

**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 initial CPUC-approved Decision 13-09-044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the “Decision”), issued September 20, 2013 and subsequent CPUC actions¹—proposes to amend 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 amend Title 4, Division 13, Article 5, Sections 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7, 10091.8, 10091.9, 10091.10, 10091.11, 10091.12, 10091.13, 10091.14 and 10091.15 of the California Code of Regulations concerning the implementation of the Residential Energy Efficiency Loan Assistance Program (“REEL Program” or “Program”).

Throughout early Program development and implementation the Authority learned many lessons and advocated for specific changes to the pilots to broaden their relevance to the private market and to streamline operations for participants. On March 29, 2017, the CPUC issued Decision 17-03-026 which granted the Authority additional flexibility to modify the REEL Program from previous guidance documents and requirements. As a result, CAEATFA staff determined that it would be the most effective to make modifications to the Program in stages, quickly implementing some changes to streamline operations, while addressing more complex issues in a subsequent round of modifications. Staff began the initial modification process, proposed modifications, held a lender roundtable, conducted a public workshop, followed by a 10-day public comment period in developing the initial modifications to the regulations, which were approved by the CAEATFA board on August 15, 2017, and subsequently approved by OAL on September 5, 2017 (File No. 2017-0823-04E). A re-adoption of the emergency regulations was

¹ CPUC has issued additional decisions (D) and rulings addressing issues related to the implementation of the pilot programs, including: D. 15-06-008, D. 15-12-002, and D. 17-03-026.

necessary to allow enough time for the Certificate of Compliance process and to make additional modifications to the Program as aforementioned. CAEATFA staff proposed additional modifications and again solicited input from Program participants, held a public workshop, followed by a 10-day public comment period. The Authority board approved the re-adoption of emergency regulations with modifications on February 12, 2018, and OAL approved the re-adoption on March 5, 2018 (File No. 2018-0222-01EE).

This current rulemaking action is substantive similar to the previous rulemaking actions under the emergency rulemaking process (File No. 2017-0823-04E and File No. 2018-0222-01EE), with some additional modifications. 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 Tuesday, June 12, 2018, at 801 Capitol Mall, Room 141, Sacramento, California 95814. Any additional public hearings will be publicized to CAEATFA's Listserve 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 on Monday, June 11, 2018.** Public comments may be submitted during the public workshop. 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 Decision 13-09-044, 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. 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 and associated governing actions.

Primarily, the pilot programs are 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. The REEL Program launched in July 2016, the first in the series of pilot programs to do so. During the Program development and implementation, CAEATFA learned many lessons and advocated for specific changes to the pilots to broaden their relevance to the private market and to streamline operations for participants. These efforts were necessary, from CAEATFA’s perspective, to facilitate Program uptake and increase its effectiveness. On March 29, 2017, the CPUC issued Decision 17-03-026 which granted CAEATFA some additional flexibility to modify the REEL Program from previous guidance Decisions.

The key changes to the Program were:

- Combining Investor Owned Utility (IOU) credit enhancement funds into single accounts to allow for statewide, consolidated loan loss reserve accounts for lenders and to provide a much more valuable credit enhancement for the same overall cost;
- Decoupling energy efficiency measure eligibility for financing from the IOU rebate and incentive programs, allowing for a true test of financing as a mechanism to encourage energy efficiency retrofits and supporting much broader measure eligibility;
- Supporting financing measures to code, allowing for additional project uptake; and

- Improving process efficiencies by removing forms proven to be burdensome to Program participants.

CAEATFA recommended a staged approach to implementing changes, as some could be quickly enacted while others would take more research and development and then enacted over multiple rulemaking processes. To incorporate the above key changes and address other lessons learned, CAEATFA began the process of developing draft regulations. CAEATFA made publicly available the proposed emergency regulations, held a lender roundtable to solicit input, and conducted a public workshop, followed by a 10-day public comment period.

The CAEATFA board approved the emergency regulations on August 15, 2017, which then OAL approved, and they took effect on September 5, 2017. Key modifications to the emergency regulations included:

- Consolidation of the separate IOU holding accounts;
- Broadening of the list of eligible measures;
- Modifying lender's legal certifications to align with current implementation agreement; and
- Streamlining forms and removing requests for data that were no longer necessary.

In order to allow time for the process of a Certificate of Compliance in codifying the emergency regulations under the regular rulemaking process, as well as incorporate additional modifications that required additional research, CAEATFA staff proposed re-adopting the emergency regulations with modifications. The key changes included:

- Adding the voluntary Credit-Challenged Program to the REEL Program to incentivize lending to borrowers with low credit scores by allowing those lenders to receive an additional loan loss reserve contribution of 20%;
- Adding a list of Eligible Energy Efficiency Measures established by CAEATFA in creating a statewide, streamlined, simpler list of measures;
- Adding the option of using income of the census tract to determine Low-to-Moderate Income as it was found by CAEATFA impractical for participating lenders to try to ascertain family size as the sole method of determination; and
- Updating the methodology for rebalancing of accounts to allow for recapturing of the original contribution that was made for a particular loan at the end of the fiscal year in which the loan was paid in full, as well as reducing the recapture amount.

For the re-adoption of emergency regulations with modifications, CAEATFA made publicly available the proposed modified emergency regulations, held stakeholder discussions soliciting input, and conducted a public workshop, followed by a 10-day public comment period. The CAEATFA Board approved the re-adoption of emergency regulations with modifications on February 12, 2018. The re-adoption of emergency regulations with modifications was approved by OAL on March 5, 2018.

The proposed regulations seek to make these previous emergency regulations, with additional modifications, permanent through the Certificate of Compliance regular rulemaking process.

Anticipated benefits of the proposed action.

The Authority anticipates that these regulations will have a positive benefit to the health and welfare of California residents and the state's environment since energy improvements to residential properties will assist in energy conservation and the reduction of greenhouse gas emissions; have a positive impact in the creation of jobs within California, particularly those commonly referred to as "green jobs," and may help expand the number of employers currently doing business within the state, particularly energy efficiency retrofit contractor companies; and expand access to capital for energy efficiency retrofits to the diverse California population.

The proposed amendments and policy objectives for the sections that apply.

Section 10091.1. Definitions. Definitions were added, deleted, or amended in order to establish or refine the terms commonly used throughout the Program as a result of the lessons learned in the development and implementation of the Program. The definitions added provide detail on new Program requirements, including Credit-Challenged Borrower, Credit Enhancement Basis, REEL Borrower Form, and Title 20. The definitions deleted, such as Customer Data Release Form, correspond to structural modifications staff believe will streamline the Program operations and increase participation. The definitions amended clarify terms for Program participants and include participant recommendations on Program improvement, such as for the terms Self Installer, Eligible Loan, Eligible Improvements, and Eligible Energy Efficiency Measures.

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 section is being amended to streamline the lender enrollment process, to include lender requirements for the newly added Credit-Challenged Program, to add the requirement that lenders already participating in the Program must receive Authority approval prior to changing a product offering, and to update lender legal requirements to bring them into alignment with the Program implementation contract between the Authority and IOUs.

Section 10091.3. Additional Requirements for Finance Lenders. This section was amended to correct subsection references. No substantive changes were made.

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. As the Credit-Challenged Program has been newly added, this section is being amended to require income verification for Credit-Challenged Borrowers when loans are greater than \$20,000 to ensure borrowers have the means to pay the loan service. Language is also being amended to be in alignment with a non-proprietary industry term.

Section 10091.5. Contractor Qualification and Management. This section is being amended as the definition "Qualified Contractor" has been renamed to "Participating Contractor." No substantive changes were made.

Section 10091.6. Establishment and Funding of Loss Reserve Accounts. This section describes the process through which Loss Reserve Accounts are established and funded. This section is being amended to make the Program more attractive to lenders and more efficient to implement by consolidating the Loss Reserve Accounts of the four Investor-Owned Utilities to one statewide account, and revising the methodology for rebalancing the Loss Reserve Accounts to annually rather than quarterly.

Section 10091.7. Optional Loss Reserve Reservation and Project Pre-Approval. This section describes the option for Participating Financial Institutions and Participating Finance Lenders the option to get loans pre-approved, which is helpful in confirming Eligible Improvements, and/or the availability of funds for Loss Reserve Contributions. This section is being amended to streamline operations, to require the lender to report which methodology was used in determining Low-to-Moderate Income of borrowers, and to update language to be consistent with the consolidation of the lender's Loss Reserve Accounts into statewide accounts.

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. This section is being amended as a result of the addition of the Credit-Challenged Program in adding a 20% Loss Reserve Contribution for Credit-Challenged Borrowers, while clarifying that 20% is the maximum Loss Reserve Contribution regardless of if the borrower is Low-to-Moderate Income and in the Credit-Challenged Program. This section is also being amended to clarify language, streamline operations and bring them into industry standards, and to update data points collected to more effectively evaluate who is benefitting from, and the efficacy of, the Program as the CPUC will be evaluating this Program.

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. This section is being amended to reflect the streamlined consolidation of Investor-Owned Utilities jurisdictional Loss Reserve Accounts into single, statewide Loss Reserve Accounts for lenders.

Section 10091.10. Project Requirements. This section is being amended to remove restrictions on project eligibility as allowed by CPUC Decision 17-03-026, which gave CAEATFA the authority to manage the list of eligible measures in the Program for statewide consistency. One statewide list of eligible improvements is being added to reduce complexity and streamline the Program. This section is also being amended to clarify methods of safety tests and who is responsible for them.

Section 10091.11. Reporting. This section outlines the information that Participating Financial Institutions, Participating Finance Lenders, and Successor Servicers are required to submit in

monthly reports to the Authority. This section is being amended to include the requirement that lenders must report on any sale or transfer of Enrolled Loans in the Program for the purposes of tracking and reporting on loans.

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. This section is being amended to clarify that Enrolled Loans can be sold or transferred in whole or in part and update reporting requirements of these loans.

Section 10091.13. Termination and Withdrawal. This section is being amended to correct the order of authority references at the end of the section to be in numerical order. No substantive changes were made.

Section 10091.14. Reports of Regulatory Agencies. This section is being amended as the definition “Qualified Contractor” has been renamed to “Participating Contractor.” No substantive changes were made.

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. This section is being amended to clarify language, add that energy savings data from the project may be collected from borrower projects, and clarify that borrower information collected may be used by the Authority or the CPUC in order to conduct surveys.

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 regulations are 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 regulations 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 (1) unlikely eliminate any jobs within the state, (2) likely create an unknown number of jobs in the energy efficiency industry, (3) unlikely eliminate any existing businesses within the state, and (4) likely 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 regulations will have a positive effect on businesses of contractors who conduct the energy efficiency retrofits. The proposed regulations 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 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, 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 at the end of the written comment period, 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/cheef/reel/index.asp>.

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/cheef/reel/index.asp>.