committing an act of fraud or dishonest dealings. Proposed section 1620.10 sets forth various statements and actions by program administrators, PACE solicitors, and PACE solicitor agents that would constitute misleading statements or dishonest dealings and requires a program administrator to implement a procedure to prohibit PACE solicitors and PACE solicitor agents from engaging in the described activity. The purpose is to provide a program administrator with guidance on the types of activities and representations that would be prohibited by the statute. The proposed rule is necessary to discourage acts and representations to property owners that are deceptive. The anticipated benefit of the rule is a fair, transparent marketplace for PACE financing. Proposed subdivision (a) of section 1620.10 sets forth actions that constitute dishonest dealings or misleading statements by a program administrator under Financial Code section 22161 and is necessary to provide program administrators with notice of the known activities. The rule provides that the list is not exhaustive of all activities that constitute dishonest dealings or misleading statements by a program administrator. This provision is necessary to clarify that other activities may still be dishonest, although they were not identified in the list. Proposed paragraph (a)(1) provides that disclosing to a PACE solicitor or PACE solicitor agent the amount of PACE financing available to a property owner constitutes dishonest dealings. Streets and Highways Code section 5925 prohibits a program administrator from providing to a contractor or third party engaged in soliciting assessment contracts on its behalf any information that discloses the amount of funds for which a property owner is eligible under a PACE assessment or the amount of equity in a property. The proposed rule is necessary to protect property owners from the risk being upsold efficiency improvements by clarifying that disclosing the amount of PACE financing available constitutes dishonest dealings.

Proposed paragraph (a)(2) provides that knowingly paying a PACE solicitor for

unperformed work that is financed through an assessment contract constitutes dishonest dealings. Property owners are liable for repaying amounts financed through a PACE assessment, and yet do not control the flow of payments from the program administrator to the PACE solicitor. A property owner is harmed if a program administrator knowingly pays a PACE solicitor for work financed through an assessment contract because the property owner is led to believe that the work financed through the assessment contract will be performed. The property owner does not have the ability to withhold payment until the work is performed. This rule is necessary to clarify that knowingly paying for unperformed work constitutes dishonest dealings.

Similarly, proposed paragraph (a)(3) provides that knowingly paying a PACE solicitor for an uninstalled product that is financed through an assessment contract constitutes dishonest dealings. The practice is dishonest in that a property owner is misled into believing the financing is for products installed on the property, and the rule is necessary to prevent the property owner from being misled. The proposed rule further clarifies that a warranty does not constitute an uninstalled product, and contract terms and services including, but not limited to, a warranty, operations, maintenance, repairs, and customer service do not constitute an uninstalled product. It further clarifies 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. These clarifications are necessary to further define activities that constitute dishonest dealings.

Proposed paragraph (a)(4) provides 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, and the product is financed through an assessment contract, constitutes dishonest dealings. This provision is necessary to clarify that participating in the deception of a property owner about the product installed on the property constitutes dishonest dealings.

Proposed subdivision (b) requires a program administrator to implement policies and procedures to prohibit a PACE solicitor and a PACE solicitor agent from engaging in various activities that would constitute dishonest dealings or misleading statements. The rule is necessary to require a program administrator to develop procedures that protect property owners by prohibiting a PACE solicitor or PACE solicitor agent from engaging in actions that are harmful to property owners.

These actions include the following: (1) misrepresenting the manner that a PACE obligation may be repaid; (2) misrepresenting to a property owner that the PACE program is a free, no cost, or subsidized government program, unless the program has those characteristics; (3) misrepresenting to a property owner that the PACE program is

available to the property owner based on the property owner's age, race, ethnicity, or income status, unless the program has that criteria; (4) misrepresenting to a property owner that the property owner prequalifies for eligibility for PACE financing prior to the program administrator making that determination; (5) misrepresenting to a property owner that a home improvement meets an energy or water efficiency standard unless the improvement meets such standard, such as the home improvement being Energy Star rated or included within title 20 or title 24 of the California Energy Commission's rules; (6) misrepresenting 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 with regard to the tax treatment of a PACE assessment; (7) failing to complete the PACE eligible home improvement contract that is financed by the assessment contract, unless completion of the home improvement contract is not a requirement of the assessment contract; (8) misrepresenting to a property owner that a home improvement that is not an efficiency improvement may be financed through a PACE assessment, or otherwise provided to a property owner solely because the property owner enters into an assessment contract; (9) misrepresenting to a property owner that the property owner will not be liable for the payment of the PACE assessments, unless the property owner will not be liable for the payments; (10) 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; (11) misrepresenting an increase in a property's market value as a result of the efficiency improvements, unless evidence supports the representation; (12) misleading the property owner about the overall cost of the assessment obligations; (13) 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 rule clarifies 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); (14) 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; (15) including home improvements not eligible for PACE financing in an assessment contract; and (16) facilitating a property owner entering into assessment contracts through more than one program administrator on the same property for the same efficiency improvement (the rule clarifies 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, and does not prevent a PACE solicitor or PACE solicitor agent from assisting a property owner entering into an assessment contract through more than one pace administrator on the same property for different efficiency improvements). Each of these activities is harmful and deceptive to property owners. The rule is necessary to specify the types of deceptive practices that program administrators must have procedures in place to prevent.

Proposed subdivision (c) provide that nothing in the rule is intended to limit, impede, or interfere with the Contractors' State License Board's jurisdiction over representations made in the solicitation of a home improvement contract, including representations regarding a tax or utility credit or rebate for an efficiency improvement. This provision is necessary to clarify that the Commissioner's rule is for the administration of the California Financing Law but does not interfere with the jurisdiction of the Contractors' State License Board over home improvement contracts.

Section 1620.11 – Solicitor Enrollment Standards or Processes: Financial Code section 22680 requires a program administrator to establish and maintain a process for enrolling PACE solicitors. The process must include a written agreement between the program administrator and the PACE solicitor, which must set forth the obligation of the PACE solicitor and its PACE solicitor agents, and a review of readily and publicly available information regarding each PACE solicitor. Subdivision (d) of section 22680 prohibits a program administrator from enrolling a PACE solicitor if the solicitor does not satisfy at least one of the following criteria: (1) maintain in good standing a license from the Contractors' State License Board; (2) maintain a registration in good standing with the Contractors' State License Board as a home improvement salesperson; or (3) be exempt from, or not subject to, licensure or registration under the Contractors' State License Law. In addition, 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 any of the following: (1) a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions; (2) a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law; or (3) a clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor. Proposed section 1620.11 further defines the requirements for enrolling a PACE solicitor.

Proposed subdivision (a) requires every program administrator to establish and maintain a written process for enrolling a PACE solicitor that complies with the

requirements of the remainder of the rule. Proposed paragraph (a)(1) prohibits a program administrator from authorizing a PACE solicitor or a PACE solicitor agent to solicit a property owner to enter into an assessment contract until the program administrator enrolls the PACE solicitor and PACE solicitor agent. This provision is necessary to effectuate the design of the regulatory structure to protect property owners by ensuring that only enrolled persons are soliciting property owners under the authority of a program administrator. 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. Like paragraph (1), this provision is necessary to protect property owners in a PACE transaction by preventing a home improvement contract from being funded by PACE financing when the protections of solicitor enrollment are not present.

Proposed subdivision (b) requires the written enrollment process to include the requirements set forth in the rule. Proposed paragraph (b)(1) requires the written enrollment process to require an enrolled PACE solicitor to maintain in good standing any necessary license or registration from the Contractors' State License Board. This provision is necessary to ensure that the enrollment process includes the statutory requirements regarding licensure or registration from the Contractors' State License Board. Proposed paragraph (b)(2) requires the written enrollment process to include provisions requiring an enrolled PACE solicitor to comply with the laws regarding PACE programs applicable to the activities of PACE solicitors. This requirement is necessary to ensure the obligation to follow the laws regarding PACE programs is included as part of the PACE solicitor enrollment process.

Proposed paragraph (b)(3) requires the written enrollment process to include provisions that restrict enrollment to PACE solicitors that agree to comply with the requirements set forth in the paragraph. Proposed subparagraph (b)(3)(A) provides that an enrolled PACE solicitor may only solicit a property owner to enter into an assessment contract arranged by the program administrator to finance efficiency improvements that are approved under the PACE program administered by the program administrator. It further provides that it does not restrict the ability of a PACE solicitor to offer other home improvements or to arrange financing for a property owner through other means, including other PACE programs of other licensed program administrators with whom the PACE solicitor is enrolled. The provision is necessary to prevent PACE financing to be used to finance home improvements that are not authorized by the laws governing the establishment of PACE programs.

Proposed subparagraph (b)(3)(B) provides that a PACE solicitor must deliver to a property owner a copy of the assessment contract and the disclosures required under the Streets and Highways Code, if under the arrangement with the program administrator, the PACE solicitor agrees to deliver these documents. This provision is

necessary to ensure the PACE solicitor is accountable for delivering documents to the property owner when the PACE solicitor is obligated to deliver the documents under the arrangement with the program administrator. Proposed subparagraph (b)(3)(C) provides that the PACE solicitor will not begin work on a home improvement contract if the conditions of the Streets and Highways Code are met, unless the property owner waives his or her right to cancel on the home improvement contract. Subdivision (a) of Streets and Highways Code section 5940 prohibits the commencement of work under a home improvement contract if the property owner entered into the contract based on the reasonable belief that the work would be covered by the PACE program, and the property owner applies for, accepts, and cancels the PACE financing within the right to cancel period. Proposed subparagraph (b)(3)(C) is necessary to effectuate the protections in Streets and Highways Code section 5940 by requiring PACE solicitors to agree to comply with the commencement of work prohibition during the enrollment process.

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. The definition of “PACE solicitor agent” in Financial Code section 22017 is an individual who acts on behalf of a PACE solicitor. This provision is necessary to ensure that a PACE solicitor knowingly consents to being responsible for the actions of a PACE solicitor agent upon enrollment. Proposed subparagraph (b)(3)(E) requires the PACE solicitor to require each PACE solicitor agent employed or retained by the PACE solicitor to undertake the training required by law. This provision is necessary to ensure the PACE solicitor is accountable for ensuring PACE solicitor agents acting on the PACE solicitor’s behalf participate in the training required by law. Proposed subparagraph (b)(3)(F) requires the PACE solicitor to notify the program administrator of unresolved property owner inquiries and complaints regarding the assessment contract. This provision is necessary to ensure that program administrators have notice and are able to participate in the resolution of property owner complaints related to PACE financing.

Proposed subparagraph (b)(3)(G) prohibits a PACE solicitor from making any statement or representation regarding a PACE program that the PACE solicitor knows, or reasonably should have known, to be false, misleading, or deceptive, or that omits material information that is necessary to make any statement made not false, misleading or deceptive. This rule is necessary to protect property owners from misrepresentations or omissions of material information. Proposed subparagraph (b)(3)(H) requires the PACE solicitor to only advertise a PACE program in accordance with the program administrator’s procedures to prevent deceptive advertising and to maintain advertising as required by the program administrator to conduct a periodic

compliance review. This provision is necessary to ensure the enrollment process includes requirements intended to protect property owners from deceptive advertising. Proposed subparagraph (b)(3)(I) requires the PACE solicitor to notify the program administrator if the PACE solicitor knows that the property owner has sought, authorized, or obtained any other PACE assessment on the property. This provision is necessary to ensure that during the enrollment process the program administrator obtains a commitment from the PACE solicitor to ensure program administrators receive notice of multiple PACE assessments so that the program administrator may accurately evaluate the property owner's ability to pay the assessment and prevent potential fraud such as multiple PACE assessments for the same property improvement. Proposed subparagraph (b)(3)(J) requires a PACE solicitor to maintain a process for responding to complaints about PACE financing that includes any requirements developed by the program administrator to facilitate resolution of the complaints and facilitate periodic compliance review. This provision is necessary to ensure that during the enrollment process, PACE solicitors commit to maintaining a complaint process in accordance with the requirements of the program administrator, so that complaints about PACE financing may be addressed.

Paragraph (b)(2) of Financial Code section 22680 requires a program administrator to establish a process for enrolling PACE solicitor that includes a review of readily and publicly available information regarding each PACE solicitor. Proposed subdivision (c) of section 1620.11 requires a program administrator to develop and implement a written process to evaluate publicly available information on a PACE solicitor for obtaining information on the expected future performance of a PACE solicitor and a PACE solicitor agent. This provision is necessary to set forth standards on evaluating publicly available information. Proposed subparagraphs (c)(1)(A) through (c)(1)(D) require a program administrator to establish and implement a process for reviewing the following publicly available information on a PACE solicitor: (1) the Contractors' State License Board's website, (2) one or more consumer rating websites, if applicable, (3) the website of the Department of Business Oversight, and (4) any other source identified by the program administrator as necessary to evaluate the publicly available information on a PACE solicitor, if economically feasible for the program administrator, such as subscription-based services or court records. These provisions are necessary to provide minimum standards and guidance on evaluating publicly available information. While a program administrator should always review the Contractors' State License Board's website for licensure status and the Department of Business Oversight's website for corrective actions, a program administrator may develop procedures for reviewing other publicly available resources, and may have different procedures and evaluation standards based on characteristics of the PACE solicitor such as the size, product, or geographical area of the PACE solicitor, or other factors identified by the program

administrator as being relevant.

Proposed paragraph (c)(2) provides that the process established and maintained by the program administrator need not include a review of all publicly available information, provided that the process is designed to include a review of a sufficient sample of public sources of information that is likely to contain consumer feedback regarding the business practices of a PACE solicitor. This provision is to provide a program administrator with flexibility in its process to evaluate PACE solicitors. Similarly, proposed paragraph (c)(3) requires a program administrator 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. Proposed subparagraph (c)(3)(A) further provides that the standards shall provide a benchmark for the program administrator to evaluate past civil and criminal actions, license discipline, and consumer complaints involving the PACE solicitor that are related to the functions of a PACE solicitor. Proposed subparagraph (c)(3)(B) provides that in establishing the standards, the program administrator must 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. The requirements are necessary to ensure program administrators have standards in place for evaluating public information as required by Financial Code section 22680, paragraph (b)(2), to provide guidance on the use of the standards, and to provide guidance on the content of the standards. Proposed paragraph (c)(4) provides that the program administrator must document the results of the review of publicly available information and maintain the documentation in books and records. This provision is necessary to require the program administrator document compliance to establish the review required by Financial Code section 22680, paragraph (b)(2) was conducted.

Subdivision (a) of Financial Code section 22682 requires a program administrator to timely notify the Commissioner of each PACE solicitor and PACE solicitor agent enrolled by the program administrator, and subdivision (b) requires notice of each enrollment cancellation and withdrawal of a PACE solicitor and PACE solicitor agent. Proposed subdivision (d) sets forth criteria for a program administrator to notify the Commissioner of the enrollment, cancellation, or withdrawal of the enrollment of a PACE solicitor. Proposed paragraph (d)(1) provides that a program administrator must notify the Commissioner of the enrollment, cancellation, or withdrawal of the enrollment of a PACE solicitor and a solicitor agent through a daily electronic transfer of data between 7:00 p.m. and 3:00 a.m. Pacific Standard Time. The rule is necessary to effectuate the requirement that a program administrator timely notify the Commissioner of the enrollment, cancellation and withdrawal of each PACE solicitor and agent. The daily electronic transfer of data between the specified times is necessary to

accommodate the Department's information technology needs while balancing a program administrator's need for a sufficient window of time to transfer the data.

Proposed subparagraphs (d)(1)(A) through (d)(1)(F) set forth the requirements for the data transfer. These provisions are necessary to allow the program administrator's data to populate the Department's licensing database. Proposed subparagraph (d)(1)(A) requires the program administrator to upload a .TXT file containing the information required by subparagraph (d)(2)(A) of section 1620.11 for each enrolled, canceled, or withdrawn PACE solicitor and solicitor agent. This provision is necessary to identify the type of file and data to be transferred. Subparagraph (d)(1)(B) provides that if a program administrator cancels or withdraws the enrollment of a PACE solicitor or solicitor agent, the program administrator must update the record for the PACE solicitor or solicitor agent to reflect both the end of enrollment and the date enrollment ended. This provision is necessary to instruct a program administrator on the method for reporting the end of the enrollment of a PACE solicitor or PACE solicitor agent. Notification of both the end of enrollment and the date enrollment ended is necessary so that the Department has a record of the time during which a PACE solicitor or PACE solicitor agent is enrolled with a program administrator and therefore authorized by the program administrator to solicit a property owner to enter into an assessment contract, so that the Department may program administrators and PACE solicitors are complying with the California Financing Law. Subparagraph (d)(1)(C) provides that the removal of PACE solicitor or solicitor agent record from the data file will not remove the PACE solicitor or solicitor agent from the Department's records and the Department's records will continue to reflect the PACE solicitor or solicitor agent as enrolled with the program administrator until the program administrator reports that the enrollment has ended and provides the date enrollment ended. This provision is necessary to ensure that a program administrator does not attempt to report the cancellation or withdrawal of enrollment by deleting a PACE solicitor or PACE solicitor agent from the .TXT file. Subparagraph (d)(1)(D) provides that if a PACE solicitor does not have a CSLB license number, the program administrator shall provide the federal Employer Identification Number (EIN) of the PACE solicitor and maintain in its books and records documentation supporting the reason that the PACE solicitor is not subject to licensure by the Contractors' State License Board. This provision is necessary for the Department to identify a PACE solicitor that does not have a Contractors' State License Board license, and to ensure that the program administrator has considered and documented the reason licensure is not required. Subparagraph (d)(1)(E) provides that the transferred data may not contain duplicate records and provides that a record is a duplicate for a PACE solicitor if the record contains the same CSLB license number and physical address as another record, or if the record contains the same EIN and physical address of another record. This provision is necessary to ensure that the Department's

database is not populated with duplicate, and thus inaccurate, records. Subparagraph (d)(1)(F) provides that the daily transfer of data must include records for all enrolled, canceled, and withdrawn PACE solicitors and solicitor agents and should not be limited to the records amended that day. This provision is necessary to instruct program administrators on the content of the data file and is intended to lessen the burden on program administrators by allowing them to extract all their data for a data transfer.

Proposed subparagraph (d)(2)(A) provides that the data submitted in the .TXT file for PACE solicitors must include the following required fields: 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. The mandatory data is necessary for the Commissioner to obtain identifying information on enrolled PACE solicitors and their agents so that the Commissioner has adequate records on the persons engaging in business as PACE solicitors and PACE solicitor agents to allow the Commissioner to effectively administer the law.

Proposed subparagraph (d)(2)(B) provides that the data must include the following conditional fields: (1) if the PACE solicitor does not have a Contractors' State License Board license, then the program administrator must provide the PACE solicitor's federal EIN and (2) if the enrollment status of the PACE solicitor is canceled or withdrawn, then the program administrator must provide the date enrollment ended. The conditional data requirements are necessary for the Department to have identifying information about a PACE solicitor that does not maintain a Contractors' State License Board (CSLB) license, and for the Department to obtain the date that enrollment ended. The Department needs a PACE solicitor's identifying information to identify the PACE solicitor authorized by the program administrator to solicit a property owner to enter into an assessment contract, so the Department may ensure program administrators and PACE solicitors are complying with the requirements of the California Financing Law. The Department needs the date that enrollment ended so the Department may identify the time that a PACE solicitor is enrolled with a program administrator and therefore authorized by the program administrator to solicit a property owner to enter into an assessment contract. This information is necessary so the Department may ensure program administrators and PACE solicitors are complying with the requirements of the California Financing Law.

Proposed subparagraph (d)(2)(C) provides that the data shall include the following fields, if the following information is available to the program administrator and applicable to the PACE solicitor: the DBA of the PACE solicitor; the CSLB license classification of the PACE solicitor; the mailing address of the PACE solicitor; the business FAX number of the PACE solicitor; the business website of the PACE solicitor; the mobile phone number of the contact person for the PACE solicitor; and the email address of the contact person for the PACE solicitor. This provision is necessary to allow the Department to collect identifying information regarding the PACE solicitor, but the information is not mandated because the information may not be applicable to a PACE solicitor or may not be available to a program administrator.

Proposed subparagraph (d)(3)(A) provides that the data submitted in the .TXT file for solicitor agents must include the following required fields: 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. The mandatory data is necessary for the Commissioner to obtain identifying information on enrolled PACE solicitor agents so that the Commissioner may effectively administer the law.

Proposed subparagraph (d)(3)(B) provides that the data must include the following conditional field: if the enrollment status of the PACE solicitor agent is canceled or withdrawn, then the program administrator must provide the date enrollment ended. This provision is necessary for the Commissioner to obtain the date a PACE solicitor agent is no longer enrolled so the Department may identify the time that a PACE solicitor agent is authorized to solicit a property owner to enter into an assessment contract. The information is necessary for the Department to ensure that program administrators and PACE solicitor agents are complying with the California Financing Law. Proposed subparagraph (d)(3)(C) provides that if the following information is available to the program administrator and applicable to the PACE solicitor agent, then the data must include the following fields: the DBO license number of the program administrator, the PACE solicitor agent's middle name, and the PACE solicitor agent's CSLB Home Improvement Salesperson (HIS) number. This provision is necessary to allow the Department to collect identifying information regarding the PACE solicitor agent, but the information is not mandated because the information may not be

applicable to a PACE solicitor agent. The Department needs a PACE solicitor agent's identifying information to identify the PACE solicitor agent authorized by the program administrator to solicit a property owner to enter into an assessment contract, so the Department may ensure program administrators and PACE solicitor agents are complying with the requirements of the California Financing Law.

Proposed paragraph (d)(4) provides that the Commissioner may reject electronic records that fail to meet the formatting standard necessary to populate the Department's database, which shall include string, numeric, and date data types for the corresponding data fields, and shall notify the program administrator by email of any rejected records. This rule is necessary to outline a process for addressing individual records within files submitted by the program administrator that are unable to populate the Department's database because the format of the individual record does not match the required string, numeric, or date format. The Department will send an email notice to notify the program administrator of records that were rejected, so that the program administrator can correct the formatting and resubmit the record. Proposed paragraph (d)(5) provides that a program administrator who receives notice of a rejected record shall correct the formatting deficiency and resubmit the record the following day in accordance with the electronic file transfer schedule established by the Commissioner. This rule is necessary to ensure that the program administrator corrects rejected records, and to avoid the unintended consequence of having the same records rejected day after day because the program administrator does not correct the formatting, resulting in both the Department and the public not receiving information on the PACE solicitor or PACE solicitor agent's enrollment status.

Section 1620.12 – Solicitor Agent Enrollment Standards and Processes:

Subdivision (c) of Financial Code section 22680 requires a program administrator to establish and maintain a process for enrolling PACE solicitor agents, including a background check of each agent. It further provides that a program administrator may rely on a background check conducted by the Contractors' State License Board to comply with the requirement. Proposed section 1620.12 sets forth standards and processes for the enrollment process of PACE solicitor agents. Proposed subdivision (a) broadly requires every program administrator to maintain a written process for enrolling a PACE solicitor agent that complies with the requirements of the rule and the subdivision is necessary to introduce the standards in the remainder of the rule. Proposed subdivision (b) provides that the process for enrolling a PACE solicitor agent must include a background check, which may be accomplished through any of the methods set forth in the following paragraphs. Proposed paragraph (b)(1) provides that the program administrator may rely on a background check conducted by the Contractors' State License Board. This provision repeats the statute and is necessary

for clarity. Proposed paragraph (b)(2) provides that the program administrator may utilize a third-party service that conducts background checks. This provision is necessary to provide a program administrator an alternative to the background check conducted by the Contractors' State License Board. Proposed paragraph (b)(3) provides that a program administrator may establish a process to review the background of a PACE solicitor agent. This provision is necessary to allow a program administrator to establish its own process for reviewing the background of a PACE solicitor agent.

Proposed subdivision (c) sets forth requirements if a program administrator establishes its own process to conduct a background check of a PACE solicitor agent. Proposed paragraph (c)(1) provides that the background check must identify whether the PACE solicitor agent maintains a license or registration in good standing from the Contractors' State License Board, or is otherwise exempt from, or is not subject to, licensure or registration. This provision is necessary for the program administrator to review the prospective PACE solicitor agent's licensure or registration status with the Contractors' State License Board. In addition to requiring licensure of contractors, that Contractors' State License Board registers home improvement salespersons. Section 7152 of the Business and Professions Code defines a "home improvement salesperson" as a person who is employed by a licensed contractor to solicit, sell, negotiate or execute contracts for which home improvements may be performed, a swimming pool, hot tub or spa constructed, or home improvement goods or services installed or furnished. The program administrator's review of the prospective PACE solicitor agent's licensure or registration status will identify for the program administrator the activities that a prospective PACE solicitor agent is authorized to engage in, so that the program administrator can ensure that property owners are not solicited to enter into a PACE assessment in the course of a solicitation for a home improvement contract if the agent is not authorized to engage in this activity. Proposed paragraph (c)(2) requires the program administrator to design the background check to identify whether the PACE solicitor agent has done any of the following: (1) been convicted of a crime as provided in the section of the Business and Professions Code applicable to applicants of the Contractors' State License Board; (2) engaged in any act involving dishonesty, fraud, or deceit as provided in the section of the Business and Professions Code applicable to applicants of the Contractors' State License Board; or (3) engaged in any act that would constitute grounds for discipline under Financial Code section 22690. These provisions are necessary to describe the types of past acts that the background check should be designed to identify, and to establish similar acts that the Contractors' State Licensure Board identifies for disqualifying applicants.

Proposed subdivision (d) requires the enrollment process to require a PACE solicitor

agent to complete the mandatory training. Under subdivisions (a) and (b) of Financial Code section 22681, a PACE solicitor agent is required to complete mandatory training but is not required to complete the six hours of education until three months after completion of the enrollment process. Proposed paragraph (d)(1) requires a program administrator to require each PACE solicitor agent to complete an introductory training that addresses the topics listed in subdivision (c) of Financial Code section 22681. It further requires the program administrator to require each PACE solicitor agent to pass a test that measures the PACE solicitor agent's knowledge and comprehension of the training material. While largely duplicative of the statute, this provision is included and is necessary to provide clarity to the enrollment process. Proposed paragraph (d)(2) specifically requires a PACE solicitor agent to complete the introductory training prior to soliciting a property owner to enter into an assessment contract, consistent with the statute. This provision is necessary to provide clarity on the minimum training and testing required for a PACE solicitor agent to solicit property owners. Proposed paragraph (d)(3) requires a program administrator to require each PACE solicitor agent to complete six hours of education provided by the program administrator within three months of completing the program administrator's enrollment process. While largely duplicative of the statute, this provision is necessary to provide clarity to the enrollment process and the intersection of the training requirements and the enrollment process. These provisions are collectively necessary to ensure that the mandatory training is part of the enrollment process, while at the same time recognizing that the law allows a PACE solicitor agent three months after enrollment to complete the six hours of education.

Proposed paragraphs (e)(1) through (e)(4) authorize a program administrator to conditionally enroll a PACE solicitor agent if the program administrator complies with the following: (1) the program administrator verifies that the PACE solicitor agent has applied for licensure or registration with the Contractors' State License Board and is waiting for the processing of the registration and fingerprints; (2) the program administrator independently conducts a background check of the PACE solicitor agent through required disclosures of information on past acts, and a review of publicly available information; (3) the PACE solicitor agent has completed the introductory training; and (4) the conditional enrollment does not extend beyond the Contractors' State License Board approval or denial of licensure or registration. The provisions are necessary to provide a framework for the conditional enrollment of a PACE solicitor agent in circumstances where the individual is waiting on licensure or registration from the Contractors' State License Board.

Finally, proposed subdivision (f) requires a program administrator to notify the Commissioner of the enrollment of a PACE solicitor agent through an electronic transfer

of data as provided in subdivision (d) of section 1620.11. This provision is necessary to confirm that PACE solicitor agents are reported to the Commissioner in the same manner and through the same process as the reporting of PACE solicitors.

Section 1620.13 – Enrollment Denial: Subdivision (e) of Financial Code section 22680 prohibits a program administrator from 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 any of the following: (1) a clear pattern of consumer complaints about the PACE solicitor regarding dishonesty, misrepresentations, or omissions; (2) a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law; or (3) a clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor. Proposed section 1620.13 describes the activities that may result in enrollment denial. The purpose of the rule is to provide guidance on evaluating the standards for the denial of enrollment, and the rule is necessary to achieve this purpose. The anticipated benefit includes promoting a balance between keeping potential bad actors out of the industry without unduly limiting the pool of qualified persons.

Proposed paragraph (a)(1) prohibits a program administrator from enrolling a PACE solicitor if because 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 omissions. This repetition of the statute is necessary for clarity. Proposed 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 subparagraph is necessary to provide guidance on the meaning of “clear pattern,” for purposes of identifying a clear pattern of consumer complaints regarding dishonesty. The proposed rule requires the complaints be in the same geographical area to establish that the complaints are a pattern representing a business practice, rather than multiple, isolated instances that are not representative of a pattern. Proposed subparagraph (a)(1)(B) provides that in considering whether a clear pattern of a dishonest business practice exists, 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. This provision is necessary to establish parameters to assist a program administrator in determining whether complaints represent a clear pattern evidencing a business practice, or isolated instances that are not representative of a business

pattern.

Proposed subparagraph (a)(1)(C) requires a program administrator to keep in its books and records documentation regarding the evaluation of consumer complaints against a PACE solicitor, and the rationale for the determination that the existence of recurring consumer complaints regarding dishonesty, misrepresentation, or omission of a material fact, with similar fact patterns in the same geographical area, do not constitute a clear pattern of a dishonest business practice. This provision is necessary for accountability in the enrollment process, and to facilitate the Commissioner's review of compliance during regulatory examinations. Proposed 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. This provision is necessary to clarify that complaints against PACE solicitor agents are attributable to PACE solicitors when the agents are acting on behalf of the solicitors.

Proposed subparagraph (a)(1)(E) provides that a program administrator is not to consider the acts of a PACE solicitor agent as acts of the PACE solicitor for purposes of determining whether a clear pattern of consumer complaints is present, if all of the following conditions exist: (1) the PACE solicitor did not know and reasonably should not have known of past instances of the conduct giving rise to the complaint prior to the solicitation of the property owner, and did not negligently disregard evidence that, upon investigation, would have revealed past instances; (2) the conduct giving rise to the complaint was not sanctioned or otherwise expressly or implicitly authorized by the PACE solicitor; and (3) 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. This subparagraph is necessary to define when a PACE solicitor agent is not acting on behalf of a PACE solicitor, and to place the burden on the PACE solicitor to act after learning that a PACE solicitor agent is engaging in harmful conduct that is not sanctioned by the PACE solicitor.

Proposed subparagraph (a)(2)(A) identifies what constitutes a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. Proposed subparagraph (a)(2)(A) 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 one or more of the following, with the severity of the actions determined by the standards of the program administrator: (1) the PACE solicitor has made a false statement of a material fact to the program administrator; (2) the PACE solicitor has advised or knowingly permitted a property owner to make a false statement of a material fact to the program administrator; (3) the PACE solicitor, or an individual with control over the operations of the PACE solicitor, has, within the last 7 years, been convicted of or pleaded nolo contendere to a crime, or committed an act and been held liable in a civil action, involving dishonesty, fraud, or deceit (a program administrator may rely on the background check conducted by the Contractors' State License Board); (4) the PACE solicitor has had its license revoked by the Contractors' State License Board or, within the past 36 months, has been disciplined by the Contractors' State License Board for an act that directly resulted in harm to the public (not including disciplinary actions for failing to renew 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); (5) the PACE solicitor has a disciplinary action against it by another regulatory agency for fraud, misrepresentation, or deceit; or (6) the PACE solicitor has engaged in elder abuse. These provisions are necessary to set forth acts for the program administrator to consider in determining whether the PACE solicitor exhibits a high likelihood that the solicitor will solicit assessment contracts in a manner that does not comply with applicable law. The acts consist of dishonesty and other violations of law that reflect on the PACE solicitor's history of truthfulness, and therefore warrant consideration by the program administrator in evaluating a PACE solicitor will comply with the law. The seven-year time period for past acts was modeled on Civil Code section 1786.18, which prohibits investigative consumer reporting agencies from reporting certain bad acts older than seven years, and Financial Code section 22109.1, subparagraph (a)(2)(A), which authorizes the Commissioner to deny an application for a mortgage loan originator license if the applicant has been convicted of a crime in the past seven years. With respect to disciplinary action by the Contractors' State License Board not involving license revocation, the Department concluded that a lookback period of three years is reasonable for determining a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law based on the Department's experience with administrative actions not involving license revocations.

Proposed subparagraph (a)(2)(B) requires a program administrator to keep in its books and records documentation regarding the evaluation of whether a PACE solicitor exhibits a high likelihood that the PACE solicitor will solicit assessment contracts in a manner that does not comply with applicable law. This provision is necessary for accountability in the enrollment process, and to facilitate the Commissioner's review of compliance during regulatory examinations. Proposed subparagraph (a)(2)(C) provides

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 agent knows or should have known of the acts. This provision is necessary to ensure that the conduct of a PACE solicitor's agents is considered when evaluating whether a PACE solicitor has a high likelihood of soliciting assessment contracts in a manner that does not comply with applicable law.

Proposed subparagraph (a)(3)(A) provides that a clear pattern on the part of the PACE solicitor of failing to timely receive and respond to property owner complaints regarding the PACE solicitor 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, 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. In providing guidance on what constitutes a clear pattern, the Department identified practices that have a harmful effect on property owners and therefore warrant consideration of whether the prospective PACE solicitor is suitable for offering financing that will result in a lien on a property owner's residence. The provision is necessary to set forth acts for the program administrator to consider in determining whether the PACE solicitor exhibits a clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor.

Proposed subparagraph (a)(3)(B) requires a program administrator to keep in its books and records documentation regarding the evaluation of whether a PACE solicitor exhibits a clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor. This provision is necessary for accountability in the enrollment process, and to facilitate the Commissioner's review of compliance during regulatory examinations. Proposed subparagraph (a)(3)(C) provides that, for purposes of establishing a clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor, the acts of a PACE solicitor agent employed or retained by a PACE solicitor must be considered if the PACE solicitor agent knows or should have known of the acts. This provision is necessary to ensure that the conduct of a PACE solicitor's agents is considered when evaluating whether a PACE solicitor has a clear pattern of failing to timely receive and respond to property owner complaints regarding the PACE solicitor.

Proposed subdivision (b) provides that a program administrator shall not be liable for failing to identify any of the practices identified in subdivision (a) of the rule if the program administrator implements a background check and enrollment process in

compliance with sections 1620.11 and 1620.12, as applicable. This provision is necessary to ensure that the enrollment denial standards set forth in this section do not create an unreasonable burden for the enrollment of a PACE solicitor or PACE solicitor agent.

Section 1620.14 – Monitoring Compliance: Subdivision (f) of Financial Code section 22680 requires a program administrator to establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with the requirements of applicable law, including a risk-based, commercially reasonable procedure to monitor and test the compliance of PACE solicitors and PACE solicitor agents with the laws applicable to PACE solicitors and PACE solicitor agents. Proposed section 1620.14 sets forth guidelines for program administrators for monitoring compliance. The purpose of the rule is to provide a program administrator with guidance on the minimum standards for monitoring a PACE solicitor and PACE solicitor agent's compliance, and the rule is necessary for this same reason. The anticipated benefits include greater compliance with the law and accordingly stronger property owner protections in the marketplace during PACE transactions.

Proposed subdivision (a) of section 1620.14 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. This provision is duplicative of existing law, with the added requirement that the process be in writing but is nevertheless necessary to provide clarity to the remainder of the rule. The requirement that the process be in writing is necessary for the Department to review the process for compliance with the law. Proposed paragraph (a)(1) requires the process include 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), which sets forth acts that a PACE solicitor may not engage in. This provision is also necessary for clarity purposes and restates the statutory requirement. Proposed paragraph (a)(1)(A) provides that a "risk-based, commercially reasonable procedure" includes, but is 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 provides that the program administrator must have a reasonable basis for determining the adequacy of the sample size. This rule was developed to balance the goal of identifying noncompliance while minimizing regulatory costs and burdens and is necessary to provide a program administrator with guidance on what constitutes a "risk-based, commercially reasonable procedure." Proposed paragraph (a)(1)(B) provides that a program administrator may test the compliance of PACE solicitors and PACE solicitor agents by posing questions to property owners during the oral confirmation of key terms

required under Streets and Highways Code section 5913. This provision is necessary to describe method that a program administrator may use to monitor the compliance of a PACE solicitor or PACE solicitor agent.

Proposed paragraph (a)(1)(C) requires the process to be designed to identify conduct and business practices that would have resulted in the denial of enrollment under section 1620.13 of the rules or the cancellation of enrollment subdivision (g) of Financial Code section 22680. This provision is necessary to incorporate the requirement under subdivision (g) of Financial Code section 22680, that a program administrator implement a process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by section 22680. Under section 1620.13 of the rules and subdivision (e) of Financial Code section 22680, a program administrator may not enroll a PACE solicitor (1) having a clear pattern of consumer complaints regarding dishonesty, misrepresentations, or omissions, (2) evidencing a high likelihood of soliciting assessment contracts in a noncompliant manner, and (3) having a clear pattern of failing to timely receive and respond to property owner complaints. Under subdivision (g) of Financial Code section 22680, a program administrator must cancel the enrollment of a PACE solicitor that fails to maintain these minimum qualifications. Proposed paragraph (a)(1)(C) requires the program administrator's written process for evaluating compliance to be designed to identify these activities that would require the denial or cancellation of enrollment. The requirement is necessary to protect property owners from potentially unscrupulous actors by ensuring program administrators evaluate the conduct and business practices of enrolled PACE solicitors and PACE solicitor agents for compliance with the minimum qualifications in Financial Code section 22680.

Proposed paragraph (a)(1)(D) requires the process to be designed to promote compliance through collaboration with PACE solicitors and PACE solicitor agents. The purpose of this provision is to promote communication and changes to problematic business practices to the extent practicable. The provision is necessary to promote compliance monitoring as a tool to advance positive methods of soliciting property owners. Proposed paragraph (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 compliance monitoring process must include the cancellation of enrollment under section 1620.16 of these rules. This provision is necessary to ensure that repeated failures to comply with the minimum qualifications described in statute, as further clarified by rule, result in the cancellation of enrollment.

Proposed paragraph (a)(1)(F) requires a program administrator to maintain the results of the compliance monitoring and testing in its books and records. This provision is necessary to document compliance with the compliance monitoring requirement, to facilitate the Commissioner's review of compliance during regulatory examinations, and to ensure the program administrator has records that allow it to monitor changes in compliance over time.

Proposed paragraph (a)(2) requires the process to promote and evaluate the compliance of a PACE solicitor and PACE solicitor agent to include a procedure to regularly monitor the license or registration status of PACE solicitors and PACE solicitor agents. This provision duplicates the statute but is necessary to clarify and provide context to the remainder of the paragraph. Proposed subparagraph (a)(2)(A) provides that continuous monitoring of the license or registration status of a PACE solicitor or PACE solicitor agent is not required. This provision is necessary to allow a program administrator flexibility in monitoring the license status of PACE solicitors and PACE solicitor agents. Proposed subparagraph (a)(2)(B) requires a program administrator to 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. This provision is necessary to set forth minimum times for the monitoring of license or registration status and is intended to balance the benefit of confirming licensure or registration status against the burden of unnecessary monitoring by identifying events where confirmation of licensure or registration is of heightened importance.

Proposed subdivision (b) provides that a program administrator that has a process for routinely monitoring the licensure or registration status of a PACE solicitor or PACE solicitor agent not less than once every 30 days need not confirm licensure or registration status in the circumstances described in paragraph (a)(2) of this rule. This provision is intended to further balance the benefits and costs of compliance by establishing a safe harbor that will achieve the goal of protecting property owners through periodic checks of licensure or registration status. The provision is necessary to provide a program administrator the option of relying on a safe harbor in monitoring compliance of license and registration status.

Section 1620.15 – Periodic Review Standards: Paragraph (f)(3) of Financial Code section 22680 requires a program administrator to establish and maintain a process to promote and evaluate the compliance of PACE solicitors and PACE solicitor agents with

the requirements of applicable law, which includes a periodic review of the solicitation activities of PACE solicitors enrolled with the program administrator, to be conducted at least once every two years. Proposed section 1620.15 set forth standards for the periodic review. The purpose of the rule is to set forth standards for the periodic review so a program administrator may comply with the statutory requirement, and the rule is necessary for this same reason. The anticipated benefits include greater PACE solicitor compliance with applicable law regarding solicitation activities.

Proposed subdivision (a) of section 1620.15 requires the procedures for the periodic review of the solicitation activities of a PACE solicitor to be in writing. This provision is necessary to ensure the Department can examine the procedures for compliance with the law. Proposed subdivision (b) requires the periodic review procedures to be designed by a program administrator to measure a PACE solicitor's compliance with the standards for solicitation activities and may include the review of consumer complaints, information gathered during the confirmation of key terms call, and other methods designed by the program administrator to gather compliance information such as surveys and reviews or samplings of records for the purpose of facilitating a program administrator with performing the reviews and analyses required by the rule. The purpose of the rule is to provide guidance on the methods available for complying with the periodic review requirements, and the rule is necessary for this same reason. The anticipated benefits of the rule include increased PACE solicitor compliance with requirements for solicitation activities through effective periodic reviews. Proposed paragraph (b)(1) requires a program administrator to perform an analysis of whether the PACE solicitor has engaged in activity that would result in the denial of enrollment. The purpose of this rule is to implement the requirement in Financial Code section 22680, subdivision (g), that a program administrator establish and implement a process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications for enrollment. By performing an analysis of whether the PACE solicitor has engaged in activity that would result in the denial of enrollment, the program administrator may determine whether the enrollment of the PACE solicitor must be canceled in accordance with Financial Code section 22680, subdivision (g), and section 1620.16 of these rules. Proposed paragraph (b)(2) requires a program administrator to perform 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. This rule is necessary for the review of solicitation activities to include that those individuals soliciting property owners are complying with the enrollment requirement for PACE solicitor agents. The proposed rule clarifies that the

review may be done through sampling to reduce the administrative burden on a program administrator.

Proposed paragraph (b)(3) requires a program administrator to confirm that each PACE solicitor agent has completed the required six hours of education. This rule is necessary to ensure that individuals soliciting property owners are knowledgeable in specified areas to avoid misrepresentations to property owners. Proposed paragraph (b)(4) requires a program administrator to 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. This rule is necessary to prevent misrepresentations in advertising. Proposed paragraph (b)(5) requires a program administrator to conduct an analysis of the controls maintained by the PACE solicitor to ensure a PACE solicitor agent complies with the law that governs soliciting a property owner to enter into an assessment contract, including such controls as written procedures, supervision, reporting, and resolution of complaints. The rule is necessary to assist in ensuring that a PACE solicitor maintains appropriate compliance controls to ensure compliance with the law governing property owner solicitations.

Proposed paragraph (b)(6) requires a program administrator to analyze a sampling of responses to the open-ended questions during the oral confirmation of key terms conducted with property owners solicited by the PACE solicitor or its agents, for patterns suggesting potential misrepresentations or omissions. The rule is necessary to assist in identifying and preventing misrepresentations and omissions. Proposed paragraph (b)(7) requires a program administrator to analyze 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. The rule is necessary to identify whether a PACE solicitor is complying 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. Proposed paragraph (b)(8) provides that If work is commenced prior to the expiration of the right to cancel period in Streets and Highways Code section 5898.16, a program administrator must analyze whether the PACE solicitor is complying with Streets and Highways Code section 5940, which sets forth certain protections if a property owner cancels the PACE financing. This rule is necessary to ensure the PACE solicitor complies with the property owner protections in the case of PACE financing cancellations.

Proposed 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 complying with the requirements for solicitation activities. This rule is necessary to ensure the periodic review includes a review of a sampling of transactions where the PACE solicitor participated in solicitation activities. Proposed paragraph (c)(1) requires the review to include an analysis of whether the PACE solicitor is only using PACE financing for authorized efficiency improvements. This rule is necessary to confirm that a PACE solicitor is offering PACE financing in a manner authorized under a PACE program in accordance with the law. Proposed 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, for work that was financed through the assessment contract. This rule is necessary to confirm that the home improvement contract covers the work financed through the assessment contract. Proposed paragraph (c)(3) requires the review to confirm that efficiency improvements installed are of the same quality and grade as those represented to the program administrator. This rule is necessary to confirm that the products being installed on the property owner's property are the same ones in the financing records, so that property owners are not paying for higher quality products than were installed. Proposed paragraph (c)(4) requires the 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, for efficiency improvements financed through the assessment contract. The purpose of this rule is to confirm that a PACE solicitor completed the work that was financed through the assessment contract.

Proposed subdivision (d) provides that for any sampling of data in the periodic review, the program administrator must sample a sufficient amount of data to identify whether the PACE solicitor is complying with its agreement with the program administrator and the law. The provision is necessary to ensure that the periodic review involves a sampling of data that is sufficiently large to identify patterns of noncompliance with the agreement between the program administrator and the PACE solicitor, and the law.

Proposed paragraph (e)(1) requires a program administrator to prepare a report summarizing the periodic review of the solicitation activities of the PACE solicitor and retain the report in its books and records. The report is necessary to document that the periodic review was conducted and to identify shortcomings in the delivery of PACE financing. Proposed paragraph (e)(2) requires the program administrator to take any other corrective action warranted by the findings in the report. This provision is necessary to require the program administrator to consider the findings in the report and whether any corrective action is necessary, and to take any necessary action. Proposed

subparagraph (e)(2)(A) requires the periodic review and any corrective action to be designed to promote compliance through collaboration with PACE solicitors and PACE solicitor agents. This provision is necessary to facilitate compliance through collaboration. 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 required by statute or rule, the process must include the cancellation of enrollment. This provision is necessary to provide direction to the program administrator with respect to the findings in a periodic review, and to protect property owners from PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by law.

Proposed subdivision (f) requires a program administrator to conduct a periodic review of a PACE solicitor at least once every two years. This provision duplicates the statute but is necessary to provide clarity to the frequency of the procedures set forth in the rule.

Section 1620.16 – Canceling Enrollment: Subdivision (g) of Financial Code section 22680 requires a program administrator to establish and implement a process for canceling the enrollment of PACE solicitors and PACE solicitor agents who fail to maintain the minimum qualifications required by section 22680, or who violate the California Financing Law. Subdivision (b) of Financial Code section 22682 requires a program administrator to timely notify the Commissioner of each enrollment cancellation and withdrawal of a PACE solicitor and PACE solicitor agent, in the manner prescribed by the Commissioner. Proposed section 1620.16 sets forth the requirements for the process for canceling the enrollment of a PACE solicitor or PACE solicitor agent. The purpose of the rule is to identify the requirements for canceling enrollment, and the rule is necessary for the same reason. The anticipated benefits of the rule include the timely and efficient notifications of enrollment cancellations, which will protect property owners from solicitations from PACE solicitors or PACE solicitor agents whose enrollment was not timely canceled.

Proposed subdivision (a) of section 1620.16 requires a program administrator to establish and implement a written process for canceling the enrollment of a PACE solicitor or PACE solicitor agent. The proposed rule tracks the statute and is necessary for clarity. Proposed paragraphs (b)(1) and (b)(2) require the process to include the following: (1) tracking the enrollment for each PACE solicitor and PACE solicitor agent; and (2) notifying the Commissioner of any change to the enrollment status of each PACE solicitor and PACE solicitor agent. These rules are necessary to effectuate the purpose of the statutes. Proposed subdivision (c) requires a program administrator to notify the Commissioner of a change to the enrollment status of each PACE solicitor

and PACE solicitor agent in the manner prescribed in section 1620.11 of the rules, which sets forth the process for notifying the Commissioner of the enrollment status of PACE solicitors and PACE solicitor agents. This requirement is necessary to ensure the reporting of enrollment status is incorporated into the written cancellation process

Section 1620.17 – Education Program: Financial Code section 22681 requires a program administrator to establish and maintain a training program for PACE solicitor agents, which is acceptable to the Commissioner. A program administrator must require each PACE solicitor agent to complete an introductory training that addresses seven specified topics, as part of the program administrator's enrollment process for PACE solicitor agents. The introductory training must require the PACE solicitor agent to pass a test that measures the agent's knowledge and comprehension of the training material. In addition, a program administrator must require each PACE solicitor agent to complete six hours of education provided by the program administrator within three months of completing the program administrator's enrollment process. The training must include the following topics: (1) PACE programs and assessment contracts, (2) PACE disclosures, (3) ethics, (4) fraud prevention, (5) consumer protection, (6) nondiscrimination, and (7) senior financial abuse. Proposed section 1620.17 sets forth requirements related to the education program. The purpose is to facilitate the training of PACE solicitor agents. The rule is necessary to establish procedures and minimum requirements related to training. The anticipated benefits include compliance with the minimum training requirements which will in turn benefit the public.

Proposed paragraph (a)(1) provides that the training program for PACE solicitor agents established and maintained by the program administrator must comply with the requirements of the rule. The provision is necessary to introduce the standard for the regulation. Proposed paragraph (a)(2) provides that a program administrator that does not administer assessment contracts for efficiency improvements on residential real property with four or fewer units does not need to comply with the rule. Training is intended to protect residential property owners who are solicited to enter into PACE assessment contracts. The purpose of this provision is to exclude program administrators that do not administer assessment contracts for efficiency improvements on residential property from the requirement to administer a training program for PACE solicitor agents because the same risks are not present when offering PACE financing in a commercial real estate transaction. Financial Code section 22691 provides that the Commissioner may by rule exempt any class of persons from provisions of Financial Code sections 22680, 22681, and 22682. The exclusion is necessary to limit the six hours of education to PACE solicitor agents who solicit residential property owners, since these property owners are more in need of protection from the potentially harmful solicitation practices that the training is intended to prevent. Proposed subdivision (b)

allows a program administrator to establish a training program by acquiring a training program from a third party. This rule is necessary to allow a program administrator flexibility in designing the training program, and to allow entities with expertise in developing training programs to develop the program on behalf of a program administrator. Proposed paragraph (b)(1) requires a program administrator that acquires a training program from a third party to verify that the training program meets the minimum requirements of the California Financing Law and the rules. This provision is necessary to ensure that the program administrator retains the obligation for compliance with the statutory training requirements. Proposed paragraph (b)(2) allows a program administrator to arrange with a third party to provide training to PACE solicitor agents. This rule is necessary to allow a third party to provide training to PACE solicitor agents for the program administrator. Some third parties may be better equipped to handle the administrative responsibility of training PACE solicitor agents on behalf of a program administrator.

Proposed paragraph (b)(3) provides that a program administrator who provides training to a PACE solicitor agent through a third party remains responsible for ensuring that each PACE solicitor agent completes the required six hours of education within three months of completing the program administrator's enrollment process. This provision is necessary to ensure a program administrator retains responsibility for ensuring each PACE solicitor agent it enrolls is trained. Proposed paragraph (b)(4) provides that, upon notice to the Commissioner, a program administrator may use a training program that has been established by a different program administrator, provided that the program administrator establishing the training program consents to its use. This rule is necessary to allow program administrators to purchase or otherwise obtain training programs from other program administrators, so that education in the industry is uniform. Notification of the Commissioner is necessary so that Department has a record of the training program used by the program administrator, to ensure compliance with the law.

Proposed subdivision (c) provides that a PACE solicitor agent that has completed a training program for a program administrator need not complete training for another program administrator, provided that the program administrator providing the training has consented to its use by the other program administrator. This rule is necessary to provide for the transportability of training, provided that the program administrator responsible for the training consents to its portability. The consent of the program administrator is necessary to ensure that the program administrator can retain the value of its investment in training a PACE solicitor agent. Proposed paragraph (c)(1) requires a program administrator to keep in its books and records evidence that a PACE solicitor agent enrolled by the program administrator has completed the required training,

including the date of completion. This rule is necessary for the program administrator to retain documentation of the training in its books and records, for compliance purposes. Proposed subparagraph (c)(2)(A) provides that, upon completion of a training program, a program administrator must provide a PACE solicitor agent a certificate that documents completion of the training program, the date of completion, and the identity of all the program administrators for whom the certificate is applicable. This rule is necessary to allow a PACE solicitor agent to retain documentation that the individual completed the training, and to have the documentation list the other program administrators for whom the training certificate is applicable, in case the agent chooses to work under a different program administrator.

Proposed subparagraph (c)(2)(B) requires a program administrator that uses a training program established by another program administrator to provide a PACE solicitor agent a certificate that documents completion of the training program, the date of completion, the name of the program administrator from whom the program administrator acquired the training program, and the date of acquisition of the right to use the training program. This rule is also necessary to allow a PACE solicitor agent to retain documentation that the individual completed the training, and to have the documentation list the other program administrators for whom the training certificate is applicable, in case the agent chooses to work under a different program administrator. The date the program administrator acquired the right to use the training program is important to verify that the program administrator was authorized to use the program, in case disputes arise regarding whether a PACE solicitor agent was enrolled and trained by a program administrator in accordance with the law.

Proposed subdivision (d) requires each program administrator to 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. This rule is necessary to ensure that the education of PACE solicitor agents is not static but is updated at least annually. The rule does not dictate the method for the program administrator to provide the updates, leaving the matter to the discretion of the program administrator. Proposed subdivision (e) sets forth the topics and information that must be included in the six hours of education. Proposed paragraph (e)(1) provides that the training on PACE programs must include information on PACE programs and assessments, and may include the following: (1) the origin of PACE programs, (2) the public benefits behind PACE programs, (3) the consequences of the first lien position, (4) the role of public agencies, (5) the treatment of PACE assessments by federal housing finance agencies, (6) the risks to property owners, (7) the potential barriers to property transfers, (8) the potential concerns of mortgagees, (9) the potential requirements of mortgagees, (10) the requirements under division 7 of the

Streets and Highways Code, and (11) the general requirements under the California Financing Law. The rule is necessary to describe potential subtopics that may be covered under PACE programs and assessment contracts, but the subtopics are not mandatory to allow a program administrator flexibility in structuring six hours of education with a substantial body of material to cover. The optional subtopics in each topic, where included, are provided as guidance on information that may be included during coverage of the topic and are not mandatory.

Proposed paragraph (e)(2) requires the PACE disclosures module to include training on the required financial disclosures when efficiency improvements are financed through an assessment contract, including the Financing Estimate and Disclosure form required by Streets and Highways Code section 5898.17. This disclosure training may also include information on the following: (1) repayment terms, (2) the assessment process, (3) interest on assessment contracts, (4) fees on assessment contracts, and (5) penalty and interest for delinquent payments. This rule is necessary to educate PACE solicitor agents about the Financing Estimate and Disclosure form, and to set forth additional topics that a program administrator may consider including in the financial disclosures training module. Proposed paragraph (e)(3) provides that in addition to providing education on ethics with respect to PACE financing solicitations, this module may include information on the following topics: (1) prohibitions on incentives, and (2) cash vs. PACE pricing. This rule is necessary to allow program administrators to potentially capture some of the regulatory requirements regarding PACE solicitations within the section on ethics.

Proposed paragraph (e)(4) provides that, in addition to providing education on fraud prevention, the module may provide information on the following potential areas of misrepresentation or omissions: (1) government sponsorship, (2) tax benefits, (3) repayment obligations, (4) refinancing, and (5) home sales. This rule is necessary to allow program administrators discretion to include additional topics in the module, while still ensuring PACE solicitor agent receives education on fraud prevention. Proposed paragraph (e)(5) provides that the module on consumer protection must include information on property owner protections under section 1920.10 of the rules. This rule is necessary to incorporate the rule regarding deceptive practices into the PACE solicitor agent training. Proposed paragraph (e)(6) provides that the module on nondiscrimination must provide information on the following topics: (1) protected classes and (2) the Unruh Civil Rights Act. This rule is necessary to prevent discrimination that may occur in PACE solicitations through education. Proposed paragraph (e)(7) requires the module on elder financial abuse to include training on the following topics: (1) activities that constitute senior financial abuse; (2) special protections in law, (3) mandatory reporters (individuals with a mandatory duty to report known or suspected

abuse), (4) ways to avoid targeting seniors, and (5) how to report suspected abuse. This rule is necessary to provide education on elder financial abuse and related topics in order to prevent the abusive targeting of senior citizens in the marketing of PACE financing.

Proposed subdivision (g) provides that the training may be developed based on materials from nationally recognized organizations with expertise in the specific areas. This provision is necessary to provide guidance to program administrators on locating reputable sources of content for the training materials.

Section 1620.19 – Annual Report Data: Financial Code Section 22159 requires each program administrator licensee to file an annual report with the Commissioner, on or before March 15, giving the relevant information that the Commissioner reasonably requires concerning the business and operations conducted by the licensee or authorized by the program administrator licensee within the state during the preceding calendar year. Financial Code section 22692 requires a program administrator to submit specified information in the annual report filed under Financial Code section 22159. The information includes: (1) information beneficial to an evaluation of the overall impact on property owners caused by the 97 percent cap on total PACE and mortgage-related debt; (2) information beneficial to an evaluation of the overall impact on property owners caused by the use of an automated valuation model in determining the market value of property subject to a PACE assessment; (3) information beneficial to an evaluation of the overall impact on property owners caused by the emergency HVAC provisions; and (4) information relevant to determining the overall impact on property owners of the absence of a minimum residual income threshold. Proposed section 1620.19 sets forth the data required in the annual report. The purpose of the rule is to comply with Financial Code section 22692 and to gather information beneficial to the Commissioner's regulatory oversight of program administrators. The information is necessary for the same reasons and the purpose of the rule. The anticipated benefits include a greater understanding of the PACE marketplace that will provide guidance in the future for developing policy related to PACE transactions, resulting in greater consumer protection.

Proposed Subdivision (a) of section 1620.19 requires a program administrator to, by March 15 of each year, report the following information for activity from the prior calendar year: the aggregate information required under Streets and Highways Code section 5954; the aggregate information required by section 10085 of California Code of Regulations, title 4; and the additional information set forth in the rule. The reporting requirements are necessary to gather information on the operations of program administrators without unduly imposing additional new reporting requirements. The

information required under Streets and Highways Code section 5954 is data related to assessment contracts, and the information must be reported to a public agency twice a year. For purposes of compliance with section 1620.19, the Commissioner requests the aggregate information once a year. Similarly, the reporting required by section 10085 of California Code of Regulations, title 4, is information required to be reported to the California Alternative Energy and Advanced Transportation Financing Authority twice a calendar year. The information is data on the numbers and related information for PACE financings. For purposes of compliance with section 1620.19, the Commissioner requests this information be aggregated and reported once a year.

Proposed paragraph (a)(3) of section 1620.19 introduces additional reporting requirements to comply with Financial Code section 22692, to provide the Commissioner with additional information to assist the Commissioner with understanding the market impact of PACE financings. Proposed subparagraph (a)(3)(A) requires the program administrator to report 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 program administrator 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. This provision is necessary to identify the volume of PACE financings resulting in tax sales or foreclosures, to measure the efficacy of the program, and to assist the Commissioner in understanding the market impact of PACE financings. Proposed subparagraph (a)(3)(B) requires a program administrator report on the aggregate average and median market value of property that is encumbered by mortgage-related and PACE assessments, at the time of the assessment contract, for all assessment contracts entered into during the prior calendar year on residential property. This information is necessary to identify the average values of properties obtaining PACE assessments.

Proposed subparagraph (a)(3)(C) requires a program administrator to report on the number of PACE solicitors, and the number of PACE solicitor agents, enrolled by the program administrator as of December 31. While a program administrator may report enrollment information through a separate report, having this data in the annual report is helpful and necessary for a year-by-year comparison to identify how economic and other factors affect enrollment. Proposed clause (a)(3)(D)1 requires a program administrator to report, for assessment contracts originated by a program administrator during the prior calendar year, the total number of assessment contracts with interest rates (i) at or below 4 percent per year; (ii) above 4 percent but at or below 8 percent

per year; (iii) above 8 percent but at or below 12 percent per year; (iv) above 12 percent and at or below 16 percent per year; (v) above 16 percent and at or below 20 percent per year; and (vi) above 20 percent per year. This information is necessary to assist the Commissioner's evaluation of the cost of financing available in this state. Proposed clause (a)(3)(D)2 requires a program administrator to report on the aggregate total fees and other charges assessed to the various property owners that were not included in the interest rate, assessment contracts originated by a program administrator during the prior calendar year. This information is necessary to assist the Commissioner's evaluation of the cost of financing available in this state.

Proposed subparagraph (a)(3)(E) requires a program administrator to report the average and median term of the assessment contracts entered in the prior year, expressed in years. This information is necessary to assist the Commissioner's evaluation of the financing available in this state. Proposed clause (a)(3)(F)1 requires a program administrator to report the number of PACE assessments that were funded and recorded under the emergency procedures in Financial Code section 22687, subdivision (e) the prior year, by zip code, and the number of HVAC systems, boilers, or other temperature regulation systems funded not in the case of emergency or immediate necessity, by zip code. This rule is necessary to effectuate paragraph (a)(3) of Financial Code section 22692, which requires a program administrator to submit information beneficial to an evaluation of the overall impact on property owners caused by the emergency HVAC provisions. Proposed clause (a)(3)(F)2 requires a program administrator to report the number of PACE assessments that were funded and recorded under the emergency procedures in Financial Code section 22687, subdivision (e) the prior year by type of improvement, and the average cost of each type of improvement. This rule is also necessary because paragraph (a)(3) of Financial Code section 22692 requires a program administrator to submit information beneficial to an evaluation of the overall impact on property owners caused by the emergency HVAC provisions.

Proposed subparagraph (a)(3)(G) requires program administrators to report information on all PACE assessments 12 months or more delinquent on December 31 of the prior year. Under proposed clause (a)(3)(G)1, for all PACE assessments 12 months or more delinquent on December 31 of the prior year, the program administrator must report the number of PACE assessments above the 97 percent cap on total PACE and mortgage-related debt at the time the assessment contract was entered into; the number of PACE assessments at or below the 97 percent cap on total PACE and mortgage-related debt, but above 87 percent, at the time the assessment contract was entered into; and the number of PACE assessments where the PACE and mortgage-related debt of the property owner was below 87 percent of the value of the property at the time the

assessment contract was entered. This rule is necessary to obtain information beneficial to an evaluation of the overall impact on property owners caused by the 97 percent cap on total PACE and mortgage-related debt. The rule requires data for PACE assessments 12 months or more delinquent to avoid capturing shorter delinquencies that are less likely to provide any meaningful information on a relationship between delinquencies and PACE and mortgage-related debt. Proposed clause (a)(3)(G)2 requires, for all PACE assessments 12 months or more delinquent on December 31 of the prior year, a program administrator to report the number of PACE assessments for which an automated valuation model was used to determine the market value of the property subject to the PACE assessment; the number of PACE assessments for which an appraisal was conducted to determine the market value of the property subject to the PACE assessment; and the number of PACE assessments where a property valuation was not obtained, if any. This rule is necessary to obtain information beneficial to an evaluation of the overall impact on property owners caused using an automated valuation model in determining the market value of property subject to a PACE assessment. Proposed clause (a)(3)(G)3 requires, for all PACE assessments 12 months or more delinquent on December 31 of the prior year, a program administrator to report the number of PACE assessments involving a case of emergency or immediate necessity under Financial Code section 22687, subdivision (e), where the program administrator did not determine and consider the current and reasonably expected income or assets of the property owner prior in accordance with Financial Code section 22687, subdivision (b). This report is necessary to obtain information beneficial to an evaluation of the overall impact on property owners caused by the emergency HVAC provisions, and this report provides such information.

Proposed clause (a)(3)(G)4 requires, for all PACE assessments 12 months or more delinquent on December 31 of the prior year, a program administrator to report the average and median residual income of the property owners upon entering into the assessment contract, at the time the assessment contracts were entered. This report is necessary to obtain information relevant to determining the overall impact on property owners of the absence of a minimum residual income threshold, and this report provides such information. Proposed subparagraph (a)(3)(H) requires a program administrator to update the information required to be disclosed under section 1409 of these rules on officers, directors, managing members, or other key personnel, and information on the gross income of the program administrator for purposes of the annual assessment under Financial Code section 22107. These provisions are necessary to obtain updated information on key personnel of the program administrator to ensure that background checks have been conducted and the Department's records accurately reflect the persons responsible for the conduct of the licensee, and to obtain the program administrator's gross income information for purposes of calculating the annual

assessment. Proposed subparagraph (a)(3)(I) requires a program administrator to report on the number of PACE assessments cancelled within three days as provided under Streets and highways Code section 5898.16, during the prior calendar year. This information is necessary to provide data on consumer behavior with respect to PACE financing.

Section 1620.21 – Property Owner Protections: Financial Code section 22686 prohibits a program administrator from executing an assessment contract, and prohibits the execution of a home improvement contract and the commencement of work under a home improvement contract, unless the program administrator makes a reasonable good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment. Proposed subdivision (a) of section 1620.21 requires a program administrator to maintain 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; and (3) the management team members responsible for maximizing profits for owners and investors. The purpose of the proposed rule is to allow the ability to pay determination to be made without influence or pressure to approve the transaction. The rule is necessary to avoid undue pressure to approve the transaction being placed on the person making the ability-to-pay determination. The anticipated benefits include a fair marketplace and property owners who can pay their PACE obligations.

Proposed subdivision (b) prohibits a program administrator from compensating 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. This rule is necessary to ensure that financial incentives are not used as a means of rewarding favorable ability-to-pay determinations, to the detriment of property owners who may not be able to afford the PACE obligations.

Section 1620.22 – Property Owner Income: Paragraph (a)(5) of Financial Code section 22687 requires a program administrator to ask a homeowner open-ended questions during the oral confirmation of key terms call, to confirm the income provided on the application and to identify the sources of their income. 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 owners that the program administrator relies on 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. Financial Code section 22686 prohibits a program administrator from approving for funding and recordation by a public agency, an assessment contract unless the program administrator makes a reasonable, good faith determination that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment. Proposed paragraph (a)(1) of section 1620.22 provides that the reasonable, good faith determination of whether a property owner has a reasonable ability to pay the annual assessment must be made and documented independently from any statement by a property owner regarding whether the property owner can pay the annual payment obligations. Proposed paragraph (a)(2) provides that the subdivision is not applicable in the case of emergency or immediate necessity under subdivision (e) of Financial Code section 22687, which allows the waiver of the requirement that a program administrator determine and consider the current or reasonably expected income or assets of the property owner. The purpose of the proposed rule is to require a program administrator to determine a property owner's ability to pay without relying on the property owner's statement regarding income. The rule is necessary to ensure that the program administrator uses reasonably reliable third-party records of the property owner's income or assets. The anticipated benefits include heightened confidence in the determination of income and ability to pay.

Proposed subdivision (b) of section 1620.22 sets forth principles for determining a property owner's current or reasonably expected income. Proposed paragraph (b)(1) provides that the examples of the records that a program administrator may use to verify a property owner's income or assets in subdivision (b)(1) of Financial Code section 22687 are not exhaustive. Subdivision (b)(1) of Financial Code section 22687 provides a list of examples of records the program administrator may use to verify the property owner's income or assets. Proposed paragraph (b)(1) is necessary to confirm that the list of examples is not exhaustive so that a program administrator may use additional records that may now or in the future be available for income verification purposes. Paragraph (b)(2) of section 22687 provides that income may not be derived from temporary sources of income. Proposed paragraph (b)(2) of section 1620.22 provides that rental income may be included in determining income. This provision is necessary to clarify that for purposes of PACE financing rental income is not a temporary source of income and may be considered in determining a property owner's income as part of the ability to pay determination.

Proposed paragraph (b)(3) of section 1620.22 prohibits a program administrator from determining the income of a property owner based on records or data that provide the basis for an estimate of income but do not reflect the actual income of the property

owner. This provision is necessary to ensure that income is not derived in a manner that is based on predictive or estimation methodologies.

Section 1620.25 – Emergency: Streets and Highways Code section 5898.16 provides property owners who enter into an assessment contract with a three-day right to cancel period. Financial Code section 5940 allows that period to be waived when the contract is executed in connection with the making of emergency or immediately necessary repairs to protect persons or property. The law contains various protections intended to ensure that a waiver of the right to cancel period is initiated by the property owner based on an urgent need, and not a routine part of the contracting process. Similarly, subdivision (e) of Financial Code section 22687 provides that the requirement for income determination using reasonably reliable third-party records may be waived in the case of emergency or immediate necessity to finance a heating, ventilation, and air conditioning (HVAC) system, boiler, or other system whose primary function is temperature regulation in a home, in limited circumstances. Proposed section 1620.25 provides that the installation of cool coat paint, window replacements, or a cool roof does not constitute an emergency or immediate necessity. This provision is necessary to ensure that the income determination requirement is not evaded by the characterization of these home improvements as an emergency or immediate necessity.

Section 1620.27 – Automated Valuation Model: Financial Code section 22685 sets forth a method for a program administrator to derive the market value of a property, for purposes of the limitations on eligibility for a PACE assessment. For example, subdivision (h) of Financial Code section 22684 limits the financing to less than 15 percent of the value of the property, and subdivision (i) limits the total PACE assessments and the mortgage-related debt to 97 percent of the market value of the property. Streets and Highways Code section 5898.16 prohibits participation if the total amount of the annual property taxes on the property with the assessments exceeds 5 percent of the property's market value. To determine market value, section 22685 requires the use of either an automated valuation model or an appraisal. If an automated valuation model is used, the program administrator must use at least three models for each property, and the program administrator must use the estimated value with the highest confidence score for the property, for purposes of determining the market value of the property. Proposed section 1620.27 requires a program administrator to maintain in its books and records evidence documenting the confidence scores and estimated values for all the automated valuation models used to derive the market value of each property subject to a PACE assessment. This provision is necessary for the Department to have access to the information during a regulatory examination to ensure compliance.

Section 1620.28 - Useful Life of Improvement: Subdivision (j) of Financial Code section 22684 provides that the term of an assessment contract may not exceed the estimated useful life of the home improvement to which the greatest portion of funds disbursed under the assessment contract is attributable. It requires the program administrator to 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. Proposed section 1620.28 requires a program administrator to base the useful life of the efficiency improvement on the equipment manufacturer or installer's specifications and requires the program administrator to maintain documentation of the useful life of the efficiency improvement in its books and records. The purpose of this requirement is to demonstrate compliance with Financial Code section 22684. The rule is necessary to define the useful life standard, and the anticipated benefits include uniform interpretation of the term.

Section 1620.29 – Commercially Reasonable: Financial Code section 22684 sets forth minimum criteria that must be met for a property owner to bear the financial risk of entering into PACE financing, such as restrictions on delinquent property taxes, involuntary liens, bankruptcies, or delinquent mortgage debt, among others. Subdivision (l) of Financial Code section 22684 requires a program administrator to use commercially reasonable and available methods to verify that the minimum criteria in the section have been met. Proposed section 1620.29 provides guidance on when the verification of the minimum criteria is commercially reasonable and available. The purpose of the proposed rule is to provide guidance on when the verification of criteria is commercially reasonable and available. The rule is necessary to provide certainty regarding the adequacy of methods used by the program administrators to verify that the minimum criteria in Financial Code section 22684 have been met by the property owner. The anticipated benefits include the protection of property owners using verification methods intended to ensure that the minimum criteria have been met. Proposed subdivision (a) of section 1620.29 provides the verification of criteria for submitting, presenting, or otherwise approving for recordation an assessment contract is “commercially reasonable and available” in the following circumstances: (1) the verification relied on public records, including property tax records, county assessor records, court filings, and information made available on government websites; (2) the verification relied on information supplied in credit reports prepared by national credit reporting agencies; (3) the verification relied on the market value of property; (4) the verification relied on mortgage statements. These examples are necessary to provide guidance on the meaning of the phrase. The examples are based on input from interested parties on potential reasonable third-party sources to verify information that the Department determined balanced the compliance burden with the need to protect the public.

Proposed subdivision (b) provides that where information is not reasonably available through an independent source, 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. This provision allows a program administrator to rely on the representation of a property owner in instances where information is not reasonably available through an independent source and is necessary to provide the program administrator a way to comply with the rule under such a circumstance. Proposed subdivision (c) of section 1620.29 provides that property tax payment histories are commercially reasonable and available and requires a program administrator to use these records to verify the criteria in Financial Code section 22684. This provision is necessary to ensure program administrators obtain the property tax payment histories through an independent source to effectuate the policy of the statute requiring verification from an independent source when reasonably available. Proposed subdivision (d) provides that the verification methods identified in the rule are non-exhaustive and permissive. This provision is necessary to allow a program administrator to use other commercially reasonable and available methods that may not be identified in the rule.

c. Anticipated Benefits of Amended and New Regulations

The benefits anticipated from the regulatory action include the protection of property owners who may be solicited to enter into an assessment contract, including protecting property owners from deceptive and misleading practices that threaten the efficacy and viability of the property assessed clean energy financing program, as provided in paragraph (a)(7) of Financial Code section 22001. The benefits anticipated from this regulatory action also include modernizing the application and licensure process under the California Financing Law through the use of NMLS to improve the efficiency of the licensing, record keeping, and license renewal processes.

III. Economic Impact Assessment

The Department has assessed whether and to what extent this proposed rulemaking action will affect (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, (3) the expansion of business currently doing business within the state, and (4) the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

This proposed rulemaking action sets forth processes for implementing AB 1264 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:

- The anticipated transition of existing licensees onto NMLS, which may require existing licensees not currently on NMLS to transfer their information onto NMLS.
- The requirements for program administrators, including the following:
 - Familiarizing employees with the regulatory requirements related to engaging in business as a program administrator;
 - Providing property owners with physical copies of agreements;
 - Attempting to make confirming telephone calls to property owners when the PACE solicitor is not present;
 - Implementing protections against misleading the public;
 - Developing procedures to prevent property owners from being misled about the certifications of a PACE solicitor or PACE solicitor agent;
 - Requiring the written disclosure of the information required in a confirmation call;
 - Requiring the delivery of an informational brochure;
 - Requiring specific items to be maintained in books and records for specified periods;
 - Requiring the complaint process include specified elements;
 - Implementing policies to prohibit dishonest dealings;
 - Requiring a written process for enrolling PACE solicitors and PACE solicitor agents that meets specified criteria;
 - Requiring the daily transfer of data on enrolled, canceled and withdrawn PACE solicitors and PACE solicitor agents;
 - Requiring a written process to monitor PACE solicitor compliance that meets specified criteria;
 - Requiring written procedures for the periodic review of PACE solicitors that meets specified criteria;
 - Implementing procedures to cancel enrollment upon specified criteria;
 - Establishing content for training;
 - Collecting, maintaining, and reporting specified information annually; and
 - Implementing a process and criteria for determining a property owner's ability to pay the annual payment obligations.

a. Creation or Elimination of Jobs

The Department has assessed 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 may include provisions that will 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.

b. Creation of New Businesses or Elimination of Existing Businesses

The Department has assessed whether this rulemaking action will create new businesses or eliminate existing businesses. This rulemaking action will not result in the creation of new businesses. The Department is not aware of any provision in this rulemaking action that will result in the elimination of a business and therefore has determined that this rulemaking action will not result in the elimination of existing businesses within the state. The rulemaking action balances the regulatory requirements against the benefits of public protection and based on the Department's assessment the action does not burden business to the extent of eliminating businesses.

c. Expansion of Business Currently Doing Business Within the State

The Department has assessed whether this rulemaking action will result in the expansion of business currently doing business within the state. The Department has determined that this rulemaking action will not result in the expansion of business currently doing business within the state. The regulatory requirements on program administrators will initially require the reallocation of resources for a business to achieve compliance with the new regulatory requirements. In the long term, this rulemaking action may positively impact the PACE financing marketplace by increasing public confidence in the market, and consequently future expansion is possible.

d. Benefits to the Health and Welfare of Residents, Worker Safety, and State's Environment

The Department has assessed whether this rulemaking action will result in benefits to the health and welfare of California residents, worker safety, and the state's environment. The regulatory requirements proposed in this rulemaking action will help improve the welfare of California residents and the state's environment by establishing processes and protections intended to prevent fraud and misrepresentation in the PACE financing marketplace.

e. Finding Regarding Report

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of the state that the report content required by this rulemaking action apply to businesses.

IV. Identification of Studies

Identification of Studies Relied Upon: The Department has not relied upon a technical, theoretical, or empirical study, report, or similar document in proposing this rulemaking action. The Department has relied upon the information provided by interested parties and parties who would be subject to the proposed regulations obtained during public discussions regarding the proposed regulations. (Gov. Code, § 11346.45.)

Information from interested parties include letters from the following individuals, organizations and coalitions:

- Bet Tzedek Legal Services, dated January 5, 2018 and June 8, 2018
- California Association of County Treasurers and Tax Collectors, dated January 9, 2018 and June 8, 2018
- California Association of Realtors, dated January 8, 2018
- California Low-Income Consumer Coalition, California Bankers Association, California Mortgage Bankers Association, California Credit Union League, California Land Title Association, California Association of Realtors, California Escrow Association, California Mortgage Association, Consumers Union, United Trustees Association, and Peggy Moak, Butte County Treasurer-Tax Collector, dated January 5, 2018
- California Low-Income Consumer Coalition, California/Nevada Credit Union League, California Land Title Association, California Escrow Association, California Mortgage Association, Consumers Union, and Peggy Moak, Butte County Treasurer-Tax Collector, dated June 8, 2018
- California Mortgage Bankers Association, dated June 5, 2018
- California Solar + Storage Association, dated June 8, 2018
- CleanFund Commercial PACE Capital, Inc., dated January 4, 2018
- Energy Efficiency Equity, dated January 5, 2018 and June 8, 2018
- Monterey Association of REALTORS, Bakersfield Association of REALTORS, Orange County REALTORS, and Santa Barbara Association of REALTORS, dated January 5, 2018
- National Consumer Law Center and National Housing Law Project, dated January 5, 2018 and June 8, 2018
- PACE Funding Group, dated December 26, 2017 and May 23, 2018

- PFM Financial Advisors, LLC, dated January 8, 2018
- Renew Financial, dated January 5, 2018 and June 22, 2018
- Renovate America, dated January 5, 2018 and June 29, 2018
- Renovate America, Renew Financial, and Ygrene Energy Fund, dated March 12, 2018
- Spruce Financial, dated January 5, 2018
- Sustainable Real Estate Solutions, dated December 26, 2017 and May 21, 2018
- Western Riverside Council of Governments, dated January 5, 2018 and June 7, 2018
- Ygrene Energy Fund, dated January 5, 2018 and June 8, 2018

V. Alternatives

Reasonable Alternatives: The Department has involved parties who would be subject to the proposed regulations in accordance with Government Code section 11346.45 and has incorporated suggestions on the proposed regulations that are less burdensome and equally effective at achieving the purpose of the proposed regulations. The Department is not aware of any reasonable alternatives that will be equally effective at achieving the purpose of the proposed regulations.

Adverse Impact on Small Business: Reduced requirements for implementing procedures and maintaining records may lessen any adverse impact on small business. The Department rejects these alternatives because the Commissioner has determined the requirements of the proposed regulations are necessary for the protection of property owners and the efficient and effective administration of the law.

VI. Evidence Supporting Initial Determination

Significant Adverse Impact on Business: The Department relies on information provided by interested parties in letters provided to the Department in anticipation of rulemaking, including parties who would be subject to the proposed regulations, to support an initial determination that the action will not have a significant adverse economic impact on business. These letters are identified above in section IV.

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