

**TITLE 4, DIVISION 13, ARTICLE 5
OF THE CALIFORNIA CODE OF REGULATIONS**

NOTICE OF PROPOSED RULEMAKING

The California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”), organized and operating pursuant to Division 16 (commencing with Section 26000) of the California Public Resources Code (the “Act”) – pursuant to the authority vested in it by the Public Resources Code Section 26009 to promulgate regulations and Public Resources Code Section 26011 to provide financial assistance to a participating party, and acting pursuant to the Memorandum of Agreement (“MOA”) between CAEATFA and the California Public Utilities Commission (“CPUC”) which sets forth the policies and procedures for establishment of a series of ratepayer-funded pilot programs as authorized and described in the CPUC-approved Decision 13 09 044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013—proposes to adopt the Residential Energy Efficiency Loan Assistance Program regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Authority proposes to adopt Title 4, Division 13, Article 5, Sections 10091.1 through 10091.15 of the California Code of Regulations concerning the implementation of the Residential Energy Efficiency Loan Assistance Program (“REEL Program” or “Program”). These regulations were initially adopted under the emergency rulemaking process on March 9, 2015 (Office of Administrative Law (“OAL”) File No. 2015-0227-01E), pursuant to Public Resources Code 26009. These proposed regulations are similar to those enacted on March 9, 2015 under the emergency rulemaking process and re-adopted with modifications under the emergency rulemaking effective September 8, 2015. These proposed regulations are substantially similar to those enacted on September 8, 2015 under the emergency rulemaking process, and include some amendments and additions that Authority staff believe are appropriate to strengthen the REEL Program and incorporate lessons learned from early implementation. The current rulemaking action would make those regulations permanent. The Authority is soliciting input for any modifications or amendments to these proposed regulations.

PUBLIC HEARING

A public hearing regarding the regulations has been scheduled from 1:00 pm. until business is concluded on December 15, 2015 at 915 Capitol Mall, Room 587, Sacramento, California 95814. Any additional public hearings will be publicized to CAEATFA’s list serve and on the Authority’s website located at <http://www.treasurer.ca.gov/caeatfa/cheef/reel/index.asp>.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the regulations to the Authority. **The written comment period on the regulations ends at 5:00 p.m. on Tuesday, December 15, 2015.** All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

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

AUTHORITY AND REFERENCE

Authority: Public Resources Code Section 26009. Section 26009 of the Public Resources Code authorizes the Authority to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code 26011 establishes the authority to provide financial assistance to a participating party.

Reference: Public Resources Code Sections 26003(a)(3)(A), 26003(a)(6), 26003(a)(8)(A), 26011 and 26040. On September 19, 2013, the CPUC approved the Decision, and requested the Authority act as the master administrator of the California Hub for Energy Efficiency Financing (“CHEEF”), funded by ratepayer funds collected by the four investor owned utilities -- Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company (collectively the “IOUs”). CAEATFA’s purpose is to advance the State’s goals of reducing the levels of greenhouse gas emissions, increasing the deployment of sustainable and renewable energy sources, implementing measures that increase the efficiency of the use of energy, creating high quality employment opportunities, and lessening the State’s dependence on fossil fuels. Its statute provides it the ability to provide financial assistance to various participating parties that carry-out eligible projects. In July 2014, CAEATFA received Legislative budget authority to administer the CHEEF functions, and subsequently entered into a Memorandum of Agreement with the CPUC, and a receivables contract with the IOUs.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to provide “financial assistance” to “participating parties” for the implementation of “projects” as those terms are defined in Public Resources Code Section 26003. See Public Resources Code Section 26011. A Memorandum of Agreement between CAEATFA and the CPUC sets forth the policies and procedures for establishment of a series of ratepayer-funded pilot programs as authorized and described in the CPUC-approved Decision 13 09 044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs. The proposed regulations will allow the Authority to administer the “Residential Energy Efficiency Loan Assistance Program,” pursuant to its MOA with the CPUC and its contract with the Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company to implement the California Hub for Energy Efficiency Financing Pilot Programs.

To encourage residential energy efficiency lending, the Authority is creating a loan loss reserve to mitigate lenders’ risk in originating loans for energy efficiency retrofit projects. Primarily, the program is intended to attract a greater amount of private capital to the energy efficiency retrofit market by reducing risk to lenders; broadening the availability of lower cost financing to individuals who might not have been able to access it otherwise; and addressing the upfront cost barrier to energy efficiency retrofit projects.

Authority staff (“Staff”) undertook a four-month public participation process beginning in October 2014 to develop these regulations, which included individual meetings and consultation with State agencies and interested parties, notices to interested parties, public availability, comment periods specific to preliminary drafts of proposed regulations and program structure, and public workshops. The regulations were approved by the Authority’s Board on February 18, 2015. The regulations were subsequently submitted to the Office of Administrative Law and adopted through the emergency rulemaking process on March 9, 2015 (OAL File Number 2015-0227-01E). That rulemaking is incorporated into this document by reference (OAL file number 2015-0227-01E). Following the adoption of the emergency regulations, Staff incorporated feedback and lessons learned from the early implementation process. The revised emergency regulations were approved by the CAEATFA Board at a publically noticed meeting on August 18, 2015, and readopted through the emergency rulemaking process on September 8, 2015.

The proposed regulations establish the rules, process and procedures for the REEL Assistance Program, including the eligibility and evaluative criteria loans must meet in order for Participating Financial Institutions and Participating Finance Lenders to qualify and receive a Loss Reserve Contribution. These regulations also address the eligibility and evaluative criteria of projects and of contractors performing the installation of Eligible Improvements. These regulations are the result of stakeholder comments obtained during public workshops and the regulation review process outlined above.

Article 5. Establishes the REEL Assistance Program.

Section 10091.1. Definitions. The proposed regulation establishes the specific meaning of several terms commonly used throughout the regulations and Program documents. The definitions provide detail on various program requirements, including Borrowers, Eligible Property, Eligible Financial Institutions and Eligible Finance Lenders, Eligible Loans, Eligible Improvements, and the different loss reserve accounts that will be established by the Authority.

Section 10091.2. Eligible Financial Institution and Eligible Finance Lender Applications to Participate. This section describes the process for a financial institution or finance lender to apply to participate in the Program. It identifies the information and qualifications required of a financial institution or finance lender. This includes a description of the loan product that it will provide as a result of the loan loss reserve, as well as certifications to comply with program rules and various lender service agreement provisions. This section also establishes the timing of the Authority’s decision to permit the applicant to be a Participating Financial Institution or Participating Finance Lender, and requires a Participating Financial Institution or Participating Finance Lender to submit a signature sheet for authorizing officials for program administration purposes.

Section 10091.3. Additional Requirements for Finance Lenders. This section describes the additional requirements that finance lenders operating under a finance lender license through the California Department of Business Oversight will need to meet to be approved as a Participating Finance Lender in the Program. These provisions include additional insurance requirements, description of quality control procedures, and various certifications and representations.

Section 10091.4. Loan Eligibility and Minimum Underwriting Criteria. This section discusses the minimum financial underwriting criteria required for loans to be eligible for enrollment in the Program. This section requires that each loan enrolled is consistent with the lender’s initial application, and also includes a description of eligible improvements. It establishes minimum underwriting criteria and loan term parameters, including: loan maximum, FICO score, debt-to-income ratio, and interest rate cap. The section clarifies eligibility for projects that are partially enrolled in the Program. This section also makes clear that Participating Financial Institutions and Participating Finance Lenders may add additional criteria to their loan underwriting process.

Section 10091.5. Contractor Qualification and Management. This section describes the requirements for energy efficiency retrofit contractor participation in the Program. Qualified Contractors will be required to have an active license with the California Contractors State License Board for the work they perform under the Program. They must also hold and maintain one million dollars in commercial general liability insurance throughout their participation in the Program, as well as complete training on Program rules and procedures given by the Authority or its agents, the IOUs, or the Center for Sustainable Energy. The section includes the process and noticing requirements for suspending Qualified Contractors from participating in the Program if their licenses become inactive or if they fail to comply with Program requirements. The proposed regulations also create a framework for suspended contractors to appeal their suspension to the Authority.

Section 10091.6. Establishment and Funding of Loss Reserve Accounts. This section describes the process through which Loss Reserve Accounts are established and funded. Such accounts shall be held by the Program Trustee for each Participating Financial Institution, Participating Finance Lender, and Successor Servicer, and will be funded with Loss Reserve Contributions from IOU-Program Holding Accounts and IOU-Program Reservation Accounts upon enrollment of Eligible Loans. On a quarterly basis, the Authority will review the balance of each Loss Reserve Account and may make adjustments to the funding to reflect reductions in the outstanding principal of Enrolled Loans corresponding with that Loss Reserve Account. The section also clarifies the funding and quarterly adjustment processes for partially enrolled loans.

Section 10091.7. Optional Loss Reserve Reservation and Project Pre-Approval. The section provides Participating Financial Institutions and Participating Finance Lenders the option to get loans pre-approved, which will be helpful in confirming Eligible Improvements, and/or the availability of funds for Loss Reserve Contributions. It identifies the specific information needed to approve an optional Loss Reserve Reservation or Project Pre-Approval, and also identifies the time frames for processing such requests. The section describes the process through which a Participating Financial Institution or Participating Finance Lender may make a Loss Reserve Reservation based upon the loan amount that will be made for a specific, upcoming project. The Participating Financial Institution or Participating Finance Lender may also request a Project Pre-Approval to ensure that the proposed project will meet Program requirements; the Project Pre-Approval request includes information to verify that the proposed contractor is a Qualified Contractor and that the proposed improvements are Eligible Improvements. Changes to this section were made to add a certification to the Qualified Contractor application for consistency with those required on other forms for the Program.

Section 10091.8. Loan Enrollment. This section outlines the documentation and certifications that are required to be submitted to the Authority to enable CAEATFA to determine that a loan meets the eligibility criteria and may be enrolled in the Program, and to determine the appropriate Loss Reserve Contribution to be deposited into the Loss Reserve Account on behalf of the Participating Financial Institution or Participating Finance Lender. While the terms and conditions of Eligible Loans are determined by the regulations and loan terms are solely by agreement between each Participating Financial Institution, or Participating Finance Lender, and its Borrowers, the specific documents required to qualify a loan for enrollment in the Program must be completed by the Borrower, the Qualified Contractor(s) or Self-Installer performing the energy efficiency work paid for by the loan, and by the Participating Financial Institution or Participating Finance Lender.

Section 10091.9. Claims. This section describes the process whereby a Participating Financial Institution, Participating Finance Lender, or Successor Servicer may claim, and if approved, receive reimbursement for a loss from an Enrolled Loan arising as a result of a Borrower’s default and the Participating Financial Institution, Participating Finance Lender, or Successor Servicer’s ultimate charge-off of that loan. Required documentation and claim limits are defined, as is the procedure for repayment of amounts recovered in excess of the Participating Financial Institution, Participating Finance Lender, or Successor Servicer’s actual loss on an Enrolled Loan. The section also makes

clear distinctions for how claim payments for partially enrolled loans will be processed. Additional data points are added to the claim application to distinguish the total loan amount from the enrolled loan amount.

Section 10091.10. Project Requirements. This section describes the quality assurance requirements necessary for projects to be funded by loans that will be enrolled in the Program. Specifically, the section describes a Qualified Contractor’s requirement to ensure that all permits and approvals for the project were obtained, and to provide the Borrower with a Bill Impact Estimate. The Program also requires that Combustion Appliance Safety or Combustion Appliance Zone testing be completed in certain circumstances; this section identifies those circumstances and the specifications around the types of contractors that may perform the test. This section also outlines the process for and scope of field verifications of installed measures to ensure compliance with Program requirements, which varies depending on the scope of the Project and whether the Eligible Improvements were installed by a Qualified Contractor or a Self-Installer.

Section 10091.11. Reporting. This section outlines the information that Participating Financial Institutions, Participating Finance Lenders, and Successor Servicers will be required to submit in monthly reports to the Authority. The reports will include information regarding each Enrolled Loan under the Program. Participating Financial Institutions, Participating Finance Lenders, and Successor Servicers will also be required to report annually on any material changes to information or certifications provided in the initial application to participate or indicating that all statements made in the application remain materially unchanged, and to update any expiring documents required under Program guidelines. This section also incorporates a process for and timeframe during which a Participating Financial Institution, Participating Finance Lender, or Successor Servicer must notify the Authority of any changes in loan terms for Enrolled Loans. In addition, the section specifies that a PFI or PFL must report any change in servicing of Enrolled Loans to the Authority at least ten (10) business days prior to the change occurring.

Section 10091.12. Sale of Enrolled Loans. This section describes the circumstances under which Participating Financial Institutions and Participating Finance Lenders may assign their rights to the Loss Reserve Contributions for Enrolled Loans to investors who have purchased Enrolled Loans. The Participating Financial Institution or Participating Finance Lender will still be required to submit quarterly reports on the status of its enrolled portfolio and submit any claims on behalf of its investors. In addition, this section describes the required information and process for an Eligible Financial Institution or Eligible Finance Lender to enroll as a “Successor Servicer” and assume the responsibilities for reporting and submitting claims to CAEATFA for previously Enrolled Loans. The section also describes notification processes that program participants must comply with in the event an Enrolled Loan is sold and the Loss Reserve Contribution for that loan is to be assigned to a Successor Servicer.

Section 10091.13. Termination and Withdrawal. This section describes the circumstances and process under which a Participating Financial Institution, Participating Finance Lender, or Successor Servicer may elect to withdraw or be required to terminate its participation under the Program. The

section also discusses noticing methods for such terminations and withdrawals, and the circumstances under which the Executive Director of the Authority may terminate a Participating Financial Institution, Participating Finance Lender, or Successor Servicer’s ability to enroll new loans in the Program. In the event of a termination or a withdrawal, this section outlines the continued loss reserve coverage of previously Enrolled Loans. Loans enrolled prior to any termination that have not been repaid will continue to be secured by the Loss Reserve Account.

10091.14. Reports of Regulatory Agencies. This section establishes that the Executive Director may seek information directly from any federal or state agency concerning any Participating Financial Institution, Participating Finance Lender, Successor Servicer, or Qualified Contractor participating in the Program.

10091.15. California Hub for Energy Efficiency Financing Privacy Rights Disclosure. This section sets forth the necessary information that describes the Borrower’s privacy rights under the Program. The regulations require that each Participating Financial Institution or Participating Finance Lender must submit with each loan to be enrolled a copy of the Disclosure signed by the Borrower. The document discloses that the Authority may come into possession of a series of data points, which are set forth in the Authority’s contract with the investor-owned utilities. Data will be made available to the public in an anonymized form and aggregated with information from other loan participants to protect the Borrower’s privacy rights while still making both loan and energy efficiency project performance available to the public. The information collected will also help to ensure accurate reporting that will assist with Program administrative planning and operations.

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

DISCLOSURES REGARDING THE PROPOSED ACTION

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

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

Significant effect on housing costs: None.

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

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

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

RESULTS OF ECONOMIC IMPACT ANALYSIS

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

The Authority finds that the proposed regulation will have a positive effect on businesses of contractors who conduct the energy efficiency retrofits. The proposed regulation may also have a positive effect on the state’s economy and environment generally as a result of the increased economic activity and energy conservation as a result of Borrower’s investment in energy upgrades to their homes. Studies have cited the need for lower cost financing as a barrier to for homeowners to invest in energy upgrades.

CONSIDERATION OF ALTERNATIVES

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

action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

AGENCY CONTACT PERSON

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

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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority’s office at 915 Capitol Mall, Room 435, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic Impact Statement, and the Technical, Theoretical, and/or Empirical Studies, Reports, or Documents. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority’s website located at <http://www.treasurer.ca.gov/caeatfa/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF FINAL STATEMENT OF REASONS

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

AVAILABILITY OF MATERIALS ON THE INTERNET

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