

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**
Meeting Date: June 26, 2012

***Request to Approve Revised Emergency Regulations for the Loan Loss Reserve
Program under the AB X1 14 Clean Energy Upgrade Financing Program***

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Issue. The California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”) approved the initial emergency regulations to implement a Loan Loss Reserve Program (“Program”) under the Clean Energy Upgrade Program authorized by Assembly Bill 14 (Skinner, 2011) at the April 17, 2012 Board Meeting. Upon approval of the initial emergency regulations for the Program,¹ CAEATFA staff (“Staff”) directed its efforts toward engaging lenders to become Participating Financial Institutions so they could begin enrolling loans into the Program. Staff’s discussions with interested lenders and further review of the Program regulations has brought attention to a few key issues that need to be addressed to successfully launch the Program.

Request. Staff proposes approving revised emergency regulations that will enable CAEATFA to successfully implement the Program under the Clean Energy Upgrade Financing Program.

Clean Energy Upgrade Financing Program and Regulation Development.

Assembly Bill 14 (Skinner, 2011) was signed into law on August 2, 2011, and authorizes CAEATFA to provide financial assistance in the form of credit enhancements to financial institutions making loans to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements on homes or small commercial properties. In the initial development phase of the Clean Energy Upgrade Financing Program, and after undertaking an eight-month stakeholder engagement process, Staff developed a Loan Loss Reserve Program designed to help Financial Institutions make loans to California homeowners for energy efficiency and renewable energy retrofits. Integral to Staff’s development of the Program has been the promulgation of emergency regulations balancing stakeholder needs with statutory, legal and program administration framework and requirements.

CAEATFA approved the initial Program emergency regulations on April 17, 2012 (“Regulations”), beginning the formal emergency rulemaking process. The Office of Administrative Law (“OAL”) approved the regulations and subsequently filed them with the Secretary of State. The emergency regulations became effective on May 4, 2012 and

¹ All capitalized terms are defined in the Program regulations.

will be valid until November 1, 2012 (180 days). In marketing the Program to Financial Institutions, Staff continued to review and evaluate the Program’s structure, and has determined that modifications and clarification of the Regulations are necessary prior to approving Financial Institutions for participation in the Program.

Proposed Modifications to the Regulations.

Following is a brief summary of the key changes made in the proposed regulatory modifications. In addition, CAEATFA staff took this opportunity to make other technical changes to the regulatory provisions, which predominantly consist of providing additional clarification, removing unnecessary provisions, or changing the order of provisions to ensure the regulations are user-friendly and more consistent with the structure of the required Program forms and documents. The proposed modifications to the Regulations can be found in Attachment A and are denoted by text with blue underlines or red ~~strikethroughs~~, and provisions that are moved are denoted in green text.

The key revisions to the Regulations focus on three main areas: expanded eligibility criteria for Financial Institutions, removal of the rating requirement for Financial Institutions, and redaction of personal confidential information identifying the Borrower from all loan enrollment documentation. Proposed revisions are made to the following sections of the Regulations:

§10050 (f): Definitions.

The existing emergency regulations state that “*‘Financial Institution’ means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).*”

The proposed modification expands the definition of “Financial Institution,” broadening the types of lenders eligible to participate in the Program to include a “*municipal utility district as described in Section 12850 of the Public Utilities Code.*”²

Staff has engaged in discussions with the Sacramento Municipal Utility District (“SMUD”) regarding its existing energy efficiency loan program and its desire to qualify as a Participating Financial Institution in the Program. Staff has determined that allowing publicly owned utilities who have existing loan programs serves the interest of the public by providing additional lower cost energy efficiency financing options and is in accordance with the intent of the statute. While some publicly

² Public Utilities Code Section 12850: This article shall apply only to districts which have owned and operated an electric distribution, water distribution, or sewage disposal system for at least eight years and which have a population of 250,000 or more.

owned utilities may have existing energy efficiency programs with established infrastructure and history of loan performance, those utilities interested in participating in the Program are required to meet the Public Utilities Code definition for eligibility and will also be required to comply with all Program regulations, including quality assurance standards and contractor certification requirements.

§10053 (a)(6): Application by Financial Institution.

The existing regulations state that a Financial Institution application shall include “*the Financial Institution’s rating from a recognized rating agency which assesses the financial soundness and stability of financial institutions.*”

The proposed modification removes the requirement for submitting a rating in the application materials.

This requirement is a carryover provision that CAEATFA initially adopted from a loan loss reserve program administered by the California Pollution Control Financing Authority – the California Capital Access Program (CalCAP). CalCAP requires this provision to assess the financial soundness of a Participating Financial Institution to determine if the loan loss reserve will be held by the particular financial institution as opposed to being held at a trustee bank. In the CAEATFA Program, all funds will remain under CAEATFA’s control, held by a trustee bank under contract with CAEATFA, as opposed to allowing Participating Financial Institutions to hold their own loan loss reserves. Therefore, there is no need to require a rating for this purpose.

§10054 (c): Loan Enrollment.

In order to enroll a Qualified Loan, the existing regulations require a Participating Financial Institution to submit: (1) a Loan Enrollment Application; (2) a Certificate of Completion signed by the Contractor and Borrower; (3) an Eligible Improvements Specification Report; (4) a copy of the pre-project energy efficiency assessment; and (4) a copy of the post-project energy assessment.

In Section 10054(c), the proposed modification specifies that the documents submitted with the Loan Enrollment Application to CAEATFA shall be “*redacted by the Participating Financial Institution to remove Borrower name, street address and any other personal identifying information.*” Additionally, the Loan Enrollment Application must include, according to Section 10054(d)(1), a “*Loan Identification Number that does not convey any personal identifying information about the Borrower.*”

Both the FDIC Right to Financial Privacy Act of 1978 and the California Financial Information Privacy Act protect customers of financial institutions by limiting government access to nonpublic personal information. In order to collect energy efficiency and financing data through the Program, CAEATFA will rely on information submitted to Participating Financial Institutions by Borrowers and Contractors as part of the loan qualification and closing process. To ensure consumer privacy, the Participating Financial Institutions will redact personal identifying information before submitting these documents to CAEATFA for loan enrollment.

§10056 (f) and (g): Claim for Reimbursement.

The existing regulation states that “Except as provided in subdivision (g), if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution’s claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.”

Subsection (g) further states that “If a Qualified Loan (or any part of it) is among the first two hundred fifty dollars (\$250,000) of Qualified Loans made by a Participating Financial Institution and it suffers a loss, and at the time of the claims there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed seventy-five percent (75%) of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.”

These provisions restricting a Participating Financial Institution’s (PFI) ability to draw down on the loan loss reserve funds are carryover provisions that CAEATFA initially adopted from the CalCAP loan loss reserve program. After additional consideration and evaluation of the implications of the provisions, and to encourage Financial Institutions participation in the Program, CAEATFA staff determined that a PFI should be able to make a full recovery of charged-off loans if funds have been designated and are available, balanced with reasonable administrative efforts on the part of CAEATFA. Therefore, CAEATFA staff determined it would be appropriate for PFIs to make a subsequent claim at a later date in the event there were insufficient funds at the time of the original claim, provided the PFI continues to make qualified loans that would allow it to replenish the loan loss reserve account. In the event

multiple claims are made and there are insufficient loan loss reserve funds, the Participating Financial Institution will need to determine the priority of their claims and which charged-off Qualified Loan they would like to cover first.

The revised provision in subsection (f) will read as follows: *“If a Qualified Loan suffers a loss and at the time of the Participating Financial Institution’s claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim.”*

Emergency Regulatory Process.

Pursuant to statute, CAEATFA was granted emergency rulemaking authority under Public Resources Code Section 26011.8(i). This authority provides CAEATFA with the ability to make modifications or changes to the regulations in an expedited manner.

The emergency rulemaking process requires that CAEATFA provide notice of the emergency rulemaking action five days prior to submitting the modifications to OAL for approval, and provides a five-day public comment period. OAL has 10 calendar days to review the regulations, which will be in effect for 180 days (and two 90-day re-adoptions if necessary) while Staff undergoes the regular rulemaking process.

Tentative Timeline.

All of the dates below are tentative and subject to change.

June 26, 2012	CAEATFA Board considers and approves revised emergency regulations
Day -5 ³ June 26, 2012	Proposed Revised Emergency Regulations are publicly noticed (5 day pre-notice prior to submittal to OAL)
Day 0 July 3, 2012	CAEATFA files rulemaking package with OAL
Day +10 July 16, 2012	OAL Decision Deadline. Regulations enacted for 180 days

³ Five working days.

Recommendation. Staff recommends adoption of a resolution to approve the proposed revised emergency regulations modifying the Loan Loss Reserve Program under the AB X1 14 Clean Energy Upgrade Financing Program and authorizing Staff to undertake emergency and permanent rulemaking proceedings and other actions related to promulgation of the regulations.

Attachments:

- Attachment A – Proposed Text of Emergency Regulations
- Attachment B – Assembly Bill X1 14 Text

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY
AND ADVANCED TRANSPORTATION FINANCING AUTHORITY
APPROVING REGULATIONS AND OTHER ACTIONS RELATED THERETO
INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES TO
IMPLEMENT THE LOAN LOSS RESERVE PROGRAM UNDER THE
CLEAN ENERGY UPGRADE FINANCING PROGRAM**

June 26, 2012

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009, and 26011.8 to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the Loan Loss Reserve Program under the AB X1 14 Clean Energy Upgrade Financing Program ("AB X1 14 Program"), as authorized in Section 26130 of the Public Resources Code, are necessary to be adopted at this time to implement the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as emergency regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting permanent regulations to the Office of Administrative Law.

Section 3. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.

TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS
Title 4. Business Regulations
Division 13. California Alternative Energy and Advanced Transportation
Financing Authority

CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
 FINANCING AUTHORITY REGULATIONS IMPLEMENTING

CLEAN ENERGY UPGRADE FINANCING PROGRAM

Proposed Modifications to Regulations for Board Consideration June 26, 2012

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ARTICLE 3. CLEAN ENERGY UPGRADE FINANCING PROGRAM**§10050. Definitions.**

- (a) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division ~~16~~ (commencing with Section 26000 of the Public Resources Code).
- (b) “Borrower” means a property owner who is making Eligible Improvements to an Eligible Property.
- (c) “Executive Director” means the Executive Director of the Authority or his or her designee.
- (d) “Eligible Improvements” means energy saving home improvements which are Permanently Affixed to the real property and which meet the requirements as outlined in this Section.
 - (1) Eligible Improvements shall be recommended by a pre-project energy efficiency assessment conducted on the Eligible Property in accordance with Home Energy Rating System (HERS) Whole House or Building Performance Institute (BPI) Building Analyst requirements and shall be designed to achieve a minimum of ten percent (10%) energy savings.
 - (2) Eligible Improvements may also include the installation of distributed generation renewable energy sources as long as they meet the loading order requirement pursuant to Section 10051.
- (e) “Eligible Property” means a residential property of three units or less [in the State of California](#).
- (f) “Financial Institution” means any insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702); [or a municipal utility district as described in Section 12850 of the Public Utilities Code](#).
- (g) “Loss Reserve Account” means an account held by a Program Trustee that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Section 10056.
- (h) “Loss Reserve Contribution” means the financial assistance provided by the Authority to the Loss Reserve Account for the benefit of a Participating Financial Institution for each Qualified Loan it enrolls in the Program. The initial Loss Reserve Contribution shall be not less than fifteen percent (15%) of the enrolled principal amount of the Qualified Loan until the Participating Financial Institution’s enrolled ~~loan~~[Qualified Loan](#) volume reaches \$250,000. Thereafter, the Loss Reserve Contribution shall be not less than ten percent (10%) of the enrolled principal amount of the Qualified Loan.
- (i) “Minimum Underwriting Criteria” means the criteria established by the Authority as defined in Section 10052.
- (j) “Participating Financial Institution” means a Financial Institution that has been approved by the Authority’s Executive Director to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article.
- (k) “Permanently Affixed” means goods that have become so related to particular real property that an interest in them arises under real property law.

- (l) “Program” means the Clean Energy Upgrade Financing Program established pursuant to Chapter 2.5 (commencing with Section 26130) of Division 16.2 of the Public Resources Code.
- (m) “Program Trustee” means a bank or trust company, or the State Treasurer, chosen by the Authority to hold or administer some or all of the Loss Reserve Accounts on behalf of the Authority.
- (n) “Qualified Contractor” means a contractor who is licensed for the work they perform and who must complete all work according to all applicable laws, rules, and regulations.
 - (1) For energy efficiency improvements only, the work must be performed by a BPI- certified contractor.
- (o) “Qualified Loan” means a loan or a portion of a loan made by a Participating Financial Institution to a Borrower to finance Eligible Improvements made to Eligible Properties.
 - (1) A Qualified Loan is one which meets the Minimum Underwriting Criteria as established by the Authority in Section 10052.
 - (2) A Qualified Loan does not include any of the following:
 - (A) A loan in the form of a line of credit.
 - (B) A loan for the construction or purchase of residential housing.
 - (C) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.
 - (D) Any loan which exceeds ten percent (10%) of the value of the Eligible Property as determined by the Participating Financial Institution.
 - (E) Open end loans (e.g. home equity lines of credit).

Authority: Section 26131, Public Resources Code.

Reference: Sections 26130 and 26133, Public Resources Code.

§ 10051. Quality Assurance Standards.

- (a) All Eligible Improvements financed by the Program must meet applicable quality assurance standards as outlined in this Section.
 - (1) Pre-project energy efficiency assessment. A pre-project energy efficiency assessment conducted on the Eligible Property in accordance with HERS Whole House or BPI Building Analyst requirements is required to assist in identifying appropriate and comprehensive energy efficiency retrofits and operational improvements. The cost of the pre-project energy efficiency assessment may be included as part of the total cost of the Eligible Improvements.
 - (2) Post-project energy assessment. The Eligible Improvements shall be evaluated by a post-project energy assessment conducted on the Eligible Property. This post-project energy assessment must be conducted by an independent third-party inspector who is a HERS Whole House Rater or a BPI Building Analyst. The cost of the post-project energy assessment may be included as part of the total cost of the Eligible Improvements.
 - (3) Distributed generation renewable energy sources final approval. If the project involves distributed generation renewable energy sources, a certification from the Qualified

Contractor that it has secured all permits and approvals needed to install the Eligible Improvements shall be required. If the project does not include energy efficiency improvements because the loading order requirement has been met through Section 10051(a)(4)(A)(2), the foregoing Qualified Contractor certification shall be in lieu of the post-project energy assessment.

~~(3)~~(4) Loading order. Any project involving distributed generation renewable energy ~~improvements~~sources must be part of a single Qualified Loan in which the energy efficiency improvements achieve a minimum ten percent (10%) reduction in total property energy use.

(A) Compliance with the loading order can be established in one of two ways:

1. Installation of recommended Eligible Improvements necessary to achieve a minimum ten percent (10%) improvement over the pre-project baseline, as demonstrated by the post project energy assessment required pursuant to subsection (a)(2) above.
2. Demonstrating a Home Energy Rating (HERS) score of ~~at least~~ 85 or lower provided air sealing, attic insulation, duct test and seal or replacement, and insulation of domestic hot water or replacement have all been installed if recommended by the pre-project energy assessment.

Authority: Section 26131, Public Resources Code.

Reference: Section 26133, Public Resources Code.

§ 10052. Minimum Underwriting Criteria.

- (a) A Participating Financial Institution may enroll Qualified Loans that meet the Minimum Underwriting Criteria and may set more stringent underwriting criteria. A Participating Financial Institution has responsibility for underwriting decisions and legal compliance with respect to the Qualified Loans it makes pursuant to these regulations.
- (b) A Participating Financial Institution agrees that for each Qualified Loan it makes it will investigate and evaluate the creditworthiness of the applicant in a manner consistent with the regulations and its customary practices for loans in the amount proposed.
- (c) The ~~Clean Energy Upgrade~~ Minimum Underwriting Criteria are:
 - (1) Loan type. Qualified Loans may be secured or unsecured closed end loans.
 - (2) Maximum loan amount. A Qualified Loan must not exceed ~~10~~ten percent (10%) of the value of the Eligible Property as determined by the Participating Financial Institution.
 - (3) Loan recipient. Borrowers must be the legal owners of the Eligible Property.
 - (4) Mortgage delinquencies. Borrowers must be current on their mortgage and property tax payments and not in default or in bankruptcy proceedings.

Authority: Section 26131, Public Resources Code.

Reference: Section 26133, Public Resources Code.

§ 10053. Application by Financial Institution.

- (a) A Financial Institution seeking to participate in the Program will complete a Financial Institution Application that shall include the following information:
- (1) Name and address of applicant Financial Institution.
 - (2) Name, address, telephone and fax numbers, email address and title of contact person.
 - ~~(3) Combined capital and surplus as the end of the Financial Institution's most recent fiscal year.~~
 - (3) Type of Financial Institution.
 - ~~(4) Number of lending branches and locations, listed by county, particularly as it relates to geographic areas served~~A list of the geographic area(s) served in California, by county.
 - (5) Names of the Regulatory Agency and the Insuring Agency to which the Financial Institution is accountable. This provision is not required if the Financial Institution is a municipal utility district as described in Section 12850 of the Public Utilities Code.
 - ~~(6) The Financial Institution's rating from a recognized rating agency which assesses the financial soundness and stability of financial institutions.~~
 - ~~(10)(6) A detailed description of the loan program to finance Eligible Improvements, including the cost efficiency of the loan program.~~
 - ~~(11)(7) A detailed description of the transactional activities associated with the loan issuance, including all transactional costs.~~
 - ~~(12)(8) The mechanism by which savings produced by this Program are passed on to the Borrowers in the form of lower cost financing.~~
 - (9) Certification that the applicant Financial Institution is not subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program, ~~and the name of that body~~ This provision is not required if the Financial Institution is a municipal utility district as described in Section 12850 of the Public Utilities Code. If a Participating Financial Institution becomes subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, the Participating Financial Institution shall inform the Authority in writing within thirty (30) days of such action.
 - ~~(7)(10) The Financial Institution's agreement to follow the Program's Program regulations as set forth in this Article.~~
 - ~~(8)(11) The Financial Institution's agreement to permit an audit of any of its records relating to enrolled Qualified Loans, during normal business hours on its premises, by the Authority or its agents, and to supply such other information concerning enrolled Qualified Loans as shall be requested by the Executive Director.~~
 - ~~(9)(12) Acknowledgment by the Financial Institution~~ The Financial Institution's acknowledgment that the Authority and the State will have no liability to the Participating Financial Institution under the Program except from funds deposited in the Loss Reserve Account for the Participating Financial Institution.
 - ~~(10) A detailed description of the loan program to finance Eligible Improvements, including the cost efficiency of the loan program.~~
 - ~~(11) A detailed description of the transactional activities associated with the loan issuance, including all transactional costs.~~
 - ~~(12) The mechanism by which savings produced by this Program are passed on to the Borrowers in the form of lower cost financing~~

- (13) The application shall be signed by a person authorized to bind the Financial Institution, and shall include the signatory's printed name, title and date.
- (b) Upon receipt of a completed application, the Executive Director will within ten (10) business days review and determine whether additional information is required, or whether the application is sufficient to permit the applicant to be a Participating Financial Institution. The Executive Director's decision whether an application is sufficient shall be final.
- ~~(c) The Participating Financial Institution is responsible for all loan decisions regarding creditworthiness and certifying compliance with the minimum underwriting requirements and certifying that it has complied with all requirements of the Program regulations.~~
- ~~(d) The Participating Financial Institution must obtain assurance from the Borrower that the loan will be used for Eligible Improvements.~~

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

§ 10054. Loan Enrollment.

- (a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.
- (b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan by notifying the Authority in writing, within ~~ten (10)~~ fifteen (15) business days after it receives a signed Certificate of Completion from the Qualified Contractor and/or Borrower certifying that the project is complete and has satisfied all Program requirements, that it is enrolling a Qualified Loan. For Qualified Loans involving multiple Certificates of Completion from Qualified Contractors, the fifteen (15)-business-day period shall start upon the date of receipt by the Participating Financial Institution of the last required Certificate of Completion.
- (c) In order to enroll a Qualified Loan, a Participating Financial Institution must submit ~~a Loan Enrollment Application, a Certificate of Completion, an Eligible Improvements Specification Report, a copy of the pre-project energy efficiency assessment, and a copy of the post-project energy assessment conducted on the Eligible Property~~ the documents specified in subdivisions (d) through (f) of this Section and the quality assurance documentation specified in Section 10051. The Participating Financial Institution shall redact Borrower name, street address and any other personal identifying information from all documents prior to submission to the Authority.
- (d) The Loan Enrollment Application to the Authority shall include the following ~~information,~~ based in part on information provided by the Borrower and the Qualified Contractor:
- ~~(1) Loan application number, city, county and zip code where the project is located.~~
 - ~~(2) Borrower's FICO score and debt-to-income ratio.~~
 - ~~(3) Brief summary of the Eligible Improvements and the intended use of the proceeds of the Qualified Loan.~~
 - ~~(4) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled).~~
 - ~~(5) Type of the Qualified Loan (e.g., home equity loan, term loan, second mortgage).~~

- ~~(6) Date the Qualified Loan is closed.~~
- ~~(7) Date the Certificate of Completion is received by the Participating Financial Institution.~~
- ~~(8) Term of the Qualified Loan.~~
- ~~(9) Interest rate applicable to the Qualified Loan~~
- ~~(10) The interest rate the Qualified Loan would have received had the loan not been enrolled in this Program.~~
- ~~(11) Estimated savings to the Borrower in the form of lower cost financing.~~
- ~~(12) Certification that the loan is a Qualified Loan, and that the Borrower receiving the Qualified Loan meets the Minimum Underwriting Criteria set forth in this Article.~~
- (1) Participating Financial Institution name and Program-assigned identification number.
- (2) Loan officer name, telephone number and email.
- ~~(1)(3) Loan Identification #~~Number that does not convey any personal identifying information about the Borrower.
- ~~(2)(4) Borrower's FICO score and debt-to-income ratio.~~
- ~~(1)(5) City, county and zip code where the project is located.~~
- ~~(3)(6) Brief summary of the Eligible Improvements and the intended use of the proceeds of the Qualified Loan.~~
- (7) Indication whether the Qualified Loan being enrolled is in the first \$250,000 of Program Qualified Loans enrolled by the Participating Financial Institution.
- ~~(4)(8) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled).~~
- ~~(5)(9) Type of the Qualified Loan (e.g., home equity loan, term loan, second mortgage), and whether the loan is secured.~~
- ~~(7)(10) Date the Certificate of Completion is received by the Participating Financial Institution.~~
- ~~(8)(11) Term and maturity date of the Qualified Loan.~~
- ~~(9)(12) Interest rate applicable to the Qualified Loan and whether it is fixed or variable.~~
- ~~(10)(13) The interest rate the Qualified Loan would have received had the loan not been enrolled in this Program.~~
- ~~(11)(14) Estimated savings to the Borrower in the form of lower cost financing.~~
- ~~(17)(15) The Participating Financial Institution's estimate of the Authority's Loss Reserve Contribution to the Loss Reserve Account.~~
- ~~(12)(16) Certification that the loan is a Qualified Loan, and that the Borrower receiving the Qualified Loan meets the Minimum Underwriting Criteria set forth in this Article.~~
- ~~(13) A copy of the certification that the Qualified Loan is used for Eligible Improvements required pursuant to subdivision (e).~~
- ~~(14)(17) Certification that the principal-enrolled amount of the loan-total outstanding principal balance of all enrolled Qualified Loans specific to the Borrower does not exceed ten percent (10%) of the value of the Eligible Property as determined by the Participating Financial Institution.~~
- ~~(15)(18) Certification that the Participating Financial Institution has obtained a written representation from the Qualified Contractor that it has secured all permits and approvals needed to complete the retrofits.~~
- ~~(16)(19) Notification if the Participating Financial Institution has enrolled the same loan or a portion thereof in any government program substantially similar to the Program including, but not limited to, other loan loss reserve or loan guarantee programs.~~

~~(17) The Participating Financial Institution's estimate of CAEATFA's contribution to the loan loss reserve account.~~

- (e) The Certificate of Completion shall be in a form specified by ~~and submitted to~~ the Authority and ~~which~~ shall include the following information (the Participating Financial Institution shall redact any Borrower personal identifying information prior to submission to the Authority):
- ~~(1) General information including:~~
- (1) Information provided by the Qualified Contractor:
- ~~(A) Borrower loan identification number.~~
- ~~(C)(A)~~ Qualified Contractor's name.
- ~~(D)(B)~~ Qualified Contractor's license number.
- ~~(B)(C)~~ City and zip code where the project is located.
- (2) The Qualified Contractor must also make certain certifications, including:
- (A) Certification that ~~they are~~ he or she is licensed to perform the work for which the Qualified Loan is made.
- (B) Certification that he or she is a BPI certified contractor if performing energy efficiency improvements.
- (C) Certification that the Eligible Improvements have been completed in accordance with the Eligible Improvements Specification Report ~~furnished to the Borrower.~~
- (D) Certification that all of the Eligible Improvements installed are energy saving home improvements recommended by the pre-project energy efficiency assessment conducted on the Eligible Property.
- (E) Certification that the installation complies with all applicable California building standards (all sections of Title 24), local electricity utility interconnection requirements, and any additional laws, ordinances, regulations and standards applicable in the jurisdiction where the installation occurred.
- (F) Certification that they have secured all permits and approvals needed to install the Eligible Improvements.
- (G) Certification that the post-project energy assessment was conducted by an independent third-party inspector who is HERS or BPI certified.
- (H) If the Eligible Improvements include ~~distributive~~ distributed generation renewable sources, a certification of how the Program's loading order requirement was met.
- (3) The Borrower must make certain certifications, including:
- (A) Certification that the Eligible Improvements listed on the Eligible Improvements Specification Report have been completed to their satisfaction.
- (B) Certification that they understand that the Authority and its directors, officers, and agents do not guarantee the performance, quality, or workmanship of the Eligible Improvements.
- (C) Certification that the loan proceeds were used to pay for the Eligible Improvements.
- (D) Acknowledgement that the Authority, including its officers, directors, employees, affiliates, agents, or designees, has received and will receive information related to the project. The Authority may use this information for program management and evaluation and shall treat the information as confidential unless otherwise required by law.

- (E) Authorization for the Qualified Contractor and Participating Financial Institution to share information with the Authority, including contract information, data on work performed and Eligible Improvements installed, information regarding the Qualified Loan, and other information relating to or arising from participation in the Program.
- (F) Borrower signature, name and date.
- (4) Lender to complete:
- (A) Participating Financial Institution name.
- (B) Loan identification number.
- (C) Participating Financial Institution address and telephone number.
- (f) The Eligible Improvements Specification Report must be completed by the Qualified Contractor and ~~submitted to the Participating Financial Institution making the Qualified Loan. It shall include the following information.~~ shall include the following information (the Participating Financial shall include the following information redact any Borrower personal identifying information prior to submission to the Authority):
- (1) General project data:
- (A) Participating Financial Institution name.
- ~~(A)(B) Qualified Loan application number.~~ Loan Identification Number.
- ~~(B)(C)~~ Project location such as city and zip code.
- ~~(C)(D)~~ Building type.
- ~~(D)(E)~~ Name of the Qualified Contractor's company.
- ~~(E) Names of Qualified Contractor's certifications.~~
- (F) Total project invoiced cost.
- (G) Qualified Loan amount.
- (H) Amount of rebates.
- (I) Project start date and project completion date.
- (2) General building data:
- (A) Year constructed.
- (B) Building floorspace.
- ~~(C) Number of occupants.~~
- ~~(D)(C)~~ Electricity service provider name.
- ~~(E)(D)~~ Natural gas service provider name.
- ~~(F)(E)~~ Other primary energy fuel.
- (3) Total energy savings:
- (A) Source or method for prediction.
- (B) Estimated electricity saved per year (kWh).
- (C) Estimated percent savings of kWh per year.
- (D) Estimated natural gas savings per year (therms).
- (E) Estimated percent savings of natural gas per year.
- (F) If other primary fuels are applicable, the expected annual energy savings per year in units of the energy fuel indicated, and the estimated percent savings per year.
- (G) Estimated annual cost savings, in dollar amount.
- (4) Distributed generation renewable source data:
- (A) Type and capacity.
- (B) Estimated annual cost savings, in dollar amount.
- ~~(4)(5)~~ List of installed Eligible Improvements.

- (5)(6) Quality assurance and quality control information:
- (A) Qualified Contractor's license number.
 - (B) Qualified Contractor's ~~BPI Certification Number (for energy efficiency improvements only)~~ certification types and certification numbers, if applicable.
 - (C) Building permit numbers, if applicable.
- (6)(7) This report is not intended to be a contract or replace the contract between the Qualified Contractor and the Borrower, nor is it intended to be a contract between the Authority and any other party.
- (g) The Participating Financial Institution shall be authorized to base the information requested in ~~subdivision (f)~~ subdivisions (e) and (f) above upon representations made to it by the Borrower and/or the Qualified Contractor, provided that no such representation may be relied upon if it is known to be false by the lending officers at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.
- (h) If a Borrower seeking a Qualified Loan from a Participating Financial Institution is an employee, member, director, officer, principle shareholder, or affiliate of the Participating Financial Institution, the terms and the conditions of the Qualified Loan and the internal procedures used to approve the Qualified Loan must comply with the following requirements:
- (1) If the Participating Financial Institution is a federal-chartered bank, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 371c, 371c-1, 375a, and 375b of the Title 12 of the United States Code, and Sections 215.4 of Title 12 of the Code of Federal Regulations.
 - (2) If the Participating Financial Institution is a state-chartered bank, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions.
 - (3) If the Participating Financial Institution is a federal-chartered savings association, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Section 1468 of Title 12 of the United States Code.
 - (4) If the Participating Financial Institution is a state-chartered savings association, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Sections 6503 and 6529 of the Financial Code.
 - (5) If the Participating Financial Institution is a federal-chartered credit union, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1757 and 1761c of Title 12 of the United States Code and Section 701.21(d) of Title 12 of the Code of Federal Regulations.
 - (6) If the Participating Financial Institution is a state-chartered credit union, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 15050 of the Financial Code.
 - (7) If the Participating Financial Institution is a certified community development financial institution (CDFI), the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1805.807 of Title 12 of the Code of Federal Regulations.

- (i) The Authority shall, upon receipt of documentation as required under Section 10054 from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within ~~ten (10)~~ fifteen (15) business days after receipt by the Authority of all documentation required by this Article. The Executive Director's determination whether a ~~loan~~ Qualified Loan shall be enrolled in the Program shall be final.
- (j) Upon enrollment of a Qualified Loan, the Loss Reserve Contribution shall be transferred for deposit into the Loss Reserve Account held on behalf of the Participating Financial Institution by the Program Trustee. The Participating Financial Institution will be notified of the transfer.
- (k) Without regard to the term and maturity date of the ~~loan~~ Qualified Loan, the term of enrollment in the Program shall not exceed ten (10) years.

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

§10055. Loss Reserve Accounts.

- (a) Upon the Executive Director's acceptance of an application by a Financial Institution under Section 10053, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:
 - (1) to receive Loss Reserve Contributions deposited by the Authority; and
 - (2) to pay claims in accordance with Section ~~-~~ 10056.
- (b) The Loss Reserve Account shall be held by a Program Trustee selected by the Authority.
- (c) All moneys in a Loss Reserve Account are the property of the Authority. Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loss Reserve Account all interest and income that has been credited to the Loss Reserve Account as set forth below and in Section ~~-~~ 10059.
- (d) If the ~~Authority's aggregate contributions to~~ balance in a Participating Financial Institution's Loss Reserve Account ~~are~~ is greater than the Participating Financial Institution's aggregate principal of its outstanding Qualified Loans for three (3) consecutive months, the Authority may withdraw the excess funds from the Participating Financial Institution's Loss Reserve Account.

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

§10056. Claim for Reimbursement.

- (a) A Participating Financial Institution shall notify the Authority within ~~thirty (30)~~ sixty (60) calendar days after it has charged off all or part of a Qualified Loan as a result of a default by the Borrower.

- (b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed one hundred eighty (180) calendar days from the date of the charge-off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge-off status within ~~thirty (30)~~ sixty (60) calendar days.
- (c) The Authority shall pay claims within thirty (30) calendar days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the representations and warranties provided by the Participating Financial Institution pursuant to Section 10054 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional thirty (30) calendar days if the Authority requires more information in order to determine if the claim shall be paid.
- (d) Claim reimbursement from all sources shall not exceed the enrolled amount of the Qualified Loan ~~or loans~~ that forms the basis for the claim, except when reasonable out-of-pocket expenses are claimed. In the event only a portion of the loan was enrolled, reimbursement of out-of-pocket expenses will be limited to the ratio of the enrolled portion to the total loan amount.
- (e) To make a claim, the Participating Financial Institution shall submit a claim ~~form~~ application to the Authority which shall include the following information:
- (1) Name and identification number of the Participating Financial Institution.
 - (2) Name, address ~~and~~, telephone number and email address of contact person.
 - (3) ~~Program and Participating Financial Institution's loan number~~ Loan Identification Number of the Qualified Loan that is subject of the claim.
 - (4) ~~Amount~~ Original principal amount and enrollment date of the Qualified Loan.
 - ~~(6)~~ (5) Amount of charge-off.
 - ~~(5)~~ (6) Date of charge-off.
 - ~~(9)~~ (7) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.
 - ~~(7)~~ (8) Amount of claim and breakdown of components of the claim between outstanding principal, accrued interest and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.
 - ~~(8)~~ Certification that notice was filed with the Authority as required by this section, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.
 - ~~(9)~~ Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.
 - ~~(10)~~ (9) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.
 - ~~(11)~~ Statement whether the Qualified Loan qualifies under subdivision (g).
 - ~~(8)~~ (10) Certification that notice was filed with the Authority as required by this Section, and certification that such charge-off was made in a manner consistent with the

Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

- ~~(12)~~(11) Statement regarding claims made concerning the Qualified Loan with other government programs substantially similar to the Program—including but not limited to loan loss reserve or loan guarantee programs—including amounts of reimbursements anticipated or received. If no such claim is being made, the statement shall explain why and include an agreement by the Participating Financial Institution that no claim will be made, or in the event a claim is made that some or all of any reimbursement received shall be paid to the Authority in an amount necessary to ensure that the Participating Financial Institution does not receive more than the amount allowed pursuant to subdivision (d).
- (12) The claim application shall be signed by a person authorized to bind the Financial Institution, and shall include the signatory's printed name, title and date.
- (f) ~~Except as provided in subdivision (g), if~~ If a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, ~~but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.~~
- ~~(g) If a Qualified Loan (or any part of it) is among the first two hundred fifty thousand dollars (\$250,000) of Qualified Loans made by a Participating Financial Institution and it suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a one subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed seventy-five percent (75%) of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.~~
- ~~(h)~~(g) If, subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority, for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

§10057. ~~Quarterly Reports~~ Participating Financial Institution Reporting.

- (a) A Participating Financial Institution shall provide a cumulative quarterly report to the Authority within two weeks of the end date of each quarter.
- (b) The quarterly report shall indicate the following information for each enrolled Qualified Loan:
 - (1) ~~Participating Financial Institution's loan number~~ Loan Identification Number.
 - (2) Maturity date of the loan.
 - (3) Total loan amount (original amount of loan).
 - (4) Total enrolled amount outstanding (today's balance or enrolled amount, whichever is less).
 - (5) The ~~payment performance on~~ standard delinquency status of all outstanding Qualified Loans and collections, if any.
 - (6) Any inchoate losses or acceleration notices.
 - (7) Closed Qualified Loans shall be reported in the quarter they pay or charge off as a zero balance. Once the Participating Financial Institution has reported the Qualified Loan as zero, it does not need to be included on future quarterly reports and the Qualified Loan may be removed from the quarterly report at that time.
 - (8) For Qualified Loans that resulted in a claim payment to the Participating Financial Institution, the quarterly report shall also include the following information:
 - (A) Date of charge-off.
 - (B) Claim amount paid.
 - (C) Recovery dates.
 - (D) Recovery amounts.
- (c) If a Participating Financial Institution becomes subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, the Participating Financial Institution shall inform the Authority in writing within thirty (30) calendar days of such action.
- (d) If at any time an enrolled Qualified Loan is enrolled in another substantially similar government program, the Participating Financial Institution must notify the Authority of such enrollment.

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

§ 10058. Subrogation.

- (a) The Authority will be subrogated to the rights of the Participating Financial Institution in collateral, personal guarantees and all other forms of security for the Qualified Loan including reimbursement claims that may be made with other government programs substantially similar to the Program including, but not limited to, other loan loss reserve or loan guarantee programs that have not been realized by the Participating Financial Institution, when the Participating Financial Institution's loss has been fully covered by payment of a loss claim, or by a combination of payment of a loss claim and recovery from the Borrower, liquidation of collateral, or from other sources.

- (b) At the time of subrogating its rights, the Participating Financial Institution shall provide the Authority with all original security agreements, any documents evidencing title to real property, certificates of title, guarantees, and any other documents representing security for the Qualified Loan, duly recorded and perfected, and accompanied by enforceable assignments and conveyances to the Authority, unless such security documents also secure indebtedness to the Participating Financial Institution which was not covered by the Qualified Loan. In such latter case, the Participating Financial Institution shall enter into an intercreditor agreement with the Authority, providing that the Participating Financial Institution shall be entitled to recover under such security documents, to the extent possible, the full amount of its loss on any indebtedness not covered by the Qualified Loan but secured by the same collateral as the Qualified Loan; the balance of any amounts recovered under such security documents shall be deposited in the Loss Reserve Account. The Participating Financial Institution shall provide monthly reports, and as requested by the Executive Director, concerning its activities in collecting moneys owed from a defaulted Borrower.
- (c) The Executive Director shall be authorized to enter into agreements with any Participating Financial Institution to provide for such institution to act as the Authority's agent to secure recovery under any agreement, collateral or security documents to which the Authority has been subrogated.

Authority: Section 26131, Public Resources Code.
Reference: Sections 26133 and 26134, Public Resources Code.

§ 10059. Termination and Withdrawal from the Program.

- (a) A Participating Financial Institution shall be authorized to withdraw from the Program after giving written notice to the Authority. Such notice shall specify either:
 - (1) that the Participating Financial Institution waives any further interest in the Loss Reserve Account (including for the reason that all Qualified Loans covered by the Loss Reserve Account have been repaid); or
 - (2) that the Participating Financial Institution will not enroll any further loans under the Program but that the Loss Reserve Account shall continue in existence to secure all Qualified Loans enrolled prior to such notice.
- (b) After receipt of a notice under subsection (a)(1) or receipt of a certificate from a Participating Financial Institution which has withdrawn from the Program pursuant to subsection (a)(2), certifying that all Qualified Loans secured by the Loss Reserve Account have been repaid and that there are no pending claims for reimbursement under Section 10056, the remaining balance in the Loss Reserve Account shall be distributed to the Authority.
- (c) The Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program, by notice in writing, upon the occurrence of any of the following:
 - (1) Entry of a cease and desist order, regulatory sanction, or any other action against the Participating Financial Institution by a regulatory agency that may impair its ability to participate in the Program; or

- (2) Failure of the Participating Financial Institution to abide by the Law or this Article; or
- (3) Failure of the Participating Financial Institution to enroll any Qualified Loans under the Program for a period of one year; or
- (4) Provision of false or misleading information regarding the Participating Financial Institution to the Authority, or failure to provide the Authority with notice of material changes in submitted information regarding the Participating Financial Institution. In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans, but all previously enrolled Qualified Loans shall continue to be covered by the Loss Reserve Account until they are paid, claims are filed, or the Participating Financial Institution withdraws from the Program pursuant to Section 10059(a).

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

§ 10060. Reports of Regulatory Agencies.

- (a) The Executive Director shall be authorized to seek information directly from any federal or state regulatory agency concerning any Participating Financial Institution participating in the Program.

Authority: Section 26131, Public Resources Code.

Reference: Sections 26133 and 26134, Public Resources Code.

Assembly Bill No. 14

CHAPTER 9

An act to amend Sections 26003, 26102, 26140, and 26141 of, to amend the heading of Division 16.2 (commencing with Section 26100) of, to add Sections 26100.5 and 26103.5 to, and to add Chapter 2.5 (commencing with Section 26130) to Division 16.2 of, the Public Resources Code, relating to energy, and making an appropriation therefor.

[Approved by Governor August 2, 2011. Filed with
Secretary of State August 2, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 14, Skinner. Energy: energy upgrade financing.

(1) Existing law requires the California Alternative Energy and Advanced Transportation Financing Authority to establish a Property Assessed Clean Energy (PACE) Reserve program to assist local jurisdictions in financing the installation of distributed generation renewable energy sources or energy or water efficiency improvements meeting specified requirements that are permanently affixed on real property through the use of a voluntary contractual assessment. Existing law, until January 1, 2015, appropriates up to \$50,000,000 from the Renewable Resource Trust Fund to the authority for the purposes of the PACE Reserve program and authorizes the authority to expend up to \$300,000 of that appropriation for initial administrative costs in implementing the PACE Reserve program.

This bill would additionally require the authority to administer a Clean Energy Upgrade Program that would be developed by the State Energy Resources Conservation and Development Commission and the authority to reduce the costs to property owners of a loan provided by a financial institution that has a loan program that satisfies the specified requirements. Because this bill would authorize the use of the money appropriated for the PACE Reserve program for the Clean Energy Upgrade Program, this bill would make an appropriation. The bill would require the authority to report annually specified information regarding the program. The bill would increase the amount of the appropriation that may be expended for initial administrative costs to \$550,000, thereby making an appropriation.

(2) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) “Cost” as applied to a project or portion of the project financed under this division means all or part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest in the real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; the cost of the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of a project.

(c) (1) “Alternative sources” means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) “Alternative sources” does not include a hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) “Advanced transportation technologies” means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state’s commitment to energy conservation,

pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

- (1) Intelligent vehicle highway systems.
- (2) Advanced telecommunications for transportation.
- (3) Command, control, and communications for public transit vehicles and systems.
- (4) Electric vehicles and ultralow-emission vehicles.
- (5) High-speed rail and magnetic levitation passenger systems.
- (6) Fuel cells.
- (e) “Financial assistance” includes, but is not limited to, either, or any combination, of the following:
 - (1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.
 - (2) Any other type of assistance the authority determines is appropriate.
- (f) “Participating party” means either of the following:
 - (1) A person, or an entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that does either of the following:
 - (A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.
 - (B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.
 - (2) A public agency or nonprofit corporation that does either of the following:
 - (A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.
 - (B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.
- (g) (1) “Project” means a land, building, improvement to the land or building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies, or an arrangement for the purchase, including prepayment, or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.
- (2) “Project,” for the purposes of Section 26011.8, means any tangible personal property that is utilized for the design, manufacture, production, or assembly of advanced transportation technologies or alternative source products, components, or systems.
- (h) “Public agency” means a federal or state agency, department, board, authority, state or community college, university, or commission, or a county,

city and county, city, regional agency, public district, school district, or other political entity.

(i) (1) “Renewable energy” means a device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

- (A) Biomass.
- (B) Solar thermal.
- (C) Photovoltaic.
- (D) Wind.
- (E) Geothermal.

(2) For purposes of this subdivision, “conventional energy fuel” means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for purposes of this section, “renewable energy” also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines and fuel cells.

(j) “Revenue” means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

SEC. 2. The heading of Division 16.2 (commencing with Section 26100) of the Public Resources Code is amended to read:

**DIVISION 16.2. PROPERTY ASSESSED CLEAN ENERGY (PACE)
AND CLEAN ENERGY FINANCING ASSISTANCE**

SEC. 3. Section 26100.5 is added to the Public Resources Code, to read: 26100.5. The Legislature further finds and declares both of the following:

(a) Actions by federally chartered home loan entities have frustrated efforts to accelerate the implementation of the PACE financing program, creating a need to establish effective alternative approaches that can be rapidly deployed to advance the purposes of this division.

(b) Among the most promising alternatives that can be implemented rapidly are those intended to increase access to capital for projects that advance the purposes of this division.

SEC. 4. Section 26102 of the Public Resources Code is amended to read: 26102. “Applicant” means, for the purposes of Chapter 2 (commencing with Section 26120), a public agency as defined in paragraph (3) of subdivision (c) of Section 5898.20 of the Streets and Highways Code and,

for the purposes of Chapter 2.5 (commencing with Section 26130), a financial institution providing a loan pursuant to that chapter to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements.

SEC. 5. Section 26103.5 is added to the Public Resources Code, to read:

26103.5. “Clean Energy Upgrade Program” means a statewide energy and water efficiency and renewable energy generation building retrofit financing program developed by the State Energy Resources Conservation and Development Commission and the authority pursuant to Section 26130.

SEC. 6. Chapter 2.5 (commencing with Section 26130) is added to Division 16.2 of the Public Resources Code, to read:

CHAPTER 2.5. CLEAN ENERGY UPGRADE PROGRAM

26130. The authority shall administer a Clean Energy Upgrade Program to reduce overall costs to the property owners of a loan provided by an applicant to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements on real property by providing a reserve or other financial assistance at a level to be determined by the State Energy Resources Conservation and Development Commission and the authority. Improvements financed pursuant to this program shall be for a residential project of three units or fewer or a commercial project that costs less than twenty-five thousand dollars (\$25,000) in total.

26131. (a) The authority shall adopt regulations governing the implementation of this chapter, including quality assurance pursuant to subdivision (b) of Section 26132, at a publicly noticed meeting. Notwithstanding any other law, regulations adopted pursuant to this section may be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including Section 11349.6 of that code, the Office of Administrative Law shall consider the adoption of the regulations pursuant to subdivision (a) to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

26132. (a) An applicant shall submit to the authority an application providing a detailed description of the loan program to finance the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements on real property, a detailed description of the transactional activities associated with the loan issuance, including all transactional costs, and other information deemed necessary by the authority.

(b) The authority shall ensure that all improvements financed by the program meet quality assurance standards developed by the authority in

consultation with the State Energy Resources Conservation and Development Commission. The standards shall include contractor certification and third-party inspection of an appropriate portion of completed projects to ensure project performance and consumer protection.

26133. (a) In evaluating eligibility, the authority shall consider whether the applicant's loan program includes the following conditions:

- (1) Loan recipients are legal owners of underlying property.
- (2) Loan recipients are current on mortgage and property tax payments.
- (3) Loan recipients are not in default or in bankruptcy proceedings.
- (4) Loans are for less than 10 percent of the value of the property.
- (5) The program offers financing for energy and water efficiency improvements.

improvements.

(6) Improvements financed by the program follow applicable standards of energy efficiency retrofit work, including any guidelines adopted by the State Energy Resources Conservation and Development Commission.

(b) In evaluating an application, the authority shall consider all of the following factors:

(1) The use by the loan program of best practices, adopted by the authority, to qualify eligible properties for participation in underwriting the loan program.

(2) The cost efficiency of the applicant's loan program.

(3) The projected number of jobs created by the loan program.

(4) The applicant's loan program requirements for quality assurance and consumer protection, as related to achieving efficiency and clean energy production, in accordance with the standards developed pursuant to subdivision (b) of Section 26132.

(5) The mechanisms by which savings produced by this program are passed on to the property owners.

(6) Any other factors deemed appropriate by the authority.

(c) The authority may approve a loan program that offers financing for electric vehicle charging infrastructure if the electric vehicle charging infrastructure is part of a project to install energy efficiency improvements and distributed generation renewable energy resources and is designed so that the project does not increase peak energy demand.

26134. (a) The authority shall require certification from a loan applicant that each loan offered pursuant to the applicant's loan program is consistent with the requirements of the Clean Energy Upgrade Program administered pursuant to this chapter.

(b) If the conditions of subdivision (a) are satisfied, the authority shall allocate to the applicant, at the closing of the loan, the amount made available from the Renewable Resource Trust Fund in the form of financial assistance as approved by the State Energy Resources Conservation and Development Commission and the authority. Prior to providing financial assistance pursuant to this section, the authority shall enter into an agreement with the applicant regarding the financial assistance, including the process for the possible return of moneys disbursed to or on behalf of the applicant.

SEC. 7. Section 26140 of the Public Resources Code is amended to read:

26140. (a) Until January 1, 2015, an amount of up to fifty million dollars (\$50,000,000) from the Renewable Resource Trust Fund, established pursuant to Section 25751, is hereby appropriated to the authority for the purposes of this division. The moneys appropriated shall remain in the Renewable Resource Trust Fund until the funds are needed by the authority pursuant to this division.

(b) Of the moneys appropriated in subdivision (a), up to five hundred fifty thousand dollars (\$550,000) may be expended by the authority for the initial administrative costs in implementing this division.

(c) All repayments of moneys disbursed pursuant to this division shall be deposited into the Renewable Resource Trust Fund.

SEC. 8. Section 26141 of the Public Resources Code is amended to read:

26141. (a) On March 31, 2011, and annually thereafter, the authority shall submit to the Legislature a report pursuant to Section 9795 of the Government Code on all of the following:

(1) The status of the account.

(2) A summary of the PACE bonds that received assistance pursuant to Chapter 2 (commencing with Section 26120) and a summary of the loans that received assistance pursuant to Chapter 2.5 (commencing with Section 26130).

(3) A summary of the benefits provided by this division, including reduced interest rates on the PACE bonds or on loans receiving assistance pursuant to this division.

(4) The number of jobs created by the PACE programs or loans that received assistance pursuant to this division.

(5) Information on energy and water savings resulting from the PACE programs or loans that received assistance pursuant to this division.

(6) Other information deemed appropriate by the authority.

(b) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 9. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.